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FOR

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THE FOURTH EDITION;

COMMENCING WITH

The Eleventh Year of the Reign of KING RICHARD II.

AND ENDING WITH

The Sixteenth Year of the Reign of KING GEORGE III.

WITH

TWO ALPHABETICAL TABLES TO THE WHOLE.

TO WHICH IS PREFIXED,

A NEW PREFACE,

By FRANCIS HARGRAVE, ESQUIRE.

VOLUME THE TENTH.

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XLVI.

The Trial of MARY BLANDY, *Spinſter, for the Murder of her Father*, Francis Blandy, *Gent. at the Aſſizes held at* Oxford *for the County of* Oxford, *on* Saturday *the 29th of* February, 1752. *Before the Honourable* Heneage Legge, *Eſq. and Sir* Sydney Stafford Smythe, *Knt. two of the Barons of his Majeſty's Court of Exchequer.*

[Publiſhed by Permiſſion of the Judges.]

ON *Monday*, the 2d of *March* 1752, a Bill of Indictment was found by the Grand Inqueſt for the County of *Oxford*, againſt *Mary Blandy*, Spinſter, for the Murder of *Francis Blandy*, late of the Pariſh of *Henley* upon *Thames*, in the ſaid County, Gentleman.

On *Tueſday*, the 3d of *March* 1752, the Court being met, the Priſoner *Mary Blandy* was ſet to the Bar, when the Court proceeded thus:

Clerk of the Arraigns. *Mary Blandy*, hold up thy Hand. *(Which ſhe did.)* You ſtand indicted by the Name of *Mary Blandy*, late of the Pariſh of *Henley* upon *Thames*, in the County of *Oxford*, Spinſter; Daughter of *Francis Blandy*, late of the ſame Place, Gentleman, deceaſed; for that you, not having the Fear of God before your Eyes, but being moved and ſeduced by the Inſtigation of the Devil, and of your Malice aforethought, contriving and intending, him the ſaid *Francis Blandy*, your ſaid late Father, in his Life-time, to deprive of his Life; and him felonioufly to kill and murder, on the 10th Day of *November*, in the 23d Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*; and on divers Days and Times, between the ſaid 10th Day of *November*, and the 5th Day of *Auguſt*, in the 25th Year of the Reign of his ſaid Majeſty, with Force and Arms, at the Pariſh of *Henley* upon *Thames* aforeſaid, in the County aforeſaid, did knowingly, wilfully, and felonioufly, and of your Malice aforethought, mix and mingle certain deadly Poiſon, to wit, white Arſenick, in certain Tea, which had been at divers Times, during the Time above ſpecified, prepared for the Uſe of the ſaid *Francis Blandy*, to be drank by him: You the ſaid *Mary*, then and there well knowing that the ſaid Tea, with which you did ſo mix and mingle the ſaid deadly Poiſon as aforeſaid, was then and there prepared for the Uſe of the ſaid *Francis Blandy*, with Intent to be then and there adminiſtered to him, for his drinking the ſame; and the ſaid Tea with which the ſaid Poiſon was ſo mixed as aforeſaid, afterwards, to wit, on the ſaid 10th Day of *November*, and on the divers Days and Times aforeſaid, at *Henley* upon *Thames* aforeſaid, was delivered to the ſaid *Francis*, to be then and there drank by him; and the ſaid *Francis Blandy*, not knowing the ſaid Poiſon to have been mixed with the ſaid Tea, did afterwards, to wit, on the ſaid 10th Day of *November*, and on the ſaid divers Days and Times aforeſaid, there drink and ſwallow ſeveral Quantities of the ſaid Poiſon, ſo mixed as aforeſaid with the ſaid Tea; and that you the ſaid *Mary Blandy* might more ſpeedily kill and murder the ſaid *Francis Blandy*, you the ſaid *Mary Blandy*, on the ſaid 5th Day of *Auguſt*, and at divers other Days and Times between the ſaid 5th Day of *Auguſt* and the 14th Day of *Auguſt*, in the 25th Year of the Reign of our ſaid Sovereign Lord *George* the Second, now King of *Great Britain*, &c. with Force and Arms, at the Pariſh of *Henley* upon *Thames* aforeſaid, in the County aforeſaid, did knowingly, wilfully, felonioufly, and of your Malice aforethought, mix and mingle certain deadly Poiſon, to wit, white Arſenick, with certain Water-Gruel, which had been made and prepared for the Uſe of your ſaid then Father, the ſaid *Francis Blandy*, to be drank by him, you the ſaid *Mary* then and there well knowing that the ſaid Water-Gruel, with which you did ſo mix and mingle the ſaid deadly Poiſon as aforeſaid, was then and there made for the Uſe of the ſaid *Francis Blandy*, with Intent to be then and there adminiſtered to him for his drinking the ſame; and the ſame Water-Gruel, with which the ſaid Poiſon was ſo mixt as aforeſaid, afterwards, to wit, on the ſame Day and Year, at *Henley* upon *Thames* aforeſaid, was delivered to the ſaid *Francis*, to be then and there drank by him; and the ſaid *Francis Blandy*, not knowing the ſaid Poiſon to have been mixed with the ſaid Water-Gruel, did afterwards, to wit, on the ſaid 5th Day of *Auguſt*, and on the Day next following, and on divers other Days and Times afterwards, and before the ſaid 14th Day of *Auguſt*, there drink and ſwallow ſeveral Quantities of the ſaid Poiſon, ſo mixed as aforeſaid with the ſaid Water-Gruel; and the ſaid *Francis Blandy*, of the Poiſon aforeſaid, and by the Operation thereof, became ſick, and greatly diſtempered in his Body; and from the ſeveral Times aforeſaid until the 14th Day of the ſame Month of *Auguſt*, in the 25th Year aforeſaid, at the Pariſh aforeſaid, in the County aforeſaid, did languiſh; on which ſaid 14th Day of *Auguſt*, in the 25th Year aforeſaid, the ſaid *Francis Blandy*, at the Pariſh aforeſaid, in the County aforeſaid, of that Poiſon died: And ſo you, the ſaid *Mary Blandy*, him the aforeſaid *Francis Blandy*, at *Henley* upon *Thames* aforeſaid, in Manner and Form aforeſaid, felonioufly, wilfully, and of your Malice aforethought, did poiſon, kill and murder, againſt the Peace of our ſaid Lord the King, his Crown and Dignity.

Clerk of the Arraigns. How ſayeſt thou, *Mary Blandy*, art thou guilty of the Felony and Murder whereof thou ſtandeſt indicted, or not guilty?

Priſoner. Not guilty.

Cl. of Arr. Culprit, how wilt thou be tried?

Priſ. By God and my Country.

Cl. of Arr. God ſend thee a good Deliverance.

Cl. of Arr. Cryer, make a Proclamation for Silence.

Cryer. Oyez, Oyez, Oyez! My Lords the King's Juſtices ſtrictly charge and command all Manner of Perſons to keep Silence, upon pain of Impriſonment.

Cryer. Oyez! You good Men, that are impannelled to try between our Sovereign Lord the King and the Priſoner at the Bar, anſwer to your Names, and ſave your Fines.

The Jury *were called over and appeared.*

Cl. of Arr. You, the Priſoner at the Bar, theſe Men which were laſt called, and do now appear, are thoſe who are to paſs between our Sovereign Lord the King and you, upon the Trial of your Life and Death; if therefore you will challenge them, or any of them, you muſt challenge them as they come to the Book to be ſworn, before they are ſworn: And you ſhall be heard.

Cl. of Arr. *Anthony Woodward.*

Cryer. *Anthony Woodward*, look upon the Priſoner; You ſhall well and truly try, and true Deliverance make, between our Sovereign Lord the King and the Priſoner at the Bar, whom you ſhall have in Charge, and a true Verdict give, according to the Evidence: *So help you God.*

And the ſame Oath was adminiſtered to the reſt, (which were ſworn) and their Names are as follow:

Anthony Woodward, ſworn. *Charles Harriſon*, ſworn. *Samuel George Glaze*, ſworn. *William Farebrother*, ſworn. *William Haynes*, ſworn. *Thomas Crutch*, ſworn.

Henry Swell, challenged.

John Clarke, ſworn.

William Read, challenged. *Harford Dobſon*, challenged. *William Stone*, challenged.

William Hawkins, ſworn. *John Haynes*, the Elder, ſworn. *Samuel Badger*, ſworn. *Samuel Bradley*, ſworn.

William Brooks, challenged.

Joſeph Jagger, ſworn.

Cl. of Arr. Crier, count theſe.

Anthony Woodward,	*John Clarke,*
Charles Harriſon,	*William Hawkins,*
Samuel George Glaze,	*John Haynes,* the Elder,
William Farebrother,	*Samuel Badger,*
William Haynes,	*Samuel Bradley,*
Thomas Crutch,	*Joſeph Jagger.*

Cryer. Gentlemen, are ye all ſworn?

Cl. of Arr. Cryer, make Proclamation.

Cryer. Oyez, Oyez, Oyez! If any one can inform my Lords the King's Juſtices, the King's Serjeant, the King's Attorney-General, or this Inqueſt now to be taken, of any Treaſons, Murders, Felonies, or Miſdemeanors, committed or done by the Priſoner at the Bar, let him come forth, and he ſhall be heard, for the Priſoner ſtands now at the Bar upon her Deliverance; and all Perſons that are bound by Recognizance to give Evidence againſt the Priſoner at the Bar, let them come forth and give their Evidence, or they will forfeit their Recognizances.

Cl. of Arr. *Mary Blandy*, hold up thy Hand; Gentlemen of the Jury, look upon the Priſoner, and hearken to her Charge; ſhe ſtands indicted by the Name of *Mary Blandy*, of the Pariſh of *Henley* upon *Thames*, in the County of *Oxford*, Spinſter, Daughter of *Francis Blandy*, late of the ſame Place, Gentleman, deceaſed, for that ſhe not having (as in the Indictment before ſet forth). Upon this Indictment ſhe has been arraigned, and upon her Arraignment has pleaded Not Guilty; and for her Trial has put herſelf upon God and her Country, which Country you are: Your Charge therefore is, to inquire whether ſhe be guilty of the Felony and Murder whereof ſhe ſtands indicted, or not guilty.

guilty. If you find her guilty, you ſhall enquire what Goods or Chattels, Lands or Tenements ſhe had at the Time of the Felony committed, or at any Time ſince: If you find her not guilty, you ſhall enquire whether ſhe fled for the ſame: If you find that ſhe did fly for the ſame, you ſhall enquire of her Goods and Chattels, as if you had found her guilty: If you find her not guilty, and that ſhe did not fly for the ſame, ſay ſo, and no more; and hear your Evidence.

The Hon. Mr. *Barrington* then opened the Indictment. After which, the Hon. Mr. *Bathurſt* ſpoke as follows:

May it pleaſe your Lordſhips, and you Gentlemen of the Jury, I am Counſel in this Caſe for the King, in whoſe Name, and at whoſe Expence, this Proſecution is carried on againſt the Priſoner at the Bar, in order to bring her to Juſtice, for a Crime of ſo black a Dye, that I am not at all ſurpriſed at this vaſt Concourſe of People, collected together to hear, and to ſee the Trial and Cataſtrophe of ſo execrable an Offender as ſhe is ſuppoſed to be.

For, Gentlemen, the Priſoner at the Bar, Miſs *Mary Blandy*, a Gentlewoman by Birth and Education, ſtands indicted for no leſs a Crime than that of Murder: And not only for Murder, but for the Murder of her own Father; and for the Murder of a Father paſſionately fond of her; undertaken with the utmoſt Deliberation; carried on with an unvaried Continuation of Intention; and at laſt accompliſhed by a frequent Repetition of the baneful Doſe, adminiſtered with her own Hands. A Crime ſo ſhocking in its own Nature, and ſo aggravated in all its Circumſtances, as will (if ſhe is proved to be guilty of it) juſtly render her infamous to the lateſt Poſterity; and make our Children's Children, when they read the horrid Tale of this Day, bluſh to think that ſuch an inhuman Creature ever had an Exiſtence.

I need not, Gentlemen, paint to you the Heinouſneſs of the Crime of Murder. You have but to conſult your own Breaſts, and you will know it.

Has a Murder been committed? Whoever beheld the ghaſtly Corpſe of the murdered Innocent weltering in its Blood, and did not feel his own Blood run ſlow and cold through all his Veins?——Has the Murderer eſcaped? With what Eagerneſs do we purſue? With what Zeal do we apprehend? With what Joy do we bring to Juſtice? And when the dreadful Sentence of Death is pronounced upon him, every Body hears it with Satisfaction, and acknowledges the Juſtice of the divine Denunciation, that, *By whom Man's Blood is ſhed, by Man ſhall his Blood be ſhed.*

If this then is the Caſe of every common Murderer, what will be thought of one, who has murdered her own Father? who has deſignedly done the greateſt of all human Injuries to him, from whom ſhe received the firſt and greateſt of all human Benefits? who has wickedly taken away his Life, to whom ſhe ſtands indebted for Life? who has deliberately deſtroyed, in his old Age, him, by whoſe Care and Tenderneſs ſhe was protected in her helpleſs Infancy? who has impiouſly ſhut her Ears againſt the loud Voice of Nature and of God, which bid her honour her Father, and inſtead of honouring him, has murdered him?

It becomes us, Gentlemen, who appear here as Counſel for the Crown, ſhortly to open the Hiſtory of this whole Affair, that you may be better able to attend to and underſtand the Evidence we have to lay before you. And though, in doing this, I will endeavour rather to extenuate than to aggravate: Yet I truſt I have ſuch an Hiſtory to open as will ſhock the Ears of all who hear me,

Mr. *Francis Blandy*, the unfortunate deceaſed, was an Attorney at Law, who lived at *Henley* in this County. A Man of Character and Reputation; he had one only Child,—a Daughter,—the Darling of his Soul, the Comfort of his Age. He took the utmoſt Care of her Education, and had the Satisfaction to ſee his Care was not ill-beſtowed; for ſhe was genteel, agreeable, ſprightly, ſenſible. His whole Thoughts were bent to ſettle her advantageouſly in the World. In order to do that, he made uſe of a pious Fraud, (if I may be allowed the Expreſſion) pretending he could give her 10,000*l.* for her Fortune. This he did in hopes that ſome of the neighbouring Gentlemen would pay their Addreſſes to her: For out of Regard to him, ſhe was from her earlieſt Youth received into the beſt Company; and her own Behaviour made her afterwards acceptable to them. But how ſhort-ſighted is human Prudence! What was intended for her Promotion, proved his Death and her Deſtruction.

For, Gentlemen, about ſix Years ago, one Captain *William Henry Cranſtoun*, a Gentleman then in the Army, happened to come to *Henley* to recruit. He ſoon got acquainted with the Priſoner, and hearing ſhe was to have 10,000*l.* fell in Love—not with her, but with her Fortune. Children he had before; married he was at that Time, yet concealing it from her, he inſinuated himſelf into her good Graces, and obtained her Conſent for Marriage.

The Father, who had heard a bad Character of him, and who had Reaſon to believe what was afterwards confirmed, that he was at that very Time married, you will eaſily imagine was averſe to the Propoſal. Upon this Captain *Cranſtoun* and the Priſoner determined to remove that Obſtacle out of their Way, and reſolved to get as ſoon as poſſible into Poſſeſſion of the 10,000*l.* that the poor Man had unfortunately ſaid he was worth.

In order for this, the Captain being at Mr. *Blandy*'s Houſe in *Auguſt* 1750, they both agreed upon this horrid Deed. And that People might be leſs ſurpriſed at Mr. *Blandy*'s Death, they began by giving out that they heard Muſic in the Houſe——A certain Sign (as Mr. *Cranſtoun* had learned from a wiſe Woman, one Mrs. *Morgan*, in *Scotland*) that the Father would die in leſs than twelve Months.——The Captain too pretended he was endowed with the Gift of ſecond Sight, and affirmed that he had ſeen Mr. *Blandy*'s Apparition. This was another certain Sign of his Death, as ſhe told the Servants; to whom ſhe frequently ſaid her Father would not live long. Nay, ſhe went farther, and told them, he would not live till the *October* following.

When it was ſhe firſt began to mix Poiſon with his Victuals, it is impoſſible for us to aſcertain; but probably it was not long after *November* 1750, when Mr. *Cranſtoun* left *Henley*. The Effects of the Poiſon were ſoon perceived. You will hear Dr. *Addington*, his Phyſician, tell you, Mr. *Blandy* had for many Months felt the dreadful Effects of it. One of the Effects was the Teeth dropping out of his Head, whole from their Sockets. Yet what do you think, Gentlemen, the Daughter did when ſhe perceived it? *She d——n'd him for a toothleſs old Rogue, and wiſhed him at Hell.* The poor Man frequently complained of Pains in his Bowels; had frequent Reachings and Sickneſs: Yet, inſtead of deſiſting, ſhe wanted more Poiſon to effect her Purpoſe. And Mr. *Cranſtoun* did accordingly in the *April* following ſend her a freſh Supply; under the Pretence of a Preſent of *Scotch* Pebbles, he incloſed a Paper of white Arſenic. This ſhe frequently adminiſtered in his Tea; and we ſhall prove to you, that in *June*, having put ſome of it into a Diſh of Tea, Mr. *Blandy* diſliking the Taſte, left half in the Cup. Unfortunately! a poor old Chair-woman (by Name *Ann Emmet*) glad to get a Breakfaſt, drank the Remainder, together with a Diſh or two more out of the Pot, and eat what Bread and Butter had been left. The Conſequence was, that ſhe was taken violently ill with purging and vomiting, and was in imminent Danger of her Life. The poor Woman's Daughter came and told Miſs *Blandy* how ill her Mother was; ſhe, ſorry that the Poiſon was miſapplied, ſaid, *Do not let your Mother be uneaſy, I will ſend her what is proper for her.* And accordingly ſent her great Quantities of Sack Whey and thin Mutton Broth, than which no Phyſician could have preſcribed better: And thus drenched the poor Woman for ten Days together, till ſhe grew tired of her Medicines, and ſent her Daughter again to Miſs *Blandy* to beg a little ſmall Beer. *No, no ſmall Beer*, the Priſoner ſaid, that was *not proper for her.* Moſt plainly then ſhe knew what it was the Woman had taken in her Father's Tea. She knew its Effect. She knew the proper Antidotes.——Having now experienced the Strength of the Poiſon, ſhe grew more open and undaunted; was heard to ſay, *Who would grudge to ſend an old Father to Hell for* 10,000*l.*? I will make no Remark upon ſuch an horrid Expreſſion,——it needs none. After this ſhe continued to mix the Poiſon with her Father's Tea as often as ſhe had an Opportunity. Soon afterwards *Suſan Gunnell*, another Witneſs we ſhall call, happened to drink ſome which her Maſter had left; ſhe was taken ill upon it, and continued ſo for three Weeks. This ſecond Accident alarmed the Priſoner. She was afraid of being diſcovered. She found it would not mix well with Tea. Accordingly ſhe wrote to Mr. *Cranſtoun* for further Inſtructions. In Anſwer to it, he bids her *put it into ſome Liquid of a more thickiſh Subſtance.*

The Father being ill, frequently took Water-gruel. This was a proper Vehicle for the Powder. Therefore from this Time you will find her always buſy about her Father's Gruel. But leſt *Suſan Gunnell*, who had been ill, ſhould eat any of it, ſhe cautioned her particularly againſt it; ſaying, *Suſan, As you have been ſo ill, you had better not eat any of your Maſter's Water-gruel; I have been told Water-gruel has done me Harm, and perhaps it may have the ſame Effect upon you.* And leſt this Caution ſhould not be ſufficient, ſhe ſpoke to *Betty Binfield*, the other Maid-Servant, and aſked her whether *Suſan* ever eat any of her Father's Gruel, adding, *She had better not; for if ſhe does, it may do for her, you may tell her.* Evidently then ſhe knew what were the Effects of the Powder ſhe put into her Father's Gruel; for if it would *do for* the Servant, it would *do for* her Father.

But the Time approached beyond which ſhe had foretold her Father would not live.——It was the Middle of *July*, and the Father ſtill living. ——At this Mr. *Cranſtoun* grows impatient. Upon the 18th of *July* he writes to her, and expreſſing himſelf in an allegorical Manner, which however you will eaſily underſtand, he ſays, *I am ſorry there are ſuch Occaſions to clean your Pebbles; you muſt make uſe of the Powder to them, by putting it in any thing of Subſtance, wherein it will not ſwim a-top of the Water, of which I wrote to you of in one of my laſt. I am afraid it will be too weak to take off their Ruſt, or at leaſt it will take too long a Time.* Here he is encouraging her to double the Doſe; ſays, he is afraid it will be too weak, and will take up too much Time. And, as a further Incitement to her to make haſte, deſcribes the Beauties of *Scotland*, and tells her that his Mother, Lady *Cranſtoun*, had employed Workmen to fit up an Apartment for her at *Lennel-Houſe.*

Soon after the Receipt of this Letter ſhe followed the Advice. And you will accordingly find the Doſe doubled. Her Father grew worſe, and, as ſhe herſelf told the Servants, complained of a Fireball in his Stomach, ſaying, *He never will be well till he has got rid of it.* And yet you will find ſhe herſelf, fearful leſt he ſhould get rid of it, was continually adding Fuel to the Fire, till it had conſumed her Father's Entrails.

Gentlemen, I will not detain you by going through every Particular, but bring you to the fatal Period. Upon the 3d of *Auguſt*, being *Saturday*, *Suſan Gunnell* made a large Pan of Water-gruel for her Maſter. Upon *Monday* the 5th, the Priſoner will be proved to go into the Pantry where it was kept, and after having, according to Mr. *Cranſtoun*'s Advice, put in a double Doſe of the Powder, ſhe ſtirred it about for a conſiderable Time, in order to make it mix the better. When fearing ſhe ſhould have been obſerved, ſhe went immediately into the Laundry, to the Maids, and told them, that *ſhe had been in the Pantry, and after ſtirring her Papa's Water-gruel, had eat the Oatmeal at the Bottom*, ſaying, that, *if ſhe was ever to take to the eating any thing in particular, it would be Oatmeal.* Strange Inconſiſtence! She who had cautioned the Maid againſt it not above a Fortnight before, who had declared that it had been prejudicial to her own Health, "is on a ſudden grown mighty fond of it."——But the Pretence is eaſily to be ſeen through. That Afternoon ſome of the Water-gruel was taken out of the Pan, and prepared for her Father's Supper. She again in the Kitchen takes care to ſtir it ſufficiently; looks at the Spoon; rubs ſome between her Fingers; and then ſends it up to the poor old Man her Father. He ſcarce had ſwallowed it, when he was taken violently ill, and continued ſo all the next Day, with a Griping, Purging, and Vomiting. Yet ſhe herſelf orders a ſecond Meſs of the ſame Gruel for her Father's Supper on the *Tueſday*, and was herſelf the Perſon who carried it up to her Father, and adminiſtered it to him as Nouriſhment. The poor old Man, grown weak with the frequent Repetition, had not drank half the Meſs before he was ſeized, from Head to Foot, with the moſt violent pricking Pains, continual Reaching and Vomiting;——and was obliged to go to Bed without finiſhing it. The next Morning the poor Chair-woman coming again to the Houſe, unfortunately eat the Remainder of the Gruel, and was inſtantly affected

in

in ſo violent a Manner, that for two Hours together it was thought ſhe would have died in Mr. *Blandy*'s Houſe. The Priſoner at this Time was in Bed; but the Maid going up to her Room, told her how ill *Dame Emmet* had been; at the ſame Time ſaying, ſhe had eat nothing but the Remainder of her Father's Water-gruel. The Priſoner's Anſwer was, *Poor Woman! I am glad I was not up, I ſhould have been ſhock'd to have ſeen her*---ſhould have been ſhocked to have ſeen the poor Chair-woman eat what was prepared for her Father; but was never ſhock'd at her Father's eating it, or at his Sufferings!

Gentlemen, in the Afternoon of the *Wedneſday*, notwithſtanding the poor Man, her Father, had ſuffered ſo much for two Days together, yet ſhe again endeavours to give him more of the ſame Gruel. *No*, (ſays the Maid) *it has an odd Taſte; it is grown ſtale, I will make freſh. It is not worth while to make freſh now, it will take you from your Ironing; this will do*, was the Priſoner's Anſwer. However, *Suſan* made freſh, after which wanting the Pan to put it in, ſhe went to throw away what was before in it. Upon tilting the Pan, ſhe perceived a white Powder at the Bottom, which ſhe knew could not be Oat-meal. She ſhewed it her Fellow-Servant, when feeling it they found it gritty. They then to plainly perceived what it was had made their poor old Maſter ſo ill. What was to be done? *Suſan* immediately carried the Pan, with the Gruel and Powder in it, to Mrs. *Mounteney*, a Neighbour and Friend of the deceaſed. Mrs. *Mounteney* kept it till it was delivered to the Apothecary, the Apothecary delivered it to the Phyſician, and he will tell you, that upon trying it, he found it to be white Arſenic. Mr. *Blandy* continued from Day to Day to grow worſe. At laſt, upon the *Saturday* Morning, *Suſan Gunnell*, an old honeſt Maid-Servant, uneaſy to ſee how her poor Maſter had been treated, went to his Bed-ſide, and, in the moſt prudent and gentleſt Manner, broke to him what had been the Cauſe of his Illneſs, and the ſtrong Ground there was to ſuſpect that his Daughter was the Occaſion of it. The Father, with a Fondneſs greater than ever a Father felt before, cried out, *Poor Love-ſick Girl! What will not a Woman do for the Man ſhe loves? But who do you think gave her the Powder?* She anſwered, *She could not tell, unleſs it was ſent by Mr.* Cranſtoun. *I believe ſo too*, ſays the Maſter, *for I remember he has talked learnedly of Poiſons. I always thought there was Miſchief in theſe curſed* Scotch *Pebbles.*

Soon afterwards he got up and came to Breakfaſt in his Parlour, where his Daughter and Mr. *Littleton*, his Clerk, then were. A Diſh of Tea, in the uſual Manner, was ready poured out for him. He juſt taſted it, and ſaid, *This Tea has a bad Taſte*; looked at the Cup, then looked hard at his Daughter. She was, for the firſt Time, ſhocked, burſt into Tears, and ran out of the Room. The poor Father, more ſhocked than the Daughter, poured the Tea into the Cat's Baſon, and went to the Window to recover himſelf. She ſoon came again into the Room. Mr. *Littleton* ſaid, *Madam, I fear your Father is very ill, for he has flung away his Tea.* Upon this News ſhe trembled, and the Tears again ſtood in her Eyes. She again withdrew. Soon afterwards the Father came into the Kitchen, and addreſſing himſelf to her, ſaid, *Molly! I had like to have been poiſoned twenty Years ago, and now I find I ſhall die by Poiſon at laſt.* This was Warning ſufficient. She immediately went up Stairs, brought down Mr. *Cranſtoun*'s Letters, together with the Remainder of the Poiſon, and threw them (as ſhe thought unobſerved) into the Fire. Thinking ſhe had now cleared herſelf from the ſuſpicious Appearances of Poiſon, her Spirits mend, *ſhe thanked God, that ſhe was much better, and ſaid, her Mind was more at Eaſe than it had been.* Alas! how often does that, which we fondly imagine will ſave us, become our Deſtruction? So it was in the preſent Inſtance. For providentially, though the Letters were deſtroyed, the Paper with the Poiſon in it was not burnt. One of the Maids having immediately flung ſome freſh Coals upon the Fire, Miſs *Blandy* went well ſatisfied out of the Room. Upon her going out, *Suſan Gunnell* ſaid to her Fellow-Servant, *I ſaw Miſs* Blandy *throw ſome Papers in the Fire, let us ſee whether we can diſcover what they were.* They removed the Coals, and found a Paper with white Powder in it, wrote upon, in Mr. *Cranſtoun*'s Hand, "Powder to clean the Pebbles." This Powder they preſerved, and the Doctor will tell you, that it was white Arſenic, the ſame which had been found in the Pan of Gruel.

Having now (as ſhe imagined) concealed her own being concerned, you will find her the next Day endeavouring to prevent her Lover from being diſcovered. Mr. *Blandy*, of *Kingſton*, having come the Night before to ſee her Father, on *Sunday* Morning ſhe ſent Mr. *Littleton* with him to Church; while they were there, ſhe ſat down and wrote this Letter to her beloved *Cranſtoun:*

Dear Willy,

My Father is ſo bad, that I have only Time to tell you, that if you do not hear from me ſoon again, don't be frightened. I am better myſelf. Leſt any Accident ſhould happen to your Letters, take care what you write. My ſincere Compliments. I am ever yours.

My Father is ſo bad.——Who had made him ſo? Yet does ſhe ſay ſhe was ſorry for it? No. She knew her Father was then dying by that Powder that he had ſent her, yet could acquaint him ſhe was herſelf better. Under thoſe Circumſtances could caution him to take care what he wrote, leſt his Letters ſhould be diſcovered. What can ſpeak more ſtrongly their mutual Guilt? This Letter ſhe ſealed with no leſs than five Wafers. When Mr. *Littleton* came from Church, ſhe privately gave it to him, deſiring it might be directed as uſual, and put into the Poſt. Mr. *Littleton* was at that Time too well appriſed of this black Tranſaction to obey her Commands. He opened the Letter. Took a Copy of it. Upon further Recollection, carried the Original to the Father, who bid him open and read it. He did ſo. What do you think, Gentlemen! was all the poor old Man ſaid upon this Diſcovery?

He only again dropped theſe Words, *Poor Love-ſick Girl! What will not a Woman do for the Man ſhe loves?*

Upon the *Monday* Morning, after having been kept for two Days without ſeeing her Father, by the Order of the Phyſicians, her Conſcience, or rather Fear, began to trouble her; ſhe told the Maid ſhe ſhould go diſtracted if ſhe did not ſee her Father, and ſent a Meſſage to beg to ſee him. Accordingly ſhe was admitted. The Converſation between them was this: "Papa, how do you do?" *My Dear, I am very ill.* She immediately fell upon her Knees, and ſaid, "Dear Sir, baniſh me where "you will; do with me what you pleaſe, ſo you do but pardon and for-"give me. And as to Mr. *Cranſtoun*, I never will ſee, write, or ſpeak to "him again." He anſwered; *I do forgive you, but you ſhould, my Dear, have conſidered that I was your own Father.* Upon this the Priſoner ſaid, "Sir, as to your Illneſs I am innocent." *Suſan Gunnell*, who was preſent, interrupted her at this Expreſſion, and told her, ſhe was aſtoniſhed to hear her ſay ſhe was innocent, when they had the Poiſon to produce againſt her, that ſhe had put into her Father's Water-gruel, and had preſerved the Paper ſhe had thrown into the Fire. The Father, whoſe Love and Tenderneſs for his Daughter exceeded Expreſſion, could not bear to hear her thus accuſed; therefore turning himſelf in his Bed, cried out, "*Oh that Villain! that hath eat of the beſt, and drank of the beſt my Houſe could afford, to take away my Life, and ruin my Daughter!* Upon hearing this, the Daughter ran to the other Side of the Bed to him; upon which he added, *My Dear, you muſt hate that Man; you muſt hate the very Ground he treads on.* Struck with this, the Priſoner ſaid, "Dear Sir, your Kind-"neſs towards me is worſe than Swords to my Heart. I muſt down upon "my Knees, and beg you not to curſe me." Hear the Father's Anſwer, a Father then dying by Poiſon given by her Hand: *I curſe thee, my Dear! no, I bleſs you, and will pray to God to bleſs you, and to amend your Life*; then added, *So do, my Dear, go out of the Room, leſt you ſhould ſay any thing to accuſe yourſelf.* Was ever ſuch Tenderneſs from a Parent to a Child! She was prudent enough to follow his Advice, and went out of the Room without ſpeaking. *His Kindneſs was Swords to her Heart*, for near half an Hour. Going down Stairs ſhe met *Betty Binfield*, and whilſt ſhe was thus affected, owned to her, ſhe had put ſome Powder into her Father's Gruel, and that *Suſan* and ſhe for their Honeſty to their Maſter deſerved half her Fortune.

Gentlemen, not to tire you with the Particulars of every Day; upon *Wednesday*, in the Afternoon, the Father died. Upon his Death, the Priſoner finding herſelf diſcovered, endeavoured to perſuade the Man-Servant to go off with her; but he was too honeſt to be tempted by a Reward to aſſiſt her in going off, though ſhe told him it would be 500*l.* in his Way. That Night ſhe refuſed to go to Bed. Not out of Grief for her Father's Death; for you will be told by the Maid who ſat up with her, that ſhe never, during the whole Night, ſhewed the leaſt Sorrow, Compaſſion, or Remorſe upon his Account. But in the Middle of the Night ſhe propoſed to get a Poſt-Chaiſe in order to go to *London*, and offered the Maid twenty-five Guineas to go with her. *A Poſt-Chaiſe! and go to* London! *God forbid, Madam! I ſhould do ſuch a Thing.* The Priſoner finding the Maid not proper for her Purpoſe, immediately put a Smile upon her Face, "I was only joking." Only joking! Good God! would ſhe now have it thought ſhe was only joking?

Her Father juſt dead by Poiſon: She ſuſpected of having poiſoned him; accuſed of being a Parricide; and would ſhe have it thought ſhe was capable of joking?

When I ſee the Aſſiſtance ſhe now has, (and I am glad to ſee ſhe has the Aſſiſtance of three as able Gentlemen as any in the Profeſſion) I am ſure ſhe will not be now adviſed to ſay ſhe was then joking. But it will appear very plainly to you, Gentlemen, that ſhe was not joking; for the next Morning ſhe dreſſed herſelf in a proper Habit for a Journey, and, while the People put to take Care of her were abſent, ſtole out of the Houſe, and went over *Henley-Bridge*. But the Mob, who had heard of what ſhe had done, followed her ſo cloſe, that ſhe was forced to take Shelter in a little Alehouſe, the *Angel*. Mr. *Fiſher*, a Gentleman, who was afterwards one of the Jury upon the Coroner's Inquiſition, came there, and prevailed with her (or in other Words forced her) to return home. Upon her Return, the Inqueſt ſitting, ſhe ſends for Mr. *Fiſher* into another Room, and ſaid, *Dear Mr.* Fiſher! *what do you think they will do with me? Will they ſend me to* Oxford *Gaol? Madam!* ſaid he, *I am afraid it will go hard with you. But if you have any of Mr.* Cranſtoun's *Letters, and produce them, they may be of ſome Service to you.* Upon hearing this, ſhe cried out, *Dear Mr.* Fiſher! *What have I done? I had Letters that would have hanged that Villain, but I have burnt them. My Honour to that Villain has brought me to my Deſtruction.* And ſhe ſpoke the Truth.

This, Gentlemen, is in Subſtance the Hiſtory of this black Affair. But, my Lords! though this is the Hiſtory in Order of Time, yet it is not the Order in which we ſhall lay the Evidence before your Lordſhips and the Jury. It will be proper for us to begin by eſtabliſhing the Fact, that *Mr.* Francis Blandy *did die of Poiſon.* When the Phyſicians have proved that, we will then proceed to ſhew, that *he died of the Poiſon put into the Water-gruel on the 5th of* Auguſt. After this we will call Witneſſes, who from a Number of Circumſtances, as well as from her own Confeſſion, will prove *ſhe put it into her Father's Water-gruel, knowing it was for her Father, and knowing it to be Poiſon.*

Having done this, we will conclude with a Piece of Evidence which I forgot to mention before, and that is the Converſation between her and Mr. *Lane* at the *Angel*. Mr. *Lane* and his Wife happening to be walking at that Time, finding a Mob about the Door, ſtepped into the Alehouſe, to ſee the Priſoner. The Moment ſhe ſaw a Gentleman, though it was one ſhe did not know, ſhe accoſted him, "Sir! you appear to be a Gen-"tleman; for Heaven's Sake, what will become of me?" *Madam!* ſaid he, *you will be ſent to* Oxford *Goal, you will there be tried for your Life; if you are innocent, you will be acquitted; if you are guilty, you will ſuffer Death.*

The Priſoner, upon hearing this, ſtamped with her Foot, and ſaid, *Oh! that damn'd Villain!* Then pauſing, *But why do I blame him? I am moſt to blame myſelf, for I gave it, and I knew the Conſequence.* If ſhe knew the Conſequence, I am ſure there are none of you, Gentlemen, but who will think ſhe deſerves to ſuffer the Conſequence.

And let me here obſerve, how evidently the Hand of Providence has interpoſed to bring her to this Day's Trial, that ſhe may ſuffer the Conſequence. For what, but the Hand of Providence, could have preſerved the Paper thrown by her into the Fire, and have ſnatched it unburnt from the devouring Flame?——Good God! how wonderful are all thy Ways! and how miraculouſly haſt thou preſerved this Paper, to be this Day produced in Evidence againſt the Priſoner, in order that ſhe may ſuffer the Puniſhment due to her Crime;

and be a dreadful Example to all others who may be tempted in like Manner to offend thy Divine Majesty!

Let me add, that next to Providence, the Public are obliged to the two Noble Lords, whose indefatigable Diligence in inquiring into this hidden Work of Darkness, has enabled us to lay before you, upon this Occasion, the clearest and strongest Proof that such a dark Transaction will admit of. For Poisoning is done in secret and alone; it is not like other Murders, neither can it be proved with equal Perspicuity. However, the Evidence we have in this Case is as clear and direct as possible; and if it comes up to what I have opened to you, I make no doubt but you will do that Justice to your Country, which the Oath you have taken requires of you.

Mr. Serjeant *Hayward*.

May it please your Lordships, and you Gentlemen of the Jury; I likewise am appointed to assist the Crown on this Occasion; but his Majesty's learned Counsel having laid before you so faithful a Narrative of this dismal Transaction, it seems almost unnecessary for me to take up any more of your Time, in repeating any Thing that has been before said; and indeed my own Inclinations would lead me to cast a Veil over the guilty Scene: A Scene, so black, and so horrid, that if my Duty did not call me to it, I could rather wish it might be for ever concealed from human Eyes. But as we are now making Inquisition for Blood, it is absolutely necessary for me to make some Observations upon that Chain of Circumstances, that attended this bloody Contrivance and detested Murder.

Experience has taught us, that in many Cases a single Fact may be supported by false Testimony; but where it is attended with a Train of Circumstances that cannot be invented (had they never happened), such a Fact will always be made out to the Satisfaction of a Jury, by the concurring Assistance of circumstantial Evidence. Because Circumstances that tally one with another are above human Contrivance. And especially, such as naturally arise in their Order, from the first Contrivance of a Scheme to the fatal Execution of it.

Having suggested thus much, I shall now proceed to lay before you those Sort of Circumstances that seem to me to arise through this whole Affair, and leave it to your Judgment, whether they do not amount to too convincing a Proof that the Prisoner at the Bar has knowingly been the Cause of her own Father's Death; for upon the Prisoner's Knowledge of what she did, will depend her Fate.

Of all kinds of Murders, that by Poison is the most dreadful, as it takes a Man unguarded, and gives him no Opportunity to defend himself; much more so when administered by the Hand of a Child, whom one could least suspect, and from whom one might naturally look for Assistance and Comfort. Could a Father entertain any Suspicion of a Child, to whom, under God, he had been the second Cause of Life? No sure, and yet this is the Case now before you. The unfortunate Deceased has received his Death by Poison, and that undoubtedly administered by the Hand of his own,—his only,—his beloved Child. Spare me, Gentlemen, to pay the Tribute of one Tear to the Memory of a Person with whom I was most intimately acquainted, and to the Excellency of whose Disposition and Integrity of Heart, I can safely bear faithful Testimony. Oh! were he now living, and to see his Daughter there, the severest Tortures that Poison could give, would be nothing to what he would suffer from such a Sight.

And since the bittерest Agonies must at this Time surround the Heart of the Prisoner, if she does but think of what a Father she has lost; I can readily join with her in her severest Afflictions upon this Occasion, and shall never blame myself, for weeping with those that weep; nor can I make the least Question, but my learned Assistants in this Prosecution will with me rejoice likewise, if the Prisoner, by making her Innocence appear, shall upon the Conclusion of this Inquiry find Occasion to rejoice. But, alas! too strong I fear will the Charge against her be proved, too convincing are the Circumstances that attend it: What those are, and what may be collected from them, is my next Business to offer to your Consideration.

But before I enter thereupon, I must beg leave to address myself to this numerous and crowded Assembly, whom Curiosity hath led hither to hear the Event of this solemn Trial; hoping that whatever may be the Consequence of it to the Prisoner, her present melancholy Situation may turn to our Advantage, and reduce our Minds to Seriousness and Attention. Solemn indeed I may well call it, as being a Tribunal truly awful: For this Method of Trial, before two of his Majesty's learned Judges, has scarce ever been known upon a Circuit; Judges of undoubted Virtue, Integrity, and Learning, who undergo this laborious and important Work, not only for the sake of bringing Guilt to Punishment, but to guard and protect Innocence whenever it appears.

But You, young Gentlemen of this University, I particularly beg your Attention, earnestly beseeching you to guard against the first Approaches of, and Temptations to Vice. See here the dreadful Consequence of Disobedience to a Parent. Who could have thought that Miss *Blandy*, a young Lady virtuously brought up, distinguished for her good Behaviour and prudent Conduct in Life, till her unfortunate Acquaintance with the wicked *Cranstoun*, should ever be brought to a Trial for her Life; and that for the most desperate and bloodiest kind of Murder, *committed by her own Hand, upon her own Father?* Had she listened to his Admonitions, this Calamity never had befallen her. Learn hence the dreadful Consequences of Disobedience to Parents: and know also, that the same Mischief, in all Probability, may happen to such who obstinately disregard, neglect, and despise the Advice of those Persons who have the Charge and Care of their Education; of Governors likewise, and of Magistrates, and of all others who are put in Authority over them. Let this fix in your Mind the excellent Maxim of the good Physician, *Venienti occurrite Morbo*. Let us defend ourselves against the first Temptations to Sin, and guard our Innocency as we would our Lives; for if once we yield, though but a little, in whose Power is it to say, Hitherto will I go, and no further?

And now, Gentlemen of the Jury, those Observations I had before mentioned, I shall attempt to lay before you, in order to assist you in making a true Judgment of the Matter committed to your Charge. The Author and Contriver of this bloody Affair is not at present here. I sincerely wish that he was; because we should be able to convince him, that such Crimes as his cannot escape unpunished. The unhappy Prisoner, ruin'd and undone, by the treacherous Flattery and pernicious Advice of that abandon'd, insidious and execrable Wretch, who had found means of introducing himself into her Father's Family, and, whilst there, by false Pretences of Love, gain'd the Affection of his only Daughter and Child. Love! did I call it? It deserves not the Name; if it was Love of any thing, it was of the Ten thousand Pounds, supposed to be the young Lady's Fortune. Could a Man that had a Wife of his own, and Children, be really in Love with another Woman? Such a Thing cannot be supposed, and therefore I beg leave to call it Avarice and Lust only; but be it what it will, the Life of the Father becomes an Obstacle to the criminal Proceedings that were intended and designed to be carried on between them, and therefore he must be removed, before that imaginary State of Felicity could be obtain'd, according to their projected Scheme. Mark how the Destruction of this poor Man is usher'd into the World: Apparitions, Noises, Voices, Musick, reported to be heard from time to time in the deceased's House. Even his Days are number'd out, and his own Child limits the Space of his Life but till the following Month of *October*. What could be the Meaning of this, but to prepare the World for a Death that was predetermin'd? Who could limit the Days of a Man's Life, but a Person that knew what was intended to be done towards the shortening of it?

In order to bring this about, *Cranstoun* sends Presents of Pebbles, as also a Powder to clean them; and this Powder, Gentlemen, you will find is the dreadful Poison that accomplished this abominable Scheme.

From time to time Mention is made of the Pebbles; but not a Syllable of the Powder. Why not of the one as well as of the other, if there had not been a Mystery concealed in it? Preparation is made for an Experiment of its Power before *Cranstoun*'s Departure; he mixes the deadly Draught; but the Prisoner's Conscience, not yet harden'd, forced her to turn away her Eyes, and she durst not venture to behold the Cup prepared, that was to send the Father into another World.

Soon after this *Cranstoun* quits the Family, (having, no question, left Instructions how to proceed farther in compleating the Scheme he had laid for taking off the old Man) and this you'll find, by Letters under his own Hand, that the Powder, whatever it was, must not be *mix'd in too thin a Liquid*, because it might be discover'd; and therefore Water-gruel is thought fitter for the Purpose. By the frequent Mixtures that were made upon these Occasions, the unfortunate Servant and Chairwoman accidentally drank Part of the deadly Composition. When Complaint is made of their Sickness, how does the Prisoner behave? Does she not administer to them with as much Art and Skill as a Physician could? Does she not prescribe proper Liquids and Draughts to absorb and take off the Edge of the corroding Poison? If she knew not what it was, how could she administer so successfully to prevent the fatal Consequences of it both in the Maid and the Chairwoman? During this Transaction, the unhappy Father finds himself afflicted with torturing Pains, immediately after receiving the Composition from his Daughter. Is there any Care taken of him? Any Physician sent for to attend him? Any healing Draughts prepar'd to quiet the Racks and Tortures that he inwardly felt? None at all, that I can find. He is left to take care of himself, and undergo those Miseries that his own Child had brought upon him, and yet had not the Heart to give him any Assistance. What could this proceed from, but Guilt only? Would not an innocent Child have made the strictest Inquiry how her *own* Father came to be out of order? Would she not have sought the World over for Advice and Assistance? But instead of that, you hear the bittерest Expressions proceed from her, Expressions sufficient to shock human Nature. *They have been all mentioned already by my learned Leader, and I will not again repeat them.*

Observe, as Things come nearer the Crisis, whether her Behaviour towards her Father carries any better Appearance. When it began to be suspected that Mr. *Blandy*'s Disorder was owing to Poison, and strongly, from Circumstances, that the Prisoner was privy to it; the poor Man, now too far gone, being inform'd that there was great Reason to suspect his own Child, what Expressions does he make use of? No harsher, than in the gentlest Method saying, *Poor Love-sick Girl! I always thought there was Mischief in those* Scotch *Pebbles. O! that damned Villain* Cranstoun, *that has eat of the best and drank of the best my House afforded, to serve me thus, and ruin my poor Love-sick Girl!* An incontestable Proof that he knew the Cause of his Disorder, and the Authors of it.

The Report spread about the House of the Father's Suspicions, soon alarm'd the Prisoner: What does she do upon this Occasion? Can any other Interpretation be put upon her Actions, than that they proceeded from a manifest Intention to conceal her Guilt? Why is the Paper of Powder thrown into the Fire? from whence, as my learned Leader most elegantly observes, it is miraculously preserved. What Occasion for Concealment, had she not been conscious of something that was wrong? If she had not known what had been in the Paper, for what Purpose was it committed to the Flames? And what really was contained in that Paper, will appear to you to be deadly Poison.

The long wished-for and fatal Hour at last arrives; and but a little before, a Letter is sent by the Prisoner to *Cranstoun*, that her Father was extremely ill; begging him to *be cautious what he writes*, lest any Accident should happen to *his Letters*. Do the Circumstances, the Language, or the Time of writing this Letter, leave any room to suppose the Prisoner could be innocent? They seem to me rather to be the fullest Proof of her knowing what she had done. What Accidents could befal *Cranstoun*'s Letters? Why is he to take care what he writes, if nothing but the Effects of Innocency were to be contained in those Letters? In a very short Time after this, the Strength of the Poison carries the Father out of the World. Do but hear how the Prisoner behaved thereupon. The Father's Corpse was not yet cold, when she makes Application to the Footman, with a Temptation of large Sums of Money, as a Reward, if he would go off with her; but the Fidelity and Virtue of the Servant was Proof against the Temptation even of Four or Five hundred Pounds. The next Proposal is to the Maid, to procure a Chaise, with the Offer

of

of a Reward for ſo doing, and to go along with her to *London*; but this Project likewiſe failed, through the Honeſty of the Servant. The next Morning, in the Abſence of *Edward Herne*, (the Guard that was ſet over her) ſhe makes her Eſcape from her Father's Houſe, and dreſſed as if going to take a Journey, walked down the Street; but the Mob was ſoon aware of her, and forced her to take Shelter in a Public-Houſe over the Bridge. Do theſe Proceedings look as if they were the Effects of Innocence? Far otherwiſe, I am afraid. Would an innocent Perſon have quitted a deceaſed Parent's Houſe, at a Time when ſhe was moſt wanting to make proper and decent Preparations for his Funeral? Would an innocent Perſon, at ſuch a Time as this, offer Money for Aſſiſtance to make an Eſcape? I think not: And I wiſh ſhe may find a ſatisfactory Cauſe to aſſign for ſuch amazing Behaviour.

Let us put Innocence and Guilt in the Scale together, and obſerve to which Side the Priſoner's Actions are moſt applicable. *Innocence*, Celeſtial Virgin, always has her Guard about her; ſhe dares look the Frowns, the Reſentments, and the Perſecutions of the World in the Face; is able to ſtand the Teſt of the ſtricteſt Inquiry; and the more we behold her, ſtill the more ſhall we be in Love with her Charms. But it is not ſo with *Guilt:* The baneful Fiend makes uſe of unjuſtifiable Means to conceal her wicked Deſigns, and prevent Diſcovery. Artifice and Cunning are her Supporters, Bribery and Corruption the Defenders of her Cauſe; ſhe flies before the Face of Law and Juſtice, and ſhuns the Probation of a candid and impartial Inquiry. Upon the whole Matter, you, Gentlemen, are to judge; and judge as favourably as you can for the Priſoner.

If this were not ſufficient to convince us of the Priſoner's Guilt, I think the laſt Tranſaction of all will leave not the leaſt Room to doubt. When in Diſcourſe with Perſons that came to her at the Houſe where ſhe had taken Shelter, what but a Self-conviction could have drawn ſuch Expreſſions from her? In her Diſcourſe with Mr. *Fiſher* about *Cranſtoun*, you will find ſhe declared ſhe had Letters and Papers that would have hanged that Villain: And again, ſays, *My Honour, Mr.* Fiſher, *to that Villain has brought me to Deſtruction:* And again, in her Inquiry of Mr. *Lane*, What they would do with her, ſhe burſts out into this bitter Exclamation, *O! that damned Villain!* Then after a ſhort Pauſe, *But why ſhould I blame him? I am more to blame than he is, for I gave it him.* How could ſhe be to blame for giving it, if ſhe knew not what it was? And, as it is ſaid, went yet farther, and declared, *that ſhe knew the Conſequence.* If ſhe did know it, ſhe muſt expect to ſuffer the Conſequence of it too.

Thus, Gentlemen, have I endeavoured to lay before you ſome Obſervations upon this Tranſaction, and I hope you will think them not unworthy of your Conſideration. I truſt I have ſaid nothing that relates to the Fact, that is not in my Inſtructions; ſhould it be otherwiſe, I aſſure you it was not with Deſign. And whatever is not ſupported by legal Evidence, you will totally diſregard.

If any other Interpretation than what I have offered, can be put upon theſe ſeveral Tranſactions, and the Circumſtances attending them, I doubt not but you will always incline on the merciful Side, where there is Room for ſo doing.

We ſhall now proceed to call our Evidence.

The other Gentlemen, of Counſel for the King, were Mr. *Hayes*, Mr. *Nares*, and Mr. *Ambler*.

The Counſel for the Priſoner, were Mr. *Ford*, Mr. *Morton*, and Mr. *Aſton*.

Dr. *Anthony Addington*, and Dr. *William Lewis*, ſworn.

Counſel. Did you, Dr. *Addington*, attend Mr. *Blandy* in his laſt Illneſs?

Dr. *Addington.* Yes, Sir.

Counſel. When was you called to him the firſt Time?

Dr. *Addington.* On *Saturday* Evening, *Auguſt* the 10th.

Counſel. In what Condition did you find him?

Dr. *Addington.* He was in Bed; and told me, that, after drinking ſome Gruel on *Monday* Night, *Auguſt* the 5th, he had perceived an extraordinary Grittineſs in his Mouth, attended with a very painful Burning and Pricking in his Tongue, Throat, Stomach, and Bowels, and with Sickneſs and Gripings; which Symptoms had been relieved by Fits of Vomiting and Purging.

Counſel. Were thoſe Fits owing to any Phyſic he had taken, or to the Gruel?

Dr. *Addington.* Not to any Phyſic; they came on very ſoon after drinking the Gruel.

Counſel. Had he taken no Phyſic that Day?——Dr. *Addington.* No.

Counſel. Did he make any farther Complaints?

Dr. *Addington.* He ſaid, that, after drinking more Gruel on *Tueſday* Night, *Auguſt* the 6th, he had felt the Grittineſs in his Mouth again; and that the Burning and Pricking in his Tongue, Throat, Stomach, and Bowels, had return'd with double Violence, and had been aggravated by a prodigious Swelling of his Belly, and exquiſite Pains and Prickings in every external as well as internal Part of his Body; which Prickings he compared to an infinite Number of Needles darting into him all at once.

Counſel. How ſoon after drinking the Gruel?

Dr. *Addington.* Almoſt immediately. He told me likewiſe, that, at the ſame time, he had had cold Sweats, Hiccup, extreme Reſtleſſneſs and Anxiety; but that then, *viz.* on *Saturday* Night, *Auguſt* the 10th, having had a great many Stools, and ſome bloody ones, he was pretty eaſy every where, except in his Mouth, Lips, Noſe, Eyes, and Fundament; and except ſome tranſient Gripings in his Bowels. I aſked him, to what he imputed thoſe uneaſy Senſations in his Mouth, Lips, Noſe, and Eyes? He ſaid, to the Fumes of ſomething that he had taken in his Gruel, on *Monday* Night, *Auguſt* the 5th, and *Tueſday* Night, *Auguſt* the 6th.

On Inſpection, I found his Tongue ſwelled, and his Throat ſlightly inflamed, and excoriated. His Lips, eſpecially the upper one, were dry and rough, and had angry Pimples on them. The Inſide of his Noſtrils was in the ſame Condition. His Eyes were a little Blood-ſhot. Beſides theſe Appearances, I obſerved that he had a low, trembling, intermitting Pulſe; a difficult, unequal Reſpiration; a yellowiſh Complexion; a Difficulty in the Utterance of his Words, and an Inability of ſwallowing even a Tea-ſpoonful of the thinneſt Liquor at a Time.

As I ſuſpected that theſe Appearances and Symptoms were the Effect of Poiſon, I aſked Miſs *Blandy*, whether Mr. *Blandy* had lately given Offence to either of his Servants, or Clients, or any other Perſon? She anſwered, *That he was at Peace with all the World, and that all the World was at Peace with him.* I then aſked her, whether he had ever been ſubject to Complaints of this Kind before? She ſaid, that he had often been ſubject to the Colic and Heart-burn; and that ſhe ſuppoſed this was only a Fit of that Sort, and would ſoon go off, as uſual. I told Mr. *Blandy*, that I aſked theſe Queſtions, becauſe I ſuſpected that by ſome Means or other he had taken Poiſon. He replied, *It might be ſo*, or in Words to that Effect: But Miſs *Blandy* ſaid, *It was impoſſible.*

On *Sunday* Morning, *Auguſt* the 10th, he ſeemed much relieved; his Pulſe, Breath, Complexion, and Power of ſwallowing, were greatly mended. He had had ſeveral Stools in the Night, without any Blood in them. The Complaints which he had made of his Mouth, Lips, Noſe, and Eyes, were leſſened; but he ſaid the Pain in his Fundament continued, and that he ſtill felt ſome Pinchings in his Bowels. On viewing his Fundament, I found it almoſt ſurrounded with gleety Excoriations and Ulcers.

About Eight o'Clock this Morning I took my Leave of him; but before I quitted his Room, Miſs *Blandy* deſired I would viſit him again the next Day.

When I got down Stairs, one of the Maids put a Paper into my Hands, which ſhe ſaid Miſs *Blandy* had thrown into the Kitchen Fire. Several Holes were burnt in the Paper, but not a Letter of the Superſcription was effaced. The Superſcription was, *The Powder to clean the Pebbles with.*

Counſel. What is the Maid's Name that gave you that Paper?

Dr. *Addington.* I cannot recollect which of the Maids it was that gave it me. I opened the Paper very carefully, and found in it a whitiſh Powder, like white Arſenic in Taſte, but ſlightly diſcoloured by a little burnt Paper mixed with it. I cannot ſwear this Powder was Arſenic, or any other Poiſon, becauſe the Quantity was too ſmall to make any Experiment with, that could be depended on.

Counſel. What do you really ſuſpect it to be?

Dr *Addington.* I really ſuſpect it to be white Arſenic.

Counſel. Pleaſe to proceed, Sir.

Dr. *Addington.* As ſoon as the Maid had left me, Mr. *Norton* the Apothecary produced a Powder, that, he ſaid, had been found at the Bottom of that Meſs of Gruel, which, as was ſuppoſed, had poiſoned Mr. *Blandy*: He gave me ſome of this Powder, and I examined it at my Leiſure, and believe it to be white Arſenic.

On *Monday* Morning, *Auguſt* the 12th, I found Mr. *Blandy* much worſe than I had left him the Day before. His Complexion was very bad; his Pulſe intermitted; and he breathed and ſwallowed with great Difficulty. He complained more of his Fundament than he had done before. His Bowels were ſtill in Pain.

I now deſired that another Phyſician might be called in, as I apprehended Mr. *Blandy* to be in the utmoſt Danger, and that this Affair might come before a Court of Judicature. Dr. *Lewis* was then ſent for from *Oxford*. I ſtaid with Mr. *Blandy* all this Day. I aſked him more than once, whether he really thought he had taken Poiſon? He anſwered each Time, that he believed he had. I aſked him, whether he thought he had taken Poiſon often? He anſwered in the Affirmative. His Reaſons for thinking ſo, were, becauſe ſome of his Teeth had decayed much faſter than was natural; and becauſe he had frequently, for ſome Months paſt, eſpecially after his Daughter had received a Preſent of *Scotch* Pebbles from Mr. *Cranſtoun*, been affected with very violent and unaccountable Prickings and Heats in his Tongue and Throat, and with almoſt intolerable Burnings, and Pains in his Stomach and Bowels, which uſed to go off in Vomitings and Purgings. I aſked him, whom he ſuſpected to be the Giver of the Poiſon? The Tears ſtood in his Eyes; yet he forced a Smile, and ſaid, ——*A poor Love-ſick Girl*——*I forgive her*——*I always thought there was Miſchief in thoſe curſed* Scotch *Pebbles.*

Dr. *Lewis* came about Eight o'Clock in the Evening. Before he came, Mr. *Blandy*'s Complexion, Pulſe, Breath, and Faculty of ſwallowing, were got much better again; but he complained more of Pain in his Fundament.

This Evening Miſs *Blandy* was confined to her Chamber; a Guard was placed over her; and her Keys, Papers, and all Inſtruments wherewith ſhe could hurt either herſelf, or any other Perſon, were taken from her.

Counſel. How came that?

Dr. *Addington.* I propoſed it to Dr. *Lewis*, and we both thought it proper; becauſe we had great Reaſon to ſuſpect her as the Author of Mr. *Blandy*'s Illneſs; and becauſe this Suſpicion was not yet publickly known, and, therefore, no Magiſtrate had taken any Notice of her.

Counſel. Pleaſe to go on, Dr. *Addington*, with your Account of Mr. *Blandy.*

Dr. *Addington.* On *Tueſday* Morning, *Auguſt* the 13th, we found him worſe again. His Countenance, Pulſe, Breath, and Power of ſwallowing, were extremely bad. He was exceſſively weak. His Hands trembled. Both they and his Face were cold and clammy. The Pain was intirely gone from his Bowels, but not from his Fundament. He was now and then a little delirious. He had frequently a ſhort Cough, and a very extraordinary Elevation of his Cheſt, in fetching his Breath; on which Occaſions an ulcerous Matter generally iſſued from his Fundament. Yet, in his ſenſible Intervals, he was chearful and jocoſe: He ſaid, *he was like a Perſon bit by a mad Dog; for that he ſhould be glad to drink, but could not ſwallow.*

About Noon this Day his Speech faultered more and more. He was ſometimes very reſtleſs, at others very ſleepy. His Face was quite ghaſtly. This Night was a terrible one.

On *Wedneſday* Morning, *Auguſt* the 14th, he recovered his Senſes for an Hour or more. He told me, he would make his Will in two or three Days; but he ſoon grew delirious again; and, ſinking every Moment, died about Two o'Clock in the Afternoon.

Counſel. Upon the whole, did you then think, from the Symptoms you have deſcribed, and the Obſervations you made, that Mr. *Blandy* died by Poiſon?

Dr. *Addington.* Indeed I did.

Counſel. And is it your preſent Opinion?

Dr. *Addington.* It is; and I have never had the leaſt Occaſion to alter it. His Caſe was ſo particular, that he had not a Symptom of any Conſequence, but what other Perſons have had, who have taken white Arſenick; and, after Death, had no * Appearance in his Body, but what other Perſons have had, who have been deſtroyed by white Arſenic.

Counſel. When was his Body opened?

Dr. *Addington.* On *Thurſday* in the Afternoon, *Auguſt* the 15th.

Counſel. What appeared on opening it?

Dr. *Addington.* I committed the Appearances to Writing, and ſhould be glad to read them, if the Court will give me Leave.

Then the Doctor, on Leave given by the Court, read as follows:

Mr. *Blandy*'s Back, and the hinder Part of his Arms, Thighs, and Legs, were livid. That Fat which lay on the Muſcles of his Belly, was of a looſe Texture, inclining to a State of Fluidity. The Muſcles of his Belly were very pale and flaccid. The Cawl was yellower than is natural; and on the Side next the Stomach and Inteſtines looked browniſh. The Heart was variegated with purple Spots. There was no Water in the Pericardium. The Lungs reſembled Bladders half filled with Air, and blotted in ſome Places with pale, but in moſt with black Ink. The Liver and Spleen were much diſcoloured; the former looked as if it had been boiled, but that Part of it which covered the Stomach, was particularly dark. A Stone was found in the Gall-Bladder. The Bile was very fluid, and of a dirty yellow Colour, inclining to red. The Kidneys were all over ſtained with livid Spots. The Stomach and Bowels were inflated, and appeared, before any Inciſion was made into them, as if they had been pinched, and extravaſated Blood had ſtagnated between their Membranes. They contained nothing, as far as we examined, but a ſlimy bloody Froth. Their Coats were remarkably ſmooth, thin, and flabby. The Wrinkles of the Stomach were totally obliterated. The internal Coat of the Stomach and Duodenum, eſpecially about the Orifices of the former, was prodigiouſly inflamed and excoriated. The Redneſs of the White of the Eye in a violent Inflammation of that Part, or rather, the White of the Eye juſt bruſhed and bleeding with the Beards of Barley, may ſerve to give ſome Idea how this Coat had been wounded. There was no Schirrhus in any Gland of the Abdomen; no Adheſion of the Lungs to the Pleura; nor indeed the leaſt Trace of a natural Decay in any Part whatever.

Counſel to Dr. *Lewis.*

Counſel. Did you, Dr. *Lewis*, obſerve that Mr. *Blandy* had the Symptoms which Dr. *Addington* has mentioned?---Dr. *Lewis.* I did.

Counſel. Did you obſerve that there were the ſame Appearances on opening his Body, which Dr. *Addington* has deſcribed?

Dr. *Lewis.* I obſerved and remember them all, except the Spots on his Heart.

Counſel. Is it your real Opinion, that thoſe Symptoms and thoſe Appearances were owing to Poiſon?---Dr. *Lewis.* Yes.

Counſel. And that he died of Poiſon?---Dr. *Lewis.* Abſolutely.

Dr. *Addington* Croſs-examined.

Priſoner's Counſel. Did you firſt intimate to Mr. *Blandy*, or he to you, that he had been poiſoned?

Dr. *Addington.* He firſt intimated it to me.

Priſ. Counſel. Did you aſk him, whether he was certain that he had been poiſoned by the Gruel that he took on *Monday* Night, *Auguſt* the 5th, and on *Tueſday* Night, *Auguſt* the 6th?

Dr. *Addington.* I do not recollect that I did.

Priſ. Counſel. Are you ſure that he ſaid he was diſordered after drinking the Gruel on *Monday* Night, the 5th of *Auguſt*?

Dr. *Addington.* Yes.

Priſ. Counſel. Did you ever aſk him why he drank more Gruel on *Tueſday* Night, *Auguſt* the 6th?

Dr. *Addington.* I believe I did not.

Priſ. Counſel. When did you make Experiments on the Powder delivered to you by Mr. *Norton*?

Dr. *Addington.* I made ſome the next Day; but many more ſome time afterwards.

Priſ. Counſel. How long afterwards?

Dr. *Addington.* I cannot juſtly ſay; it might be a Month or more.

Priſ. Counſel. How often had you Powder given you?

Dr. *Addington.* Twice.

Priſ. Counſel. Did you make Experiments with both Parcels?

Dr. *Addington.* Yes: But I gave the greateſt Part of the firſt to Mr. *King*, an experienced Chemiſt in *Reading*; and deſired that he would examine it, which he did; and he told me, that it was white Arſenic. The ſecond Parcel was uſed in Trials made by myſelf.

Priſ. Counſel. Who had the ſecond Parcel in keeping till you tried it?

Dr. *Addington.* I had it, and kept it either in my Pocket, or under Lock and Key.

Priſ. Counſel. Did you never ſhew it to any body?

Dr. *Addington.* Yes, to ſeveral Perſons; but truſted nobody with it out of my Sight.

Priſ. Counſel. Why do you believe it to be white Arſenic?

Dr. *Addington.* For the following Reaſons: 1. This Powder has a milky Whiteneſs; ſo has white Arſenic. 2. This is gritty and almoſt inſipid; ſo is white Arſenic. 3. Part of it ſwims on the Surface of cold Water, like a pale ſulphureous Film; but the greateſt Part ſinks to the Bottom, and remains there undiſſolved; the ſame is true of white Arſenic. 4. This thrown on red-hot Iron, does not flame, but riſes entirely in thick white Fumes, which have the Stench of Garlick, and cover cold Iron, held juſt over them, with white Flowers; white Arſenic does the ſame. 5. I boiled ten Grains of this Powder in four Ounces of clean Water, and then, paſſing the Decoction through a Filtre, divided it into five equal Parts, which were put into as many Glaſſes: Into one Glaſs I poured a few Drops of Spirit of Sal Ammoniac; into another ſome of the Lixivium of Tartar; into the third ſome ſtrong Spirit of Vitriol; into the fourth ſome Spirit of Salt; and into the laſt ſome Syrup of Violets. The Spirit of Sal Ammoniac threw down a few Particles of pale Sediment. The Lixivium of Tartar gave a white Cloud, which hung a little above the Middle of the Glaſs. The Spirits of Vitriol and Salt made a conſiderable Precipitation of a lightiſh-coloured Subſtance; which, in the former, hardened into glittering Cryſtals, ſticking to the Sides and Bottom of the Glaſs. Syrup of Violets produced a beautiful pale green Tincture. Having waſhed the Sauce-pan, Funnel, and Glaſſes, uſed in the foregoing Experiments, very clean, and provided a freſh Filtre, I boiled ten Grains of white Arſenic, bought of Mr. *Wilcock*, Druggiſt in *Reading*, in four Ounces of clean Water; and filtering and dividing it into five equal Parts, proceeded with them juſt as I had done with the former Decoction. There was an exact Similitude between the Experiments made on the two Decoctions. They correſponded ſo nicely in each Trial, that I declare I never ſaw any two Things in Nature more alike, than the Decoction made with the Powder found in Mr. *Blandy*'s Gruel, and that made with white Arſenic. From theſe Experiments, and others, which I am ready to produce, if deſired, I believe that Powder to be white Arſenic.

Priſ. Counſel. Did any Perſon make theſe Experiments with you?

Dr. *Addington.* No: But Mr. *Wilcock*, the Druggiſt, was preſent while I made them; and he weighed both the Powder and the white Arſenic.

Priſ. Counſel. When did Mr. *Blandy* firſt take Medicines by your Order?

Dr. *Addington.* As ſoon as he could ſwallow, on *Saturday* Night, *Auguſt* the 10th. Before that Time he was under the Care of Mr. *Norton.*

Benjamin Norton ſworn.

I live at *Henley*; I remember being ſent for to Mrs. *Mounteney*'s in *Henley*, on *Thurſday*, *Auguſt* the 8th, in order to ſhew me the Powder. There was with her *Suſan Gunnell*, the Servant-maid. She brought in a Pan; I looked at it, and endeavoured to take it out, that I might give a better Account of it; for as it lay, it was not poſſible to ſee what it was: Then I laid it on white Paper, and delivered it to Mrs. *Mounteney*, to take Care of, till it dried; ſhe kept it till *Sunday* Morning, then I had it to ſhew to Dr. *Addington*; I ſaw the Doctor try it once at my Houſe, upon a red-hot Poker; upon which I did imagine it was of the Arſenic-kind.

Counſel. Did you attend the Deceaſed while he was ill?

Norton. I did; I went on the 6th of *Auguſt*; he told me he was ill as he imagined of a Fit of the Colic; he complained of a violent Pain in his Stomach, attended with great Reachings, and ſwelled, and a great Purging; I carried him Phyſic, which he took on the *Wedneſday* Morning; he was then better; on the *Thurſday* Morning, as I was going, I met the Maid; ſhe told me, he was not up; ſo I went about Twelve: he was then with a Client in the Study; he told me the Phyſic had done him a great deal of Service, and deſired more. I ſent him ſome to take on *Friday* Morning: I was not with him after *Thurſday*.

Counſel. Had you uſed to attend him?

Norton. I had for ſeveral Years. The laſt Illneſs he had before, was in *July* 1750. I uſed to attend him.

Counſel. Did you ever hear Miſs *Blandy* talk of Muſic?

Norton. I did. She ſaid, ſhe had heard it in the Houſe, and ſhe feared ſomething would happen in the Family. She did not ſay any Thing particular, becauſe I made very light of it.

Counſel. Did ſhe ſay any Thing of *Apparitions*?

Norton. She ſaid, Mr. *Cranſtoun* ſaw her Father's Apparition one Night.

Counſel. How long before his Death was it that ſhe talked about Muſic?

Norton. It might be about three or four Months before.

Counſel. Was the Powder you delivered to Dr. *Addington*, the ſelf-ſame Powder you received of Mrs. *Mounteney*?

Norton. It was the very ſame, it had not been out of my Cuſtody.

Counſel. Should you know it again?

Norton. I have ſome of the ſame now in my Pocket. (*He produces a Paper ſealed up with the Earl of* Macclesfield *and Lord* Cadogan's *Seals upon it.*) This is ſome of the ſame that I delivered to Dr. *Addington.*

Croſs-Examined.

Priſoner's Counſel. Who ſent for you to the Houſe?

Norton. I cannot tell that.

Priſ. Counſel. When you came, did you ſee Miſs *Blandy*?

Norton. I did. She and Mr. *Blandy* were both together.

Priſ. Counſel. What Converſation had you then?

Norton. I aſked Mr. *Blandy*, whether or no he had eat any Thing that he thought diſagreed with him? Miſs *Blandy* made anſwer, and ſaid, her Papa had had nothing that ſhe knew of, except ſome Peas, on the *Saturday* Night before.

Priſ. Counſel. Did you hear any thing of Water-gruel?

Norton. I knew nothing of that, till it was brought to me.

Priſ. Counſel. Had you any Suſpicion of Poiſon then?

Norton. I had not, nor Mr. *Blandy* had not mentioned any thing of being poiſoned by having taken Water-gruel.

Priſ. Counſel. What did Miſs *Blandy* ſay to you?

Norton. She deſired me to be careful of her Father in his Illneſs.

Priſ. Counſel. Did ſhe ſhew any Diſlike to his having Phyſic?

Norton. No, none at all; ſhe deſired, when I ſaw any Danger, I would let her know it, that ſhe might have the Advice of a Phyſician.

Priſ. Counſel. When was this?

Norton. This was on *Saturday* the 10th.

Priſ. Counſel. When he grew worſe, did ſhe adviſe a Phyſician might be called in?

Norton. Yes, ſhe did, after I ſaid he was worſe; ſhe then begged that Dr. *Addington* might be ſent for. Mr. *Blandy* was for deferring it till next Day; but when I came down, ſhe aſk'd, if I thought him in Danger? I ſaid, he is; then ſhe ſaid, Though he ſeems to be againſt it, I will ſend for a Doctor directly; and ſent away a Man unknown to him.

Priſ. Counſel. Was he for delaying?

Norton. He was till the next Morning.

Priſ. Counſel. How has ſhe behaved to him in any other Illneſs of her Father's?

Norton. I never ſaw but at ſuch Times ſhe has behaved with true Affection and Regard.

Priſ. Counſel. Had ſhe uſed to be much with him?

Norton. She uſed to be backwards and forwards with him in the Room.

* The Doctor intended to have excepted the Stone found in Mr. *Blandy*'s Gall-Bladder.

Prif. Counfel. Did you give any Intimation to Miſs *Blandy*, after the Powder was tried?

Norton. I did not; but went up to acquaint her Uncle; he was ſo affected, he could not come down to apprize Mr. *Blandy* of it.

Prif. Counfel. When did ſhe firſt know that you knew of it?

Norton. I never knew ſhe knew of it till the *Monday*.

Prif. Counſel. How came you to ſuſpect That at the Bottom of the Pan to be Poiſon?

Norton. I found it very gritty, and had no Smell. When I went down, and ſaw the old Waſherwoman, that ſhe had taſted of the Water-gruel, and was affected with the ſame Symptoms as Mr. *Blandy*, I then ſuſpected he was poiſoned, and ſaid, I was afraid Mr. *Blandy* had had foul Play; but I did not tell either him or Miſs *Blandy* ſo, becauſe I found by the Maid, that Miſs was ſuſpected.

Priſ. Counſel. Who did you ſuſpect might do it?

Norton. I had Suſpicion it was Miſs *Blandy*.

King's Counſel. When was Dr. *Addington* ſent for?

Norton. On the *Saturday* Night.

Mrs. *Mary Mounteney* ſworn.

Suſan Gunnell brought a Pan to my Houſe on the 8th of *Auguſt* with Water-gruel in it, and Powder at the Bottom, and deſired me to look at it: I ſent for Mr. *Norton*; he took the Powder out on a Piece of white Paper, which I gave him: He delivered the ſame Powder to me, and I took care of it and locked it up.

Croſs-examined.

Priſoner's Counſel. Did you ever ſee any Behaviour of Miſs *Blandy* otherwiſe than that of an affectionate Daughter?

Mounteney. I never did. She was always dutiful to her Father, as far as I ſaw, when her Father was preſent.

Priſ. Counſel. To whom did you firſt mention that this Powder was put into the Paper?

Mounteney. To the beſt of my Remembrance, I never made Mention of it to any body, till Mr. *Norton* fetched it away, which was on the 11th of *Auguſt*, the *Sunday* Morning after, to be ſhewn to Dr. *Addington*.

Priſ. Counſel. Between the Time of its being brought to your Houſe, and the Time it was fetched away, was you ever at Mr. *Blandy*'s Houſe?

Mounteney. No, I was not in that Time, but was there on *Sunday* in the Afternoon.

Priſ. Counſel. Had you not ſhewed it at any other Place during that Time?——*Mounteney.* I had not, Sir.

Priſ. Counſel. Did you on the *Sunday*, in the Afternoon, mention it to Mr. or Miſs *Blandy*?——*Mounteney.* No, not to either of them.

Suſannah Gunnell ſworn.

Gunnell. I carried the Water-gruel in a Pan to Mrs. *Mounteney*'s Houſe.

Counſel. Whoſe Uſe was it made for?

Gunnell. It was made for Mr. *Blandy*'s Uſe, on the *Sunday* Seven-night before his Death.

Counſel. Who made it?——*Gun.* I made it.

Counſel. Where did you put it after you had made it?

Gun. I put it into the common Pantry, where all the Family uſed to go.

Counſel. Did you obſerve any particular Perſon buſy about there afterwards?

Gunnell. No, Nobody; Miſs *Blandy* told me on the *Monday* ſhe had been in the Pantry, (I did not ſee her) ſtirring her Father's Water-gruel, and eating the Oatmeal out of the Bottom of it.

Counſel. What Time of the *Monday* was this?

Gunnell. This was ſome time about the Middle of the Day.

Counſel. Did Mr. *Blandy* take any of that Water-gruel?

Gun. I gave him a Half-pint Mug of it on *Monday* Evening, for him to take before he went to Bed.

Counſel. Did you obſerve any body meddle with that Half-pint Mug afterwards?

Gun. I ſaw Miſs *Blandy* take the Tea-ſpoon that was in the Mug, and ſtir the Water-gruel, and after put her Finger to the Spoon, and then rubbed her Fingers.

Counſel. Did Mr. *Blandy* drink any of that Water-gruel?

Gun. Mr. *Blandy* drank ſome of it; and on the *Tueſday* Morning, when he came down Stairs, he did not come through the Kitchen as uſual, but went the back Way into his Study.

Counſel. Did you ſee him come down?——*Gun.* I did not.

Counſel. When was the firſt Time you ſaw him that Day?

Gun. It was betwixt Nine and Ten; Miſs *Blandy* and he were together; he was not well, and going to lie down on the Bed.

Counſel. Did you ſee him in the Evening?

Gun. In the Evening *Robert Harman* came to me, as I was coming down Stairs, and told me, I muſt warm ſome Water-gruel, for my Maſter was in haſte for Supper.

Counſel. Did you warm ſome?

Gun. I warmed ſome of that out of the Pan, of which he had ſome the Night before, and Miſs *Blandy* carried it to him into the Parlour.

Counſel. Did he drink it?

Gun. I believe he did; there ſeemed to be about Half of it left the next Morning.

Counſel. How did he ſeem to be after?

Gun. I met him, ſoon after he had eat the Water-gruel, going up Stairs to Bed; I lighted him up: As ſoon as he was got into the Room, he called for a Baſon to reach; he ſeemed to be very ſick, by his reaching a conſiderable Time.

Counſel. How was he next Morning?

Gun. About ſix o'Clock I went up the next Morning to carry him his Phyſick: He ſaid he had had a pretty good Night, and was much better.

Counſel. Had he reached much over-night?

Gun. He had, for the Baſon was half full, which I left clean over-night.

Counſel. Was any Order given you to give him any more Water-gruel?

Gun. On the *Wedneſday* Miſs *Blandy* came into the Kitchen, and ſaid, *Suſan*, as your Maſter has taken Phyſick, he may want more Water-gruel, and as there is ſome in the Houſe, you need not make freſh, as you are ironing. I told her, it was ſtale, if there was enough; and it would not hinder much to make freſh; ſo I made freſh accordingly, and I went into the Pantry to put ſome in for my Maſter's Dinner; then I brought out the Pan (the Evening before I thought it had an odd Taſte), ſo I was willing to taſte it again, to ſee if I was miſtaken or not: I put it to my Mouth, and drank ſome, and taking it from my Mouth, I obſerved ſome Whiteneſs at the Bottom.

Counſel. What did you do upon that?

Gunnell. I went immediately to the Kitchen, and told *Betty Binfield*, there was a white Settlement, and I did not remember I ever had ſeen Oatmeal ſo white before: *Betty* ſaid, Let me ſee it; I carried it to her. She ſaid, What Oatmeal is this? I think it looks as white as Flour. We both took the Pan, and turned it about, and ſtrictly obſerved it, and concluded it could be nothing but Oatmeal. I then took it out of Doors into the Light, and ſaw it plainer; then I put my Finger to it, and found it gritty at the Bottom of the Pan; I then recollected I had heard ſay, Poiſon was white and gritty, which made me afraid it was Poiſon.

Counſel. What did you do with the Pan?

Gun. I carried it back again, and ſet it down on the Dreſſer in the Kitchen; it ſtood there a ſmall Time, then I locked it up in the Cloſet, and on the *Thurſday* Morning I carried it to Mrs. *Mounteney*, and Mr. *Norton* came there and ſaw it.

Counſel. Do you remember Miſs *Blandy* ſaying any thing to you about eating her Papa's Water-gruel?

Gun. About ſix Weeks before his Death, I went into the Parlour; Miſs *Blandy* ſaid, *Suſan*, what is the Matter with you? You do not look well: I ſaid, I do not know what is the Matter; I am not well, but I do not know what the Matter is. She ſaid, What have you eat or drank? upon which I ſaid, Nothing more than the reſt of the Family. She ſaid, *Suſan*, have you eat any Water-gruel? for I am told Water-gruel hurts me, and it may hurt you. I ſaid, It cannot affect me, Madam, for I have not eat any.

Counſel. What was it * *Betty Binfield* ſaid to you about Water-gruel?

Gun. Betty Binfield ſaid, Miſs *Blandy* aſked, if I had eat any of her Papa's Water-gruel? ſaying, if I did, I might do for myſelf, a Perſon of my Age.

Counſel. What Time was this?

Gun. I cannot ſay whether it was juſt after or juſt before the Time ſhe had ſpoke to me herſelf. On the *Wedneſday* Morning, as I was coming down Stairs from giving my Maſter his Phyſic, I met *Elizabeth Binfield*, with the Water-gruel in a Baſon, which he had left; I ſaid to the Chairwoman, *Ann Emmet*, Dame, you uſed to be fond of Water-gruel, here is a very fine Meſs my Maſter left laſt Night, and I believe it will do you good; the Woman ſoon ſat down on a Bench in the Kitchen, and eat ſome of it, I cannot ſay all.

Counſel. How was ſhe afterwards?

Gun. She ſaid, the Houſe ſmelt of Phyſic, and every Thing taſted of Phyſic; ſhe went out, I believe into the Waſh-houſe, to reach, before ſhe could finiſh it.

Counſel. Did you follow her?

Gun. No, I did not; but about twenty Minutes, or half an Hour after that, I went to the Neceſſary-houſe, and found her there vomiting and reaching, and, as ſhe ſaid, purging.

Counſel. How long did ſhe abide there?

Gun. She was there an Hour and half, during which Time I went divers Times to her; at firſt I carried her ſome Surfeit-water; ſhe then deſired to have ſome fair Water; the next Time I went to ſee how ſhe did, ſhe ſaid ſhe was no better; I deſired her to come in a-Doors, hoping ſhe would be better by the Fire; ſhe ſaid, ſhe was not able to come in; I ſaid, I would lead her in; I did, and ſet her down in a Chair by the Fire; ſhe was vomiting and reaching continually; ſhe ſat there about half an Hour, or ſomething more, during which Time ſhe grew much worſe, and I thought her to be in a Fit, or ſeized with Death.

Counſel. Did you acquaint Miſs *Blandy* with the Illneſs and Symptoms of this poor Woman?

Gen. I told Miſs *Blandy* when I went into the Room to dreſs her, about nine o'Clock, that Dame (the Name we uſed to call her by) had been very ill that Morning; that ſhe had complained that the Smell of her Maſter's Phyſic had made her ſick; and that ſhe had eat nothing but a little of her Maſter's Water-gruel, which he had left laſt Night, which could not hurt her.

Counſel. What did ſhe ſay to that?

Gun. She ſaid ſhe was very glad ſhe was not below Stairs, for ſhe ſhould have been ſhocked to have ſeen her poor Dame ſo ill.

Counſel. As you have lived Servant in the Houſe, how did you obſerve Miſs *Blandy* behave towards her Father, and in what Manner did ſhe uſe to talk of him, three or four Months before his Death?——*Gun.* Sometimes ſhe would talk very affectionately, and ſometimes but middling.

Counſel. What do you mean by middling?

Gun. Sometimes ſhe would ſay, he was an old Villain, for uſing an only Child in ſuch a Manner.

Counſel. Did ſhe wiſh him to live?

Gun. Sometimes ſhe wiſhed for his long Life, ſometimes for his Death.

Counſel. When ſhe wiſhed for his Death, in what Manner did ſhe expreſs herſelf?

Gun. She often ſaid, ſhe was very unkward, and that if he was dead, ſhe would go to *Scotland*, and live with Lady *Cranſtoun*.

Counſel. Did ſhe ever ſay how long ſhe thought her Father might live?

Gun. Sometimes ſhe would ſay, for his Conſtitution, he might live theſe twenty Years; ſometimes ſhe would ſay, he looked ill and poorly.

Counſel. Do you remember when Dr. *Addington* was ſent for on the *Saturday*?——*Gun.* I do.

Counſel. Had Miſs *Blandy* uſed to go into her Father's Room after that Time?——*Gun.* She did as often as ſhe pleaſed till *Sunday* Night; then Mr. *Norton* took Miſs *Blandy* down Stairs, and deſired me not to let any Body go into the Room, except myſelf, to wait on him.

Counſel. Did ſhe come in afterwards?

Gun. She came into the Room on *Monday* Morning, ſoon after Mr. *Norton* came in, or with him; I went in about ten o'Clock again.

Counſel. What Converſation paſſed between Miſs *Blandy* and her Father?

Gun. She fell down on her Knees, and ſaid to him, Baniſh me, or ſend me to any remote Part of the World; do what you pleaſe, ſo you forgive me; and as to Mr. *Cranſtoun*, I will never ſee him, ſpeak to him, nor write to him more ſo long as I live, ſo you will forgive me.

Counſel. What Anſwer did he make?

* *N. B.* The Counſel for the Priſoner waved the Objection to this as Hearſay Evidence; becauſe the Counſel for the Crown aſſured them, they ſhould call *Betty Binfield* herſelf next.

Gunnell.

Gunnell. He ſaid, I forgive thee, my Dear, and I hope God will forgive thee; but thee ſhouldſt have conſidered better, than to have attempted any Thing againſt thy Father; thee ſhouldſt have conſidered, I was thy own Father.

Counſel. What ſaid ſhe to this?

Gun. She anſwered, Sir, as for your Illneſs, I am intirely innocent. I ſaid, Madam, I believe you muſt not ſay you are intirely innocent, for the Powder that was taken out of the Water-gruel, and the Paper of Powder that was taken out of the Fire, are now in ſuch Hands, that they muſt be publickly produced. I told her, I believed, I had one Doſe prepared for my Maſter in a Diſh of Tea, about ſix Weeks ago.

Counſel. Did you tell her this before her Father?—*Gun.* I did.

Counſel. What Anſwer did ſhe make?

Gun. She ſaid, I have put no Powder into Tea; I have put Powder into Water-gruel, and if you are injured, I am intirely innocent, for it was given me with another Intent.

Counſel. What ſaid Mr. *Blandy* to this?

Gun. My Maſter turned himſelf in his Bed, and ſaid to her, *Oh! ſuch a Villain! come to my Houſe, eat of the beſt, and drink of the beſt that my Houſe could afford, to take away my Life, and ruin my Daughter.*

Counſel. What elſe paſſed?

Gun. He ſaid, Oh! my Dear! thee muſt hate that Man, thee muſt hate the Ground he treads on, thee canſt not help it. The Daughter ſaid, Oh! Sir, your Tenderneſs towards me is like a Sword to my Heart; every Word you ſay is like Swords piercing my Heart; much worſe, than if you were to be ever ſo angry. I muſt down on my Knees, and beg you will not curſe me.

Counſel. What ſaid the Father?

Gun. He ſaid, *I curſe thee! my Dear, how couldſt thou think I could curſe thee? No, I bleſs thee, and hope God will bleſs thee, and amend thy Life*; and ſaid further, *Do, my Dear, go out of my Room, ſay no more, leſt thou ſhouldſt ſay any Thing to thy own Prejudice: Go to thy Uncle* Stevens, *take him for thy Friend: poor Man! I am ſorry for him.* Upon this ſhe directly went out of the Room.

Counſel. Give an Account of the Paper you mentioned to her, how it was found.

Gun. On the *Saturday* before my Maſter died, I was in the Kitchen. Miſs *Blandy* had wrote a Direction on a Letter to go to her Uncle *Stevens*. Going to the Fire to dry it, I ſaw her put a Paper into the Fire, or two Papers, I cannot ſay whether. I went to the Fire, and ſaw her ſtir it down with a Stick: *Elizabeth Binfield* then put on freſh Coals, which I believe kept the Paper from being conſumed. Soon after Miſs *Blandy* had put it in, ſhe left the Kitchen; I ſaid to *Elizabeth Binfield*, *Betty*, Miſs *Blandy* has been burning ſomething; ſhe aſked, Where? I pointed to the Grate, and ſaid, At that Corner; upon which *Betty Binfield* moved a Coal, and took from thence a little Paper; I ſtood by and ſaw her, ſhe gave it into my Hand; it was a ſmall Piece of Paper, with ſome Writing on it, folded up about three Inches long. The Writing was, *The Powder to clean the Pebbles*, to the beſt of my Remembrance.

Counſel. Did you read it?

Gun. I did not, *Elizabeth Binfield* read it to me. *(Produced in Court, Part of it burnt, ſealed up with the Earl of* Macclesfield *and Lord* Cadogan's *Seals.)* This is the Paper, I believe, by the Look of it; but I did not ſee it unfolded. I delivered it into *Elizabeth Binfield*'s Hand on *Saturday* Night, between Eleven and Twelve o'Clock. From the Time it was taken out of the Fire, it had not been out of my Pocket, or any Thing done to it, from that Time till I gave it her. I went into my Maſter's Room about Seven o'Clock in the Morning, to carry him ſomething to drink; when he had drank it, I ſaid, I have ſomething to ſay to you concerning your Health, and concerning your Family; I muſt beg you will not put yourſelf in a Paſſion, but hear me what I have to ſay. Then I told him, I believe, Sir, you have got ſomething in your Water-gruel, that has done you ſome Injury, and I believe Miſs *Blandy* put it in, by her coming into the Waſh-houſe on *Monday*, and ſaying, ſhe had been ſtirring her Papa's Water-gruel, and eating the Oatmeal out from the Bottom. He ſaid, I find I have ſomething not right: My Head is not right as it uſed to be, nor has been for ſome Time. I had before told him, I had found the Powder in the Gruel. He ſaid, Doſt thou know any Thing of this Powder? Didſt thee ever ſee any of it? I ſaid, No, Sir, I never ſaw any, but what I ſaw in the Water-gruel. He ſaid, Doſt know where ſhe had this Powder, nor canſt not thee Gueſs? I ſaid, I cannot tell, except ſhe had it of Mr. *Cranſtoun*. My Reaſon for ſuſpecting that was, Miſs *Blandy* had Letters came oftener than uſual. My Maſter ſaid, And now thee mention'ſt it, I remember when he was at my Houſe, he mentioned a particular Poiſon that they had in their Country, ſaying, *Oh! that Villain! that ever he came to my Houſe!* I told him likewiſe, I had ſhewed the Powder to Mr. *Norton*; he aſked what Mr. *Norton* ſaid to it; I told him, Mr. *Norton* could not ſay what it was, as it was wet, but ſaid, Let it be what it will, it ought not to be there; and ſaid, he was fearful there was foul Play ſomewhere. My Maſter ſaid, What, *Norton* not know! that is ſtrange, and ſo much uſed to Drugs. Then I told him, Mr. *Norton* thought proper he ſhould ſearch her Pockets, and take away her Keys and Papers. He ſaid, I cannot do it, I cannot ſhock her ſo much; canſt not thee, when thou goeſt into her Room, take out a Letter or two, that ſhe may think ſhe dropped them by Chance? I told him, I had no Right to do it: She is your Daughter, and you have a Right to do it, and nobody elſe. He ſaid, I never in all my Life read a Letter that came to my Daughter, from any Perſon. He deſired, if poſſible, if I could meet with any Powder any where, that I would ſecure it.

Counſel. Do you remember when *Ann Emmet* was ſick (the Chair-woman)?

Gun. I do, but cannot ſay how long, or how little a Time before this; I remember ſhe was ill ſome Time before my Maſter's Death.

Counſel. What did the Priſoner order the old Woman to eat at that Time?

Gun. She ſent her ſome Sack-Whey, and ſome Broth; I believe to the Value of a Quart or three Pints at twice, about once a Day, or every other Day, for four or five Days.

Counſel. Have you been ill from what you eat yourſelf?

Gun. I was ill after drinking a Diſh of Tea one *Sunday* Morning, which I thought was not well reliſhed, and I believed ſomebody had been taking Salts in the Cup before.

Counſel. Who was it poured out for?

Gun. I believe it was poured out for my Maſter.

Counſel. Why do you believe that?

Gun. Becauſe he uſed to drink in a different Diſh from the reſt of the Family, and it was out of his Diſh.

Counſel. When was this?

Gun. This was about ſix Weeks and three Days before his Death.

Counſel. How did you find yourſelf, after drinking it?

Gun. I found no ill Effect till after Dinner: I then had a Hardneſs in my Stomach, and apprehended it was from eating plentifully of Beans for Dinner.

Counſel. What Symptoms had you afterwards?

Gun. My Stomach ſeemed to have ſomething in it that could not digeſt, and I had remarkable Trembling for three Days, and after that for three Mornings was ſeized with a Reaching.

Counſel. Have you ſince that Time been ill, from what you eat or drank?

Gun. I taſted the Water-gruel twice, once on the *Tueſday* Evening, when I was mixing it for my Maſter; and on *Wedneſday*, when I was going to pour it away, I put the Pan to my Mouth and drank a little of it.

Counſel. How did you find yourſelf after that?

Gun. I did not find any remarkable Diſorder till the *Wedneſday* Morning about Two o'Clock, before my Maſter's Death; then I was ſeemingly ſeized with Convulſions. My Throat was very troubleſome for five or ſix Weeks after, and ſeemed a little foreiſh and a little ſwelled. I continued very ill for three Weeks and upwards after my Maſter's Death, which was on the *Wedneſday*. I went to Bed ſick at Two that Morning, and apply'd to Dr. *Addington*.

Counſel. Do you remember any Thing beſides Letters coming from Mr. *Cranſtoun*?

Gun. I remember ſhe had once a large Box of Table-Linen, and ſome *Scotch* Pebbles in it; ſhe ſaid, they came from him.

Counſel. What Time was this?

Gun. This was early in the Spring, before my Maſter's Death.

Counſel. Had ſhe more than one Box ſent to her?

Gun. She had a ſmall Box ſent afterwards of *Scotch* Pebbles; that might be about three Months before his Death, or leſs, I cannot ſay.

Counſel. Did ſhe uſe to ſhew the Pebbles to any body?

Gun. She uſed to ſhew them to any Perſon of her Acquaintance; but I never heard of any Powder to clean them.

Croſs-examined.

Priſoner's Counſel. For a Year before the 5th of *Auguſt* laſt, had any Thing ailed your Maſter, ſo as to call in the Apothecary?

Gun. About a Year before he had had a violent Cold.

Priſ. Counſel. Was he, or was he not, in good Health for a Year before?

Gun. He was frequently complaining of the Gravel and Heart-burn, which he was ſubject to for Years.

Priſ. Counſel. Did he make any other Complaints?

Gun. He uſed to have little Fits of the Gout.

Priſ. Counſel. Was there any other Complaint for ſeven, eight, nine, or ten Years?

Gun. Nothing particular, but that of the Heart-burn; which I cannot tell whether I ever heard him complain of before or not.

Priſ. Counſel. Can you take upon you to ſay, that he made any particular Complaint of the Heart-burn, more than he had done at any other Time?

Gun. I cannot ſay poſitively; becauſe I have not continued theſe Things in my Memory. He ordered me to give him ſome dry Oatmeal and Water for the Heart-burn.

Priſ. Counſel. Is that good for the Heart-burn?

Gun. I have been told, it is very good for it.

Priſ. Counſel. How was her Behaviour to her Father?

Gun. Her general Behaviour was dutiful, except upon any Paſſion, or a haſty Word from her Father.

Priſ. Counſel. When did ſhe call her Father, old Villain?

Gun. She would uſe Expreſſions of that Kind when ſhe was in a Paſſion.

Priſ. Counſel. Upon what Account?---*Gun.* For uſing her ill.

King's Counſel. Were theſe Expreſſions made uſe of before his Face, or behind his Back?

Gun. I have heard her before his Face, and behind his Back.

Priſ. Counſel. When have you heard it?

Gun. I believe in the laſt twelve Months; but cannot be ſure.

King's Counſel. Recollect on what Occaſion.

Gun. It has been, I believe, on little Paſſions on both Sides, and that generally from Trifles.

Priſ. Counſel. When did you firſt communicate your Suſpicion to Mr. *Blandy*, about his being poiſoned?

Gun. On the *Saturday* Morning before his Death, from what I ſaw on the *Wedneſday* before.

Priſ. Counſel. Why did you keep this Suſpicion of yours from *Wedneſday* to *Saturday*?

Gun. The Reaſon I did not tell my Suſpicions to Mr. *Blandy* ſooner than *Saturday*, was, becauſe I ſtaid for Mr. *Stevens*, the Priſoner's Uncle, who did not come till *Friday* Night; I told him then, and he deſired me to tell Mr. *Blandy* of it.

Priſ. Counſel. Did you ever ſay any Thing of it to Miſs *Blandy*?

Gun. No, I did not.

Priſ. Counſel. Pray, what Converſation paſſed between her Father and her down upon her Knees, *&c.*?

Gun. She ſaid, Sir, how do you do? He ſaid, I am very ill.

Priſ. Counſel. Was any Thing ſaid about Mr. *Cranſtoun*'s Addreſſes to her?

Gun. Yes, there was. That Converſation was occaſioned by a Meſſage, that Mr. *Blandy* had ſent to his Daughter by me on *Monday* Morning.

Priſ. Counſel. What was that Meſſage?

Gun. That he was ready to forgive her, if ſhe would but endeavour to bring that Villain to Juſtice.

Priſ. Counſel. Did ſhe ſay, with what Intent the Powder was given to her?

Gun. She ſaid, it was given her with another Intent.

Priſ. Counſel. Did ſhe ſay, upon what Intent?

Gunnell. She did not ſay that. He did not aſk that.

Priſoner's Counſel. Was not that explained?

Gun. It was no ways explained.

Priſ. Counſel. Did he treat her, as if ſhe herſelf was innocent?

Gun. He did, Sir.

Priſ. Counſel. Then all he ſaid afterwards was as thinking his Daughter very innocent.---*Gun.* It was, Sir.

Priſ. Counſel. As to the Ruin of his Daughter, did he think it was intirely owing to *Cranſtoun?*

Gun Mr. *Blandy* ſaid, he believed his Daughter intirely innocent of what had happened.

Priſ. Counſel. By what he ſaid to you, do you think that the Father thought his Daughter was impoſed upon by *Cranſtoun*, when he uſed that Expreſſion, *She muſt hate the Man*, &c?

Gun. I do think ſo; he ſaid, Where is *Polly?* I anſwered, In her Room; he ſaid, *Poor unfortunate Girl! that ever ſhe ſhould be impoſed upon and led away by ſuch a Villain to do ſuch a Thing!*

Priſ. Counſel. Do you imagine, from the whole Converſation that paſſed between her Father and her, that ſhe was intirely innocent of the Fact, of the Powder being given?

Gun. I do not think ſo; ſhe ſaid, ſhe was innocent.

Priſ. Counſel. What was your Opinion, did the Father think her wholly unacquainted with the Effect of the Powder?

Gun. I believe he thought ſo; that is as much as I can ſay.

Priſ. Counſel. When you told Miſs *Blandy* that the Waſherwoman was extremely ill, having eat ſome Water-gruel, was any Thing more ſaid with relation to the Father's having eat ſome of the ſame Water-gruel before?

Gun. I don't remember there was a Word ſaid about the Father's having eat any of it.

Priſ. Counſel. During the Time of his Illneſs, was not Miſs *Blandy*'s Behaviour to her Father, with as much Care and Tenderneſs as any Daughter could ſhew?

Gun. She ſeemed to direct every Thing as ſhe could have done for herſelf, or any other Perſon that was ſick.

Priſ. Counſel. Do you know that ſhe was guilty of any Neglect in this Reſpect?---*Gun.* No, I do not, Sir.

King's Counſel. What did he mean when he ſaid, "Poor unfortunate "Girl! that ever ſhe ſhould be impoſed upon, and led away by ſuch a "Villain, to do ſuch a Thing!" What do you imagine he meant by ſuch a Thing?

Gun. By giving him That, which ſhe did not know what it was.

Court. When ſhe told you, *that* Water-gruel would ſerve for her Father on the *Wedneſday*, did ſhe know that her Father had been ill, by taking Water-gruel on the *Monday* and *Tueſday* Nights?

Gun. She knew he was ill, but I cannot tell whether ſhe knew the Cauſe of it; and knew that the Chairwoman was ill, before ſhe propoſed my giving him the ſame Gruel; but did not oppoſe my making freſh, for any other Reaſon, than that it would hinder my Ironing.

Elizabeth Binfield ſworn.

Binfield. I was a Servant to Mr. *Francis Blandy* at *Henley*, and had been almoſt three Years.

Counſel. When did you firſt diſcover his Illneſs, and hear him complain of unuſual Prickings in his Stomach?

Binfield. About a Fortnight before he died.

Counſel. Did you ever hear Miſs *Blandy* talk of ſomething in the Houſe, which ſhe ſaid preſaged his Death, or ſomething like it?

Binfield. I have often heard her talk of Walkings and Muſick in the Houſe that ſhe had heard; ſhe ſaid, ſhe thought it to be her Mother; ſaying, the Muſic foretold her Father's Death.

Counſel. Who has ſhe ſaid ſo to?---*Binfield.* She has told me ſo.

Counſel. How long ago?

Binfield. For ſome Time before her Father's Death; I believe for three Quarters of a Year.

Counſel. How long did ſhe continue talking in this Manner?

Binfield. She did till his Death; I have often heard her ſay, he would die before *October*.

Counſel. What Reaſons did ſhe give for that?

Binfield. By the Muſic; ſaying, ſhe had been informed that Muſic foretels Death within a Twelve-month.

Counſel. Who did ſhe ſay had informed her ſo?

Binfield. She ſaid Mr. *Cranſtoun* had been to ſome famous Woman who had informed him ſo, and named one Mrs. *Morgan*, who lived either in *Scotland*, or *London*; I cannot ſay which.

Counſel. Did ſhe expreſs herſelf glad, or ſorry?

Binfield. Glad; for that then ſhe ſhould ſoon be releaſed from al her Fatigues, and ſoon be happy.

Counſel. Did ſhe talk of the State of Health in which he was?

Binfield. Sometimes ſhe has ſaid, he has been very well, ſometimes ill. I remember I heard her ſay that my Maſter complained of a Ball of Fire in his Guts: I believe it was before the *Monday* he eat the Water-gruel, I cannot particularly ſay, I believe a Fortnight before he died; then ſhe ſaid, Mr. *Cranſtoun* had told her of that famous Woman's Opinion about Muſic.

Counſel. Do you remember the firſt Time one *Ann Emmet* was taken ill?

Binfield. It was about a Month or ſix Weeks before.

Counſel. Do you know what Miſs *Blandy* ordered her in that Illneſs?

Binfield. I do. She ordered her ſome White-wine Whey, and Broth ſeveral Times. I made it two or three Times, two Quarts at a Time.

Counſel. Do you remember a Paper being taken out of the Fire?

Binfield. I do. It was on the *Saturday* before my Maſter died, I took it out myſelf.

Counſel. Should you know it again, if you ſee it?

Binfield. I believe I ſhould (*ſhe is ſhewn a Paper*). I really believe this is it, which I took out of the Fire, and delivered it to *Suſan Gunnell*; after which I had it again from her, and I delivered it to Dr. *Addington*, and Mr. *Norton*.

Counſel. Do you remember Miſs *Blandy*'s ſaying any thing about *Suſan Gunnell*'s eating the Water-gruel?

Binfield. I do. When *Suſan* was ill, ſhe aſked me, how *Suſan* did? I ſaid, Very ill. Said ſhe, Do you remember her ever drinking her Maſter's Water-gruel? I ſaid, Not as I know of. She ſaid, *If ſhe does, ſhe may do for herſelf, may I tell you.*

Counſel. Did ſhe bid you tell *Suſan* ſo?

Binfield. She did not bid me tell *Suſan*, but I did tell her.

Counſel. What Time was this?---*Binfield.* It might be about a Month or ſix Weeks before Mr. *Blandy*'s Death.

Counſel. Do you remember any Expreſſions ſhe made uſe of about her Father?

Binfield. I heard her ſay, *Who would grudge to ſend an old Father to Hell for ten thouſand Pounds?* exactly them Words.

Counſel. When was this?---*Binfield.* It was about a Month before his Death, or it may be more, I cannot juſtly tell.

Counſel. How was this Converſation introduced?---*Binfield.* She was ſpeaking of young Girls being kept out of their Fortunes.

Counſel. Who was with you at this Time?

Binfield. It was to me and nobody elſe.

Counſel. Have you heard her uſe him with bad Language?

Binfield. I have heard her curſe him, call him Raſcal and Villain.

Counſel. What was ſhe ſo angry with her Father about?

Binfield. Mr. *Cranſtoun* was at our Houſe about three Quarters of a Year before Mr. *Blandy*'s Death. He came in *Auguſt* 1750, and ſtayed there till near *Chriſtmas*. It was not agreeable to my Maſter; we uſed to think by his Temper, that he did not approve of his being ſo much with his Daughter; but I do not believe he debarred his Daughter from keeping him Company.

Counſel. Did you ever hear him ſay any Thing to her, of his having been once like to be poiſoned?

Binfield. I was in the Kitchen when my Maſter came in to be ſhaved. I ſtayed there till he went out again. Miſs *Blandy* was there, and he ſaid, that once he had like to have been poiſoned.

Coun. When was it that he ſaid ſo?

Binfield. It was on the 10th of *Auguſt*, ſaying, he was once at the Coffee-houſe, or the *Lion*, and he and two other Gentlemen had like to have been poiſoned by what they had drank. Miſs *Blandy* ſaid, Sir, I remember it very well; ſhe ſaid, it was at one of thoſe Places; and he ſaid No, it was the other. He ſaid, One of the Gentlemen died immediately, the other is dead now, and I have ſurvived them both; but it is my Fortune to be poiſoned at laſt. He looked very hard at her, during the Time he was talking.

Counſel. What did he ſay was put into the Wine?

Binfield. I remember he ſaid it was white Arſenic.

Counſel. When he looked hard at her, how did ſhe look?

Binfield. She looked in great Confuſion, and all in a Tremble.

Counſel. Did you ſit up with Miſs *Blandy* the Night after her Father died?

Binfield. I did till Three o'Clock, ſhe went to Bed about One. She ſaid to me, *Betty*, will you go away with me? If you will go to the *Lion* or the *Bell*, and hire a Poſt-Chaiſe, I will give you fifteen Guineas when you get into it, and ten Guineas more when we come to *London*. I ſaid, Where will you go then, into the *North?* She ſaid, I ſhall go into the *Weſt* of *England*. I ſaid, Shall you go by Sea? She ſaid, I believe ſome Part of the Way. I ſaid, I will not go.

Then ſhe burſt into a Laughter, and ſaid, *I was only in a Joke, did you think I was in earneſt?* Yes, ſaid I. *No*, ſaid ſhe, *I was only joking.*

Counſel. Did you ever hear Miſs tell Dr. *Addington*, that ſhe had given your Maſter ſome of that Powder?

Binfield. I heard Miſs *Blandy* tell the Doctor, ſhe had given my Maſter ſome of that Powder before in a Diſh of Tea, which, ſhe ſaid, he did not drink, and ſhe throwed into the Street out of the Window, fearing ſhe ſhould be diſcovered, and filled the Cup again; and that *Suſan Gunnell* drank it, and was ill for a Week after.

Counſel. When was this?---*Binfield.* This was on the *Monday* before my Maſter died.

Counſel. Do you remember what happened on *Monday*, the 5th of *Auguſt?*

Binfield. Yes. On that Day I and two Waſher-women were in the Waſh-houſe. Miſs *Blandy* came in, and ſaid, *Betty*, I have been in the Pantry eating ſome of the Oatmeal out of your Maſter's Water-gruel. I took no Notice of it; but the ſame Day, in the Afternoon, I went into the Pantry, and Miſs *Blandy* followed me, and took a Spoon and ſtirred the Water-gruel, and taking ſome up in the Spoon, put it between her Fingers and rubbed it.

Counſel. What was it in?

Binfield. It was in a Pan. When my Maſter was taken ill on the *Tueſday* in the Afternoon, Miſs came into the Kitchen, and ſaid, *Betty*, if one Thing ſhould happen, will you go with me to *Scotland?* I ſaid, Madam, I do not know. What, ſays ſhe, you are unwilling to leave your Friends? Said I, If I ſhould go there, and not like it, it will be expenſive travelling back again.

Counſel. Did ſhe ſay, If one Thing ſhould happen? What Thing?

Binfield. I took no farther Notice of it then; but thoſe were the Words. On the *Monday* Morning, before he died, ſhe ſaid to me, *Betty*, go up to your Maſter, and give my Duty to him, and tell him, I beg to ſpeak one Word with him. I did; ſhe went up; I met her when ſhe came out of the Room from him; ſhe claſped me round the Neck, and burſt out a-crying, and ſaid, *Suſan* and you are the two honeſteſt Servants in the World; you ought to be imaged in Gold for your Honeſty; half my Fortune will not make you amends for your Honeſty to my Father.

Croſs-examined.

Priſoner's Counſel. Had Mr. *Blandy* at any Time, and when, previous to the 5th of *Auguſt* been ill?

Binfield. About a Twelvemonth before, he had been ill ſome Time; but I cannot tell how long.

Priſ. Counſel. What was his Illneſs?---*Binfield.* He had a great Cold.

Priſ Counſel. Did he take any Phyſic?

Binfield. I believe he did once or twice.

Priſ. Counſel. Can you tell the Time?---*Binfield.* I believe it was the latter End of *July*, or Beginning of *Auguſt*.

Priſ. Counſel. Who made the Whey and Broth that were ſent to the Waſher-woman?

Binfield. My Fellow-Servant made the Whey, I made the Broth.

Priſ. Counſel. Was ſhe a kind Miſtreſs to the Waſher-woman?

Binfield. She was; ſhe had a greater Regard for her than any other Woman that came about the Houſe.

Priſ. Counſel. About this Muſic, Who did ſhe ſay heard it?

Binfield. She moſtly mentioned herſelf hearing that.

Priſ. Counſel. Was this Talk when *Cranſtoun* was there?

Binfield. I heard her talk ſo, when he was there, and in his Abſence.

Priſ. Counſel. Was it when ſhe was in an angry Temper only, that ſhe uſed thoſe Words to her Father?

Binfield. I have heard her in the beſt of Times curſe her Father.

Priſ. Counſel. Was *Suſan Gunnell* very ill after drinking that Tea?

Binfield. She was, and continued ſo for a Week.

King's Counſel. Was it at the Time *Suſan* was ill, from drinking of the Tea, that Miſs *Blandy* aſked you about her taking the Gruel, and ſaid, it would do for her? And did ſhe ſay any Thing elſe?

Binfield. Miſs *Blandy* ſaid, ſhe poured it out for my Maſter; but he went to Church, and left it.

Priſ. Counſel. Have you had any ill Will againſt her?

Binfield. I always told her, I wiſhed her very well.

Priſ. Counſel. Did you ever ſay, *Damn her for a black Bitch, I ſhould be glad to ſee her go up the Ladder, and be hanged?*

Binfield. No, Sir, I never did in my Life.

King's Counſel. Did you and the reſt of the Family obſerve, that Mr. *Blandy*'s Looks were as well the laſt ſix Months as before?

Binfield. Miſs *Blandy* has ſaid to me, Don't you think my Father looks faint? Sometimes I have ſaid, He is; ſometimes not. I never obſerved any Alteration at all.

Here Dr. *Addington* is appealed to by the Counſel for the Priſoner.

Priſoner's Counſel. Do you, Dr. *Addington*, remember Miſs *Blandy*'s telling you on *Monday* Night, *Auguſt* the 12th, that ſhe had on a *Sunday* Morning, about ſix Weeks before, when her Father was abſent from the Parlour, mixed a Powder with his Tea; and that *Suſan Gunnell* had drank that Tea?

Dr. *Addington.* I remember her telling me that *Monday* Night, that ſhe d on a *Sunday* Morning, about ſix Weeks before, when her Father was ſent from the Parlour, mixed a Powder with his Tea; but do not remember her ſaying, that *Suſan Gunnell* had drank that Tea. I have ſeveral times heard *Suſan Gunnell* ſay, that ſhe was ſure ſhe had been poiſoned by drinking Tea out of Mr. *Blandy*'s Cup that *Sunaay* Morning.

Priſ. Counſel. Did not Miſs *Blandy* declare to you, that ſhe had always thought the Powder innocent?

Dr. *Addington.* Yes.

Priſ. Counſel. Did ſhe not always declare the ſame?

Dr. *Addington.* Yes.

The King's Counſel then interpoſed, and ſaid, that he had not intended to mention what had paſſed in Diſcourſe between the Priſoner and Dr. *Addington*; but that now, as her own Counſel had been pleaſed to call for Part of it, he deſired the Whole might be laid before the Court.

Dr. *Addington.* On *Monday* Night, *Auguſt* the 12th, after Miſs *Blandy* had been ſecured, and her Papers, Keys, *&c.* taken from her, ſhe threw herſelf on the Bed and groaned; then raiſed herſelf, and wrung her Hands, and ſaid, That it was impoſſible for any Words to deſcribe the Horrors and Agonies in her Breaſt; that Mr. *Cranſtoun* had ruined her; that ſhe had ever, till now, believed him a Man of the ſtricteſt Honour; that ſhe had mixed a Powder with the Gruel, which her Father had drank on the foregoing *Monday* and *Tueſday* Nights; that ſhe was the Cauſe of his Death, and that ſhe deſired Life for no End, but to go through a painful Penance for her Sin. She proteſted at the ſame Time, that ſhe had never mixed the Powder with any Thing elſe that he had ſwallowed; and that ſhe did not know it to be Poiſon, till ſhe had ſeen its Effects. She ſaid, that ſhe had received the Powder from Mr. *Cranſtoun*, with a Preſent of *Scotch* Pebbles; that he had wrote on the Paper that held it, *The Powder to clean the Pebbles with*; that he had aſſured her it was harmleſs; that he had often taken it himſelf; that if ſhe would give her Father ſome of it now and then, *a little and a little at a Time*, in any Liquid, it would make him kind to him and her; that accordingly, about ſix Weeks before, at Breakfaſt-time, her Father being out of the Room, ſhe had put a little of it into his Cup of Tea, but that he never drank it; that Part of the Powder ſwimming at Top of the Tea, and Part ſinking to the Bottom, ſhe had poured it out of the Window, and filled up the Cup with freſh Tea; that then ſhe wrote to Mr. *Cranſtoun*, to let him know that ſhe could not give it in Tea without being Diſcovered; and that, in his Anſwer, he had adviſed her to give it in Water-gruel for the future, or in any other thickiſh Fluid. I aſked her, whether ſhe would endeavour to bring Mr. *Cranſtoun* to Juſtice? After a ſhort Pauſe, ſhe anſwered, That ſhe was fully conſcious of her own Guilt, and was unwilling to add Guilt to Guilt; which ſhe thought ſhe ſhould do, if ſhe took any Step to the Prejudice of Mr. *Cranſtoun*, whom ſhe conſidered as her Huſband, tho' the Ceremony had not paſſed between them.

King's Counſel. Was any Thing more ſaid by the Priſoner or you?

Dr. *Addington.* I aſked her, whether ſhe had been ſo weak as to believe the Powder, that ſhe had put into her Father's Tea and Gruel, ſo harmleſs as Mr. *Cranſtoun* had repreſented it? Why Mr. *Cranſtoun* had called it a Powder to clean Pebbles, if it was intended only to make Mr. *Blandy* kind? Why ſhe had not tried it on herſelf, before ſhe ventured to try it on her Father? Why ſhe had flung it into the Fire? Why, if ſhe had really thought it innocent, ſhe had been fearful of a Diſcovery, when Part of it ſwam on the Top of the Tea? Why, when ſhe had found it hurtful to her Father, ſhe had neglected, ſo many Days, to call proper Aſſiſtance to him? And why, when I was called at laſt, ſhe had endeavoured to keep me in the dark, and hide the true Cauſe of his Illneſs?

Counſel. What Anſwers did ſhe make to theſe Queſtions?

Dr. *Addington.* I cannot juſtly ſay; but very well remember, that they were not ſuch as gave me any Satisfaction.

Priſ. Counſel. She ſaid then, that ſhe was entirely ignorant of the Effects of the Powder.

Dr. *Addington.* She ſaid, that ſhe did not know it to be Poiſon, 'till ſhe had ſeen its Effects.

Priſ. Counſel. Let me aſk you, Dr. *Addington*, this ſingle Queſtion: Whether the Horrors and Agonies, which Miſs *Blandy* was in at this Time, were not, in your Opinion, owing ſolely to an hearty Concern for her Father?

Dr. *Addington.* I beg, Sir, that you will excuſe my giving an Anſwer to this Queſtion. It is not eaſy, you know, to form a true Judgment of the Heart; and I hope a Witneſs need not deliver his Opinion of it.

Priſ. Counſel. I do not ſpeak of the Heart: You are only deſired to ſay, whether thoſe Agitations of Body and Mind, which Miſs *Blandy* ſhewed at this Time, did not ſeem to you to ariſe intirely from a tender Concern for her Father?

Dr. *Addington.* Since you oblige me, Sir, to ſpeak to this Particular, I muſt ſay, that all the Agitations of Body and Mind, which Miſs *Blandy* ſhewed at this Time, or any other, when I was with her, ſeemed to me to ariſe more from the Apprehenſion of unhappy Conſequences to herſelf, than from a tender and hearty Concern for her Father.

Priſ. Counſel. Did you never then obſerve in her any evident Tokens of Grief for her Father?

Dr. *Addington.* I never thought I did.

Priſ. Counſel. Did ſhe never wiſh for his Recovery?

Dr. *Addington.* Often.

Priſ. Counſel. Did not you think that thoſe Wiſhes implied a Concern for him?

Dr. *Addington.* I did not; becauſe I had before told her, that if he died ſoon, ſhe would inevitably be ruined.

Priſ. Counſel. When did you tell her this?

Dr. *Addington.* On *Sunday* Morning, *Auguſt* the 11th, juſt before I left *Henley*.

Priſ. Counſel. Did not ſhe deſire you that Morning, before you quitted his Room, to viſit him again the next Day?—Dr. *Addington.* Yes.

Priſ. Counſel. And was ſhe not very ſollicitous that you ſhould do him all the Service in your Power?

Dr. *Addington.* I cannot ſay that I diſcovered any Sollicitude in her on this Score, 'till *Monday* Night, *Auguſt* the 12th, after ſhe was confined, and her Keys, and other Things, had been taken from her.

King's Counſel. Did you, Dr. *Addington*, attend *Suſan Gunnell* in her Illneſs?

Dr. *Addington.* Yes, Sir; but I took no Minutes of her Caſe.

King's Counſel. Did her Symptoms agree with Mr. *Blandy*'s?

Dr. *Addington.* They differed from his in ſome Reſpects; but the moſt material were manifeſtly of the ſame Kind with his, though in a much leſs Degree.

King's Counſel. Did you think them owing to Poiſon?

Dr. *Addington.* Yes.

King's Counſel. Did you attend *Ann Emmet?*—Dr. *Addington.* Yes, Sir.

King's Counſel. To what Cauſe did you aſcribe her Diſorder?

Dr. *Addington.* To Poiſon: For ſhe told me, that on *Wedneſday* Morning, *Auguſt* the 7th, very ſoon after drinking ſome Gruel at Mr. *Blandy*'s, ſhe had been ſeized with Prickings and Burnings in her Tongue, Throat, and Stomach, which had been followed by ſevere Fits of Vomiting and Purging. And I obſerved that ſhe had many other Symptoms, which agreed with Mr. *Blandy*'s.

King's Counſel. Did ſhe ſay, that ſhe thought ſhe had ever taken Poiſon before?

Dr. *Addington.* On my telling her that I aſcribed her Complaints to Poiſon, which ſhe had taken in Gruel at Mr. *Blandy*'s, *Auguſt* the 7th, ſhe ſaid, that if ſhe had been poiſoned by drinking that Gruel at Mr. *Blandy*'s, ſhe was ſure that ſhe had been poiſoned there the Hay-time before by drinking ſomething elſe.

Alice Emmet ſworn.

My Mother is now very ill, and cannot attend; ſhe was Chairwoman at Mr. *Blandy*'s in *June* laſt; ſhe was taken very ill in the Night, with a Vomiting and Reaching, upwards and downwards. I went to Miſs *Blandy* in the Morning, by her Deſire, to ſee if ſhe would ſend her ſomething, as ſhe wanted ſomething to drink, ſaying ſhe was very dry; Miſs ſaid, ſhe would ſend ſomething, which ſhe did in about two Hours.

Counſel. Did you tell her what your Mother had eat or drank?

Emmet. No, I did not; only ſaid, my Mother was very ill and very dry, and deſired ſomething to drink.

Mr. *Robert Littleton* ſworn.

I was Clerk to Mr. *Blandy* almoſt two Years; the latter End of *July* laſt I went to my Father's in *Warwickſhire*, and returned again *Auguſt* the 9th, and breakfaſted with Mr. *Blandy* and his Daughter the next Morning, which was on a *Saturday*; he was in great Agony, and complained very much; he had a particular Diſh to drink his Tea in; he taſted his Tea, and did not drink it; ſaying, it had a gritty bad Taſte, and aſked Miſs, whether ſhe had not put too much of the black Stuff in it? meaning Bohea Tea. She anſwered, it was as uſual; he taſted it again and ſaid, it had a bad Taſte; ſhe ſeemed to be in ſome Sort of a Tremor; he looked particular at her, and ſhe looked very much confuſed and hurried, and went out of the Room. Soon after, my Maſter poured it out into the Cat's Baſon, and ſet it to be filled again; after this, when he was not there, Miſs aſked me what he did with the Tea? I ſaid, he had not drank it, but put it into the Cat's Baſon in the Window; then ſhe looked a good deal confuſed and hurried. The next Day Mr. *Blandy* of *Kingſton* came about half an Hour after Nine in the Morning; they walked into the Parlour, and left me to breakfaſt by myſelf in the Kitchen; I went to Church; when I returned, the Priſoner deſired me to walk with her Couſin into the Garden; ſhe delivered a Letter to me, and deſired me to ſeal and direct it as uſual, and put it into the Poſt.

Counſel. Had you ever directed any Letter for her before?

Littleton. I have a great many; I uſed to direct her Letters to Mr. *Cranſtoun*.

He is ſhewn a Letter.

Littleton. This is one.

Counſel. Did you put it into the Poſt?

Littleton. I did not; I opened it, having juſt before heard Mr. *Blandy* was poiſoned by his own Daughter; I tranſcribed it, and took it to Mr. *Norton*'s the Apothecary at *Henley*, and after that I ſhewed it, and read it to Mr. *Blandy*.

Counſel. What did he ſay?

Littleton. He ſaid very little; he ſmiled and ſaid, *Poor love-ſick Girl! What won't a Girl do for a Man ſhe loves?* (or to that Effect.)

Counſel. Have you ever ſeen her write?

Littleton. I have very often.

Counſel. Look at this Letter, is it her own Hand-writing?

Littleton. I cannot tell; it is wrote worſe than ſhe uſed to write, but it is the ſame ſhe gave me.

Counſel. Do you remember Mr. *Cranſtoun* coming there in *Auguſt* 1750?

Littleton. I do. It was either the latter End of *July*, or the Beginning of *Auguſt*.

Counſel. Did you hear any Talk about Muſic about that Time?

Littleton. After he was gone, I heard the Priſoner ſay, ſhe heard Muſic in the Houſe; this I heard her ſay very often, and that it denoted a Death in the Family; ſometimes ſhe ſaid, ſhe believed it would be herſelf; at other Times, it might be her Father, by Reaſon of his being ſo much broken; I heard her ſay once, ſhe thought ſhe heard her Mother.

Counſel. Did ſhe ſay when that Death would happen?

Littleton. She ſaid that Death would happen before *October*, meaning the Death of her Father, ſeeming to me.

Counſel. Have you heard her curſe her Father?

Littleton. I have heard her ſeveral Times, for a Rogue, a Villain, a toothleſs old Dog.

Counſel. How long was this before her Father's Death?

Littleton. I cannot juſtly tell that, but I have heard her a great many Times within two Months of his Death, and a great while before; I had uſed to tell her he was much broken latterly, and would not live long; ſhe would ſay, ſhe thought ſo too, and that the Muſic portended his Death.

Croſs-examined.

Priſoner's Counſel. When you breakfaſted with them in the Parlour, who was there firſt?

Littleton. She was.

Priſ. Counſel. Did you ſee the Tea made?---*Littleton.* No, Sir.

Priſ. Counſel. Did you ſee it poured out?

Littleton. No; but he deſired me to taſte the Tea; I did mine, and ſaid, I fancied his Mouth was out of Taſte.

Priſ. Counſel. Did not this Hurry, you ſay Miſs *Blandy* was in, ariſe from the Diſpleaſure of her Father, becauſe the Tea was not made to his Mind?

Littleton. I cannot ſay that, or what it was from.

Priſ. Counſel. What became of that he throwed into the Cat's Baſon?

Littleton. He left it there.

Robert Harman ſworn.

I was Servant to Mr. *Blandy* at the Time of his Death; that Night he died, the Priſoner aſked me, where I ſhould live next? I ſaid, I did not know; ſhe aſked me to go with her; I aſked her, where ſhe was going? ſhe ſaid, It would be 500*l.* in my Way, and no Hurt to me, if I would; I told her, I did not chuſe to go.

Counſel. Did ſhe tell you to what Place ſhe was going?

Harman. She did not.

Counſel. Did ſhe want to go away at that Time of Night?

Harman. Then, immediately.

Croſs-examined.

Priſoner's Counſel. Did ſhe give any Reaſon why ſhe deſired to go away?

Harman. No, ſhe gave none.

Priſ. Counſel. How long had you lived there?

Harman. A Twelve-month.

Priſ. Counſel. What has been her general Behaviour to her Father, during the Time you was there?

Harman. She behaved very well, ſo far as ever I ſaw, and to all the Family.

King's Counſel. Did you ever hear her ſwear about her Father?

Harman. No, I never did.

Mr. *Richard Fiſher* ſworn.

I was one of the Jury on the Coroner's Inqueſt, that ſat on Mr. *Blandy*'s Body on *Thurſday*, *Auguſt* the 15th. As I was going up Street to go to Market, I was told, Miſs *Blandy* was gone over the Bridge. I went, and found her at the Sign of the *Angel*, on the other Side of the Bridge. I told her, I was very ſorry for her Misfortune, and aſked her what ſhe could think of herſelf to come from Home, and if ſhe would be glad to go Home again? She ſaid, "Yes; but what muſt I do to get there for the Mob?" I ſaid, I would endeavour to get a cloſe Poſt-Chaiſe, and carry her Home. I went out through the Mob, and got one, and carried her Home. She aſked me, whether ſhe was to go to *Oxford* that Night or not? I ſaid, I believed not. When I came to her Father's Houſe, I delivered her up to the Conſtables. When we were upon the Enquiry before the Coroner, a Gentleman was aſking for ſome Letters, which came in the Time of Mr. *Blandy*'s Illneſs; I went to her Uncle *Stevens* to ſee for them. She then aſked me again, What the Gentlemen intended to do with her, or how it would go? I ſaid, I was afraid very hard, unleſs ſhe could produce ſome Letters to bring Mr. *Cranſtoun* to Juſtice. She ſaid, "Dear Mr. *Fiſher*, "I am afraid I have burnt ſome that would have brought him to Juſtice." She took a Key out of her Pocket, and ſaid, "Take this Key, and ſee "if you can find ſuch Letters in ſuch a Drawer." There was one Mrs. *Minn* ſtood by, I deſired her to go with the Key, which ſhe did; but no Letters were found there; then Miſs *Blandy* ſaid, *My Honour to him will prove my Ruin.*

Counſel. Whad did ſhe mean by the Word *him?*

Fiſher. Mr. *Cranſtoun:* When ſhe found there were no Letters of Conſequence to be found.

Mrs. *Lane* ſworn.

I was with my Huſband at *Henley*, at the Sign of the *Angel* on the other Side the Bridge; there was Miſs *Blandy*. The firſt Word I heard Mr. *Lane* my Huſband ſay, was, if ſhe was found guilty, ſhe would ſuffer according to Law; upon which ſhe ſtampt her Foot upon the Ground, and ſaid, *O! that damn'd Villain!* then pauſed a little, and ſaid, *But why ſhould I blame him? for I am more to blame than he, for I gave it him, and knew the Conſequence.*

Counſel. Did ſhe ſay, *I knew*, or *I know?*

Mrs. *Lane.* I really cannot ſay, Sir; for I did not expect to be called for to be examined here, and will not take upon me to ſwear poſitively to a Word; ſhe was in a Sort of an Agony, in a very great Fright.

Mr. *Lane* ſworn.

I went into the Room where the Priſoner was before my Wife, the Day after Mr. *Blandy*'s Death; ſhe aroſe from her Chair, and met me, and looked hard at me; ſhe ſaid, Sir, I have not the Pleaſure of knowing you. Said I, No, I am a Stranger to you. She ſaid, Sir, you look like a Gentleman, what do you think they will do with me? Said I, you will be committed to the County-Gaol, and be tried at the Aſſizes, and if your Innocence appears, you will be acquitted; if not, you will ſuffer accordingly. She ſtamped with her Foot, and ſaid, *O! that damn'd Villain! But why do I blame him? I am more to blame.* Then Mr. *Littleton* came in, which took off my Attention from her, that I did not hear ſo as to give an Account of the whole.

(The Letter which *Littleton* opened, read in Court.) Directed to the Honourable *William Henry Cranſtoun*, Eſq.

Dear Willy,

My Father is ſo bad, that I have only Time to tell you, that if you do not hear from me ſoon again, do not be frightened; I am better myſelf; and leſt any Accident ſhould happen to your Letters, take Care what you write. My ſincere Compliments. I am ever *Yours.*

The Priſoner's Defence.

My Lords,

IT is morally impoſſible for me to lay down the Hardſhips I have received——I have been aſperſed in my Character. In the firſt Place, it has been ſaid, that I have ſpoke ill of my Father; that *I have curſed him, and wiſhed him at Hell*; which is extremely falſe.---Sometimes little Family Affairs have happened, and he did not ſpeak to me ſo kind as I could wiſh.---I own I am paſſionate, My Lords, and in thoſe Paſſions ſome haſty Expreſſions might have dropt: But great Care has been taken to recollect every Word I have ſpoken at different Times, and to apply them to ſuch particular Purpoſes, as my Enemies knew would do me the greateſt Injury. Theſe are Hardſhips, my Lords, extreme Hardſhips! ſuch as you yourſelves muſt allow to be ſo. It is ſaid too, My Lords, that I endeavoured to make my Eſcape. Your Lordſhips will judge, from the Difficulties I laboured under. I had loſt my Father---I was accuſed of being his Murderer---I was not permitted to go near him---I was forſaken by my Friends ---affronted by the Mob---inſulted by my Servants.---Although I begged to have the Liberty to liſten at the Door where he died, I was not allowed it. My Keys were taken from me, my Shoe-buckles and Garters too,---to prevent me from making away with myſelf, as though I was the moſt abandoned Creature.---What could I do, My Lords? I verily believe I muſt have been out of my Senſes.—When I heard my Father was dead, and the Door open, I ran out of the Houſe, and over the Bridge, and had nothing on but an Half-Sack and Petticoat, without a Hoop,---my Petticoats hanging about me.---The Mob gathered about me.---Was this a Condition, My Lords, to make my Eſcape in?---A good Woman beyond the Bridge ſeeing me in this Diſtreſs, deſired me to walk in till the Mob was diſperſed; the Town-Serjeant was there, I begged he would take me under his Protection to have me Home; the Woman ſaid, it was not proper, the Mob was very great, and that I had better ſtay a little. When I came Home, they ſaid I uſed the Conſtable ill.---I was locked up for fifteen Hours, with only an old Servant of the Family to attend me.---I was not allowed a Maid for the common Decencies of my Sex. I was ſent to Gaol, and was in Hopes, there, at leaſt, this Uſage would have ended. But was told, it was reported I was frequently drunk;---that I attempted to make my Eſcape;---that I never attended the Chapel. A more abſtemious Woman, My Lords, I believe, does not live.

Upon the Report of my making my Eſcape, the Gentleman who was High-Sheriff laſt Year, (not the preſent) came and told me, by Order of the Higher Powers, he muſt put an Iron on me; I ſubmitted, as I always do to the Higher Powers. Some Time after he came again, and ſaid he muſt put an heavier upon me, which I have worn, My Lords, till I came hither. I aſked the Sheriff, Why I was ſo ironed? He ſaid, he did it by the Command of ſome Noble Peer, on his hearing that I intended to make my Eſcape. I told them, I never had ſuch a Thought, and I would bear it with the other cruel Uſage I had received on my Character. The Reverend Mr. *Swinton*, the worthy Clergyman who attended me in Priſon, can teſtify that I was very regular at the Chapel, whenever I was well; ſometimes I really was not able to come out, and then he attended me in my Room.---They likewiſe have publiſhed Papers and Depoſitions, which ought not to have been publiſhed, in order to repreſent me as the moſt abandoned of my Sex, and to prejudice the World againſt me. I ſubmit myſelf to your Lordſhips, and to the worthy Jury.---I can aſſure your Lordſhips, as I am to anſwer it before that Grand Tribunal, where I muſt appear, I am as innocent as the Child unborn of the Death of my Father.---I would not endeavour to ſave my Life at the Expence of Truth. —I really thought the Powder an innocent, inoffenſive Thing, and I gave it to procure his Love.---It has been mentioned, I ſhould ſay I was RUINED: My Lords, when a young Woman loſes her Character, is not that her RUIN? Why, then, ſhould this Expreſſion be conſtrued in ſo wide a Senſe? Is it not ruining my Character to have ſuch a Thing laid to my Charge? And whatever may be the Event of this Trial, I am RUINED moſt effectually.

For the Priſoner. *Ann James* ſworn.

I live at *Henley*, and had uſe to waſh for Mr. *Blandy*; I remember the Time Mr. *Blandy* grew ill; before he was ill, there was a Difference between *Elizabeth Binfield* and Miſs *Blandy*, and *Binfield* was to go away.

Counſel. How long before Mr. *Blandy*'s Death?

Ann James. It might be pretty near a Quarter of a Year before: I have heard her curſe Miſs *Blandy*, and *damn her for a Bitch*; and ſaid ſhe would not ſtay. Since this Affair happened, I heard her ſay, *Damn her for a black Bitch, I ſhall be glad to ſee her go up the Ladder, and ſwing.*

Counſel. How long after?

Ann James. It was after Miſs was ſent away to Gaol.

Croſs-

Croſs-examined.

King's Counſel. What was this Quarrel about?

Ann James. I do not know; I heard her ſay ſhe had a Quarrel, and was to go away, ſeveral Times.

King's Counſel. Who was by at this Time?

Ann James. *Mary Banks* was by, and Nurſe *Edwards*, and *Mary Seymour*; and I am not ſure whether *Robert Harman* was there, or not.

King's Counſel. How was it introduced?

Ann James. It happened in Mr. *Blandy*'s Kitchen, ſhe was always talking about Miſs.

King's Counſel. Was you there on the 5th of *Auguſt?*

Ann James. I cannot ſay I was.

King's Counſel. Do you remember the Priſoner's coming into the Waſh-houſe, and ſaying, ſhe had been doing ſomething with her Father's Water-gruel?——*Ann James.* No, I do not remember it.

Elizabeth Binfield was called up again.

King's Counſel. Did you, *Elizabeth Binfield*, ever make uſe of ſuch an Expreſſion as this Witneſs has mentioned?

Eliz. Binfield. I never ſaid ſuch Words.

King's Counſel. Did you ever tell this Witneſs Miſs and you had quarrelled?——*Eliz. Binfield.* To the beſt of my Knowledge, I never told her about a Quarrel.

King's Counſel. Have you ever had a Quarrel?

Eliz. Binfield. We had a little Quarrel ſome Time before.

King's Counſel. Did you ever declare you was to go away?

Eliz. Binfield. I did.

Mary Banks ſworn.

I remember being in Mr. *Blandy*'s Kitchen in Company with *Ann James.*

Counſel. Who was in Company?—*Mary Banks.* I do not remember.

Counſel. Do you remember a Converſation between *Elizabeth Binfield* and *Ann James?*

Mary Banks. I do not remember any Thing of it.

Counſel. Do you remember her aſperſing Miſs *Blandy*'s Character?

Mary Banks. I do not recollect.

Counſel. Did you hear her ſay, ſhe ſhould be glad to ſee the black Bitch go up the Ladder to be hanged?

Mary Banks. She did ſay, ſhe ſhould be glad to ſee the black Bitch go up the Ladder to be hanged.

Counſel. When was this?

Mary Banks. It was the Night Mr. *Blandy* was opened.

Counſel. Are you ſure it was that Day?—*Mary Banks.* I am ſure it was.

Counſel. Where was Miſs *Blandy* then?

Mary Banks. She was then in the Houſe.

Edward Herne ſworn.

I formerly was a Servant in Mr. *Blandy*'s Family; I went there eighteen Years ago, and left them about twelve Years ago laſt *November*, but have been frequently at the Houſe ever ſince; that is, may be once, twice, thrice, or four Times in a Week.

Counſel. What was Miſs's general Behaviour to her Father, and in the Family?—*Herne.* She behaved, according to what I always obſerved, as well to her Father and the Family, as any Body could do, an affectionate, dutiful Daughter.

Counſel. Did you ſee her during the Time of Mr. *Blandy*'s Illneſs?

Herne. I did. The firſt Time I went into the Room, ſhe was not able to ſpeak to me, nor I to her, for ten Minutes.

Counſel. What was that owing to?

Herne. It was owing to the Greatneſs of her Grief.

Counſel. When was this?——*Herne.* It was the 12th of *Auguſt*, at Night.

Counſel. How did her Father ſeem to be ſatisfied with her Behaviour and Conduct?——*Herne.* She was put into my Cuſtody that Night; when I went into the Room, (upon hearing the Groans of her Father) ſhe ſaid, at my Return, Pray, *Ned*, how does he do?

Counſel. Did you ever hear her ſpeak ill of her Father?

Herne. I never heard her ſwear an Oath all the Time I have known her, or ſpeak a diſreſpectful Word of her Father.

Croſs-examined.

King's Counſel. What are you?——*Herne.* I am Sexton of the Pariſh.

King's Counſel. On what Night did Mr. *Blandy* die?

Herne. On the *Wedneſday* Night.

King's Counſel. How came you, as ſhe was put under your Care, to let her get away?

Herne. I was gone to dig a Grave, and was ſent for Home; they told me ſhe was gone over the Bridge.

King's Counſel. Had you any Talk with her about this Affair?

Herne. She declared to me, that Captain *Cranſtoun* put ſome Powder into Tea one Morning for Mr. *Blandy*, and ſhe turned herſelf about when he was ſtirring of it in the Cup.

King's Counſel. When did ſhe tell you this?—*Herne.* In *Auguſt* 1750.

King's Counſel. Have you ſeen her ſince ſhe has been in *Oxford* Gaol?

Herne. I have. When the Report was ſpread that the Captain was taken, I was with her in the Gaol; a Gentleman came in, and ſaid, he was taken; ſhe wrung her Hands, and ſaid, *I hope in God it is true, that he may be brought to Juſtice as well as I, and that he may ſuffer the Puniſhment due to his Crime, as ſhe ſhould do for her's.*

Priſoner. Give me Leave to aſk the laſt Witneſs ſome Queſtions.

Court. You had better tell your Queſtions to your Counſel; for you may do yourſelf Harm by aſking Queſtions.

Priſ. Counſel. Did not the Priſoner at the ſame Time declare, That, as to herſelf, ſhe was totally innocent, and had no Deſign to hurt her Father?

Herne. At that Time ſhe declared, That when *Cranſtoun* put the Powder into the Tea, upon which no Damage at all came, and when ſhe put Powder afterwards herſelf, ſhe apprehended no Damage could come to her Father.

Priſ. Counſel. When ſhe ſpoke of her own Suffering, did ſhe not mean the ſame Misfortune that ſhe then laboured under?

Herne. She ſaid, ſhe ſhould be glad *Cranſtoun* ſhould be taken, and brought to Juſtice; ſhe thought it would bring the whole to Light, he being the Occaſion of it all; for ſhe ſuffered (by being in Priſon) and was innocent, and knew nothing that it was Poiſon, no more than I, or any one Perſon in the Houſe.

Thomas Cawley ſworn.

I have known Miſs *Blandy* twenty Years, and upwards, and her Father likewiſe; I was intimate in the Family, and have frequently drank Tea there.

Counſel. What was her Behaviour to her Father, during your Knowledge of her?

Cawley. I never ſaw any other than dutiful.

Thomas Staverton ſworn.

Thomas Staverton. I have lived near them five or ſix-and-twenty Years, and upwards, and was always intimate with them; I always thought they were two happy People, he happy in a Daughter, and ſhe in a Father, as any in the World; the laſt Time ſhe was at our Houſe, ſhe expreſſed her Father had had many Wives laid out for him, but ſhe was ſatisfied he never would marry till ſhe was ſettled.

Croſs-examined.

King's Counſel. Did you obſerve, for the laſt three or four Months before his Death, that he declined in his Health?

Staverton. I obſerved he did; I do not ſay as to his Health; but he ſeemed to ſhrink, and I have often told my Wife, my old Friend *Blandy* was going.

King's Counſel. Had he loſt any Teeth latterly?

Staverton. I do not know as to that; he was a good-looking Man.

Priſ. Counſel. How old was he?

Staverton. I think he was ſixty-two.

Mary Davis ſworn.

I live at the *Angel* at *Henley-Bridge*; I remember Miſs *Blandy* coming over the Bridge the Day that Mr. *Blandy* was opened; ſhe was walking along, and a great Crowd of People after her. I ſeeing that, went and aſked what was the Matter; I aſked her where ſhe was going? She ſaid, To take a Walk for a little Air, for they were going to open her Father, and ſhe could not bear the Houſe. The Mob followed her ſo faſt, was the Reaſon I aſked her to go to my Houſe, which ſhe accepted.

Counſel. Did ſhe walk faſt, or ſlowly?

Mary Davis. She was walking as ſoftly as Foot could be laid to the Ground; it had not the leaſt Appearance of her going to make her Eſcape.

Robert Stoke ſworn.

Robert Stoke. I ſaw the Priſoner with Mrs. *Davis* the Day her Father was opened; I told her, I had Orders from the Mayor to detain her; ſhe ſaid, ſhe was very glad, becauſe the Mob was about.

Counſel. Did you think, from her Dreſs and Behaviour, ſhe was about an Attempt to make her Eſcape?

Stoke. No, it did not appear to me at all.

Croſs-examined.

King's Counſel. Was you there when Mr. and Mrs. *Lane* came in?

Stoke. I was.

King's Counſel. Did you hear the Words ſhe ſaid to Mr. *Lane?*

Stoke. I heard nothing at all.

Mr. *Ford.* As very unjuſtifiable and illegal Methods have been uſed to prejudice the World againſt Miſs *Blandy*; ſuch as, it is to be hoped, no Man will have the Boldneſs to repeat, I mean the printing and publiſhing the Examination of Witneſſes before her Trial; and as very ſcandalous Reports have been ſpread concerning her Behaviour, ever ſince her Impriſonment; it is deſired, that the Reverend Gentleman who has attended her as a Clergyman, may give an Account of her Conduct whilſt in Gaol, that ſhe may at leaſt be delivered of ſome of the Infamy ſhe at preſent lies under.

To which he was anſwered by the Court, That it was needleſs to call a Witneſs to that, as the Jury was only to regard what was depoſed in Court, and entirely to diſregard what Papers had been printed, and ſpread about, or any Report whatſoever.

The Honourable Mr. Bathurſt's *Reply.*

Your Lordſhips will, I hope, indulge me in a very few Words by way of Reply; and after the Length of Evidence which has been laid before the Jury, I will take up but little of your Lordſhips Time.

Gentlemen, you obſerve it has been proved to a Demonſtration, That *Mr.* Francis Blandy *did die of Poiſon.* It is as clearly proved, that *he died of the Poiſon put into his Water-gruel upon the 5th of* Auguſt; and that *the Priſoner at the Bar put it in:* For ſo much appears, not only from her own Confeſſion, but from a Variety of other Evidence.——The ſingle Queſtion, therefore, for your Conſideration is, *Whether ſhe did it knowingly or ignorantly?*

I admit, that in ſome of the Converſations which ſhe has had at different Times with different Perſons, ſhe has ſaid ſhe did it without knowing it to be Poiſon, or believing it to be ſo.——At the ſame time I beg Leave to obſerve, (as you will find when their Lordſhips ſum up the Evidence to you) that ſhe did not always make the ſame Pretence.

Examine then, Gentlemen, whether it is poſſible ſhe could do it ignorantly.

It has appeared in Evidence, that ſhe owned ſhe ſaw Mr. *Cranſtoun* put ſome Powder into her Father's Tea in the Month of *Auguſt* preceding; that ſhe had herſelf afterwards done the ſame; but ſhe ſaid ſhe ſaw no ill Effect from it, and therefore concluded it was not hurtful.——Her own Witneſs, *Thomas Staverton*, ſays, that *for a Year paſt Mr.* Blandy *uſed to ſhrink in his Cloaths*; that he made the Obſervation to his Wife, and told her *his Friend* Blandy *was going.*——Our Witneſſes have ſaid, That ſhe herſelf made the ſame Obſervation; told them, *her Father looked very ill, as though he would not live*; and ſaid, *he would not live till* October.

And here let me obſerve one Thing. She ſays, ſhe gave her Father this Powder to make him love her.——After having heard the great Affection with which the poor dying Man behaved towards her, can you think ſhe wanted any Charm for that Purpoſe? After having heard what her own Witneſſes have ſaid of the Father's Fondneſs for the Daughter, can you believe ſhe had Occaſion for any Love-powder?

But one Thing more. She knew her Father had taken this Powder in his Water-gruel upon the *Monday* Night, and upon the *Tuesday* Night; saw how violently he was affected by it; and yet would have had more of the same Gruel given to him upon the *Wednesday*.

Yet one Thing more. When she must have been fully satisfied that it was Poison, and that it would probably be the Occasion of his Death; she endeavoured to burn the Paper in which the rest of the Powder was contained, without ever acquainting the Physicians what she had given him, which might have been the Means for them to have prescribed what was proper for his Relief.

Still one Thing more. She is accused upon the *Saturday*; she attempts to burn the Powder upon the *Saturday*; and yet upon the *Sunday* she stays from Church, in order to write a Letter to Mr. *Cranstoun*.---In that Letter she stiles him her *Dear Willy*;---acquaints him, her Father is so bad that he must not be frightened, if he does not soon hear from her again;---says, she is herself better;---then cautions him to take care what he writes, lest his Letters should fall into a wrong Hand. Was this such a Letter as she would have wrote, if she had been innocent? if she had not known the Quality of the Powder? if she had been imposed upon by Mr. *Cranstoun?*

I will only make one other Observation, which is, that of all our Witnesses she has attempted to discredit only one. She called two Persons to contradict *Elizabeth Binfield* in regard to a scandalous Expression (which she was charged with, but which she positively denied ever to have made use of), in saying, *She should be glad to see the Prisoner go up the Ladder, and swing.*---They first called *Ann James*; she swore to the Expression, and said, *It was after Miss* Blandy *was sent to* Oxford *Gaol.* The next Witness, *Mary Banks*, who, at first, did not remember the Conversation, and, at last, did not remember who were present, said (upon being asked about the Time) that she was sure the Conversation happened upon the *Thursday* Night on which Mr. *Blandy* was opened, *and during the Time that Miss* Blandy *was in the House.* These two Witnesses, therefore, grosly contradict one another; consequently ought not to take away the Credit of *Elizabeth Binfield.* And let me observe, that *Elizabeth Binfield* proved nothing (besides some few Expressions used by Miss *Blandy*), but what was confirmed by the other Maid-Servant, *Susan Gunnell.*

I will, in Justice to the Prisoner, add (what has already been observed by Mr. *Ford*), that the printing what was given in Evidence before the Coroner, drawing odious Comparisons between her and former Parricides, and spreading scandalous Reports in regard to her Manner of demeaning herself in Prison, was a shameful Behaviour towards her, and a gross Offence against Public Justice. But you, Gentlemen, are Men of Sense, and upon your Oaths; you will therefore totally disregard whatever you have heard out of this Place. You are sworn to give a true Verdict between the King and the Prisoner at the Bar, according to the Evidence now laid before you: It is upon that we (who appear for the Publick) rest our Cause.---If, upon that Evidence, she appears to be innocent, in God's Name let her be acquitted: But if, upon that Evidence, she appears to be guilty, I am sure you will do Justice to the Public, and acquit your own Consciences.

Prisoner. It is said, I gave it my Father to make him fond of me.——There was no Occasion for that,—but to make him fond of *Cranstoun.*

Mr Baron Legge.

GENTLEMEN of the Jury——*Mary Blandy*, the Prisoner at the Bar, stands indicted before you for the Murder of *Francis Blandy*, her late Father, by mixing Poison in Tea and Water-gruel, which she had prepared for him. To which she has pleaded, that she is Not Guilty.

In the first Place, Gentlemen, I would take Notice to you of a very improper and a very scandalous Behaviour towards the Prisoner, by certain People, who have taken upon themselves, very unjustifiably, to publish in Print, what they call Depositions, taken before the Coroner, in relation to this very Affair, which is now brought before you to determine. I hope you have not seen them; but if you have, I must tell you, as you are Men of Sense and Probity, that you must divest yourselves of every Prejudice that can arise from thence, and attend merely to the Evidence that has now been given before you in Court, which I shall endeavour to repeat to you, as exactly as I am able after so great a Length of Examination.

In Support of the Indictment, the Counsel for the Crown have called a great Number of Witnesses. In order to establish, in the first Place, the Fact, that Mr. *Blandy* died of Poison, they begin with Dr. *Addington*, who tells you, that he did attend Mr. *Blandy* in his last Illness; that he was first called in upon *Saturday* Evening, the 10th of *August* last; that the Deceased complained, that after drinking some Water-gruel on *Monday* Night, the 5th of *August*, he perceived a Grittiness in his Mouth, attended with a pricking Burning, especially about his Tongue and Throat; that he had a Pricking and Burning in his Stomach, accompanied with Sickness; a Pricking and Griping in his Bowels; but that afterwards he purged and vomited a good deal, which had lessened those Symptoms he had complained of; that on *Tuesday* Night, the 6th of *August*, he took more Gruel, and had immediately a Return of the same Symptoms, but more aggravated; that he had besides Hiccups, cold Sweats, great Anxieties, Prickings in every external as well as internal Part of his Body, which he compared to so many Needles, darting at the same Time into all Parts of him; but the Doctor tells you, at the Time he saw him, he said he was easy, except in his Mouth, his Nose, Lips, Eyes, and Fundament, and some transient Pinchings in his Bowels, which the Doctor then imputed to the Purgings and Vomitings, for he had had some bloody Stools; that he imputed the Sensations upwards to the Fumes of something he had taken the *Monday* and *Tuesday* before; that he inspected the Parts affected, and found his Tongue swelled, his Throat excoriated and a little swelled, his Lips dry, and Pimples on them, Pimples on the Inside of his Nostrils, and his Eyes blood-shot; (that next Morning he examined his Fundament, which he found surrounded with Ulcers) his Pulse trembled and intermitted, his Breath was interrupted and laborious, his Complexion yellowish, and he could not with the greatest Difficulty swallow a Tea-spoonful of the thinnest Liquid; that he then asked him, if he had given Offence to any Person whatever. His Daughter the Prisoner was then present, and she made Answer, that her Father was at Peace with all the World, and all the World with him. He then asked, if he had been subject to this kind of Complaint before: The Prisoner said, that he was subject to the Heart-burn and Colic, and she supposed this would go off as it used to do; that he then told them, that he suspected that by some means or other he had taken Poison: To which the Deceased replied, he did not know but he might, or Words to that Effect; but the Prisoner said, it was *impossible.* He returned to visit him on *Sunday* Morning, and found him something relieved; that he had had some Stools, but none bloody, which he took for a Spasm; that afterwards *Norton* the Apothecary gave him some Powder, which he said had been taken out of Gruel, which the Deceased had drank on *Monday* and *Tuesday*; this Powder he examined at Leisure, and believes it to be white Arsenic; that the same Morning a Paper was put into his Hands by one of the Maids, which she said had been taken out of the Fire, and which she saw Miss *Blandy* throw in; there was a Superscription on the Paper *Powder to clean the Pebbles*; there was so little of it, that he can't say positively what it was, but suspects it to be Arsenic, for he put it on his Tongue, and it felt like Arsenic, but some burnt Paper mixed with it had discoloured and softened it. He tells you, that on *Monday* Morning the Deceased was worse; all the Symptoms returned, and he complained more of his Fundament than before: He then desired the Assistance of some skilful Physician, because he looked upon him to be in the utmost Danger, and apprehended this Affair might come before a Court of Judicature: He asked the Deceased, if he really thought he was poisoned: to which he answered, that he really believed so, and thought he had taken it often, because his Teeth rotted faster than usual; he had frequent Prickings and Burnings in his Tongue and Throat, violent Heart-burn and frequent Stools, that carried it off again by unaccountable Fits of Vomiting and Purging; that he had had these Symptoms, especially after his Daughter had received a Present of *Scotch* Pebbles from Mr. *Cranstoun.* He then asked the Deceased who he suspected had given the Poison to him; the Tears then stood in his Eyes, but he forced a Smile, and said, *A poor love-sick Girl! I forgive her: I always thought there was Mischief in those cursed* Scotch *Pebbles.*

Dr. *Lewis* came that Evening, and Miss *Blandy* was sent into her Chamber, under a Guard, and all Papers in her Pocket, and all Instruments with which she might hurt herself, or any other Person, and her Keys, were taken from her, that nothing might be secreted; for it was not then publickly known that Mr. *Blandy* was poisoned, and they thought themselves accountable for her forth-coming. On *Monday* Night the Deceased mended again, and grew better and worse, unaccountably, as long as he lived. On *Tuesday* Morning every Thing growing worse, he became excessively weak, rambled in his Discourse, and grew delirious, had cold clammy Sweats, short Cough, and a deep Way of fetching his Breath; and he observed, upon those Occasions, that an ulcerous Matter issued from his Fundament. In the Midst of all this, whenever he recovered his Senses, he said he was better, and seemed quite serene, and told him, he thought himself like a Man bit by a mad Dog. *I should be glad to drink, but I can't swallow.* About Noon his Speech faltered more than before; he grew ghastly; was a shocking Sight; and had a very bad Night. On *Wednesday* Morning he recovered his Senses a little, and said he would make his Will in a few Days; but soon grew delirious again, sunk every Minute, and about Two in the Afternoon he died.

The Doctor tells you, he then thought, and still thinks, that he died of Poison; that he had no Symptoms while he lived, nor after he was dead, but what are common in People who have taken white Arsenic. He then read some Observations which he had made on the Appearances of his Body after he was dead; that his Back, and the Parts he lay on, were livid; the Fat on the Muscles of his Belly was loose in Texture, and approached Fluidity; the Muscles of the Belly were pale and flaccid; the Cawl yellower than natural; the Side next the Stomach and Intestines browniish; the Heart variegated with purple Spots; there was no Water in the Pericardium; the Lungs resembled Bladders filled with Air, blotted with black, like Ink; the Liver and Spleen were discoloured, and the former looked as if it had been boiled; a Stone was found in the Gall-bladder; the Bile was very fluid, and of a dirty yellow Colour, inclining to red; the Kidneys were stained with livid Spots; the Stomach and Bowels were inflated, and looked as if they had been pinched, and Blood stagnated in the Membranes; they contained slimy bloody Froth; their Coats were thin, smooth and flabby; the Inside of the Stomach was quite smooth, and, about the Orifices, inflamed, and appeared stabbed and wounded, like the White of an Eye just brushed by the Beards of Barley; that there was no Appearance of any natural Decay at all in him, and therefore he has no Doubt of his dying by Poison; and believes that Poison to have been white Arsenic; that the Deceased never gave him any Reason why he took the same Sort of Gruel a second Time, nor did he ask him. He tells you, as to the Powder that was given him by *Norton*, he made some Experiments with it the next Day, and some Part of it he gave to Mr. *King*, an experienced Chemist in *Reading*, who, upon Trial, found it to be Arsenic, as he told him; that he twice had Powder from *Norton*; and that what he had the second Time he kept entirely in his own Custody, and made Experiments with it a Month afterwards; that he never was out of the Room, while those Experiments were making, and he observed them to tally exactly with other Arsenic which he tried at the same Time. I need not mispend your Time in repeating the several Experiments which the Doctor has told you he made of it; he has been very minute and particular in his Account of them; and, upon the whole, concludes the same to have been Arsenic.

Dr. *Lewis*, the other Physician, who has likewise been sworn, stood by all the while, and confirms Dr. *Addington*'s Evidence; tells you he observed the same Symptoms, and gives it absolutely as his Opinion, that Mr. *Blandy* died by Poison, of which he has not the least Doubt.

The next Witness that is called on the Part of the Crown is *Benjamin Norton*, who is an Apothecary at *Henley*: He tells you, he was sent for to Mrs. *Mounteney*'s in *Henley*, on *Thursday* Morning, the 8th of *August*; that there was a Pan brought thither by *Susan Gunnell*, Mr. *Blandy*'s Maid.

Maid-ſervant, with ſome Water-gruel in it; that he was aſked, what that Powder was in the Bottom of the Pan; to which he replied, That it was impoſſible to ſay, whilſt it was wet in the Gruel, but that he would take it out; that accordingly he did take it out, and laid it upon Paper, and gave it to Mrs. *Mounteney* to keep, which ſhe did till the *Sunday* following, when it was delivered to him, and he ſhewed it to Doctor *Addington*, to whom he gave ſome of it twice, and, by the Experiment made upon it with a hot Poker, he apprehended it to be of the Arſenic-kind; that the Powder he gave Doctor *Addington* was the ſame that he received from Mrs. *Mounteney*; that he has ſome of it ſtill by him, which he now produces in Court. He tells you, that he was ſent for to Mr. *Blandy* on *Tueſday* the 6th of *Auguſt*; that he was very ill, as he imagined, of the Colic, and complained of a violent Pain in his Stomach, attended with Reaching and Purging, and Swelling of the Bowels; that he took Phyſic on *Wedneſday* Morning, for which he found himſelf better; that on *Thurſday* he went there in the Morning, but did not then ſee him, but went again about Twelve o'Clock, and then ſaw him; he deſired to have more Phyſic, which he ſent him to take on the *Friday* Morning; that he has been uſed to attend Mr. *Blandy*, but that he never ſaw him thus out of Order; that the laſt Illneſs he had had was thirteen Months before. He tells you, that he has heard the Priſoner ſay, that ſhe had heard Muſic in the Houſe, which portended ſomething, and that *Cranſtoun* had ſeen her Father's Apparition; and this was ſome Months before her Father's Death; he ſays, that he can't tell who it was ſent for him, but that, when he came, he found Mr. *Blandy* and the Priſoner together; that he aſked, if he had eat any thing that had diſagreed with him; to which the Priſoner made Anſwer, nothing that ſhe knew of, except ſome Peas on the *Saturday* Night before: That, at that Time, he did not apprehend any thing of Poiſon, nor did Mr. *Blandy* mention any Thing of taking the Gruel to him: That on *Saturday* the Priſoner deſired he would take Care of her Father, and, if there were any Danger, call for Help; he told her, he thought he was in great Danger; and then ſhe begged Dr. *Addington* might be ſent for. Mr. *Blandy* himſelf would have deferred it till the next Day, but ſhe, notwithſtanding, ſent for him immediately: He tells you, that as to the Powder he found it to be gritty, and had no Smell; at firſt he could not tell what it was, till he took Notice of the old Woman's Symptoms to be the ſame as Mr. *Blandy*'s; then he ſuſpected foul Play, and, from what he heard in the Family, ſuſpected Miſs *Blandy*.

Mrs. *Mounteney* is then called, who tells you, that ſhe remembers *Suſan Gunnell* bringing a Pan to her Houſe, with Water-gruel, and Powder at the Bottom of it, on *Thurſday*; that ſhe ſent for *Norton* the Apothecary, who took the Powder out, and laid it on white Paper, which he gave to her to keep till it was called for; that ſhe locked it up, and delivered the ſame to *Norton* on the *Sunday* following: She tells you, that the Priſoner always behaved dutifully to her Father, as far as ever ſhe ſaw, *when in his Preſence*; that ſhe did not mention the Paper left with her to any body, till it was fetched away on *Sunday* Morning, the 11th of *Auguſt*; that ſhe was not at Mr. *Blandy*'s in that Time, and neither ſaw him, nor the Priſoner; but ſhe was there on the *Sunday* Afternoon, though ſhe did not then mention any Thing of it.

The next Witneſs is *Suſan Gunnell*, who tells you, that ſhe carried the Pan of Water-gruel to Mrs. *Mounteney*'s from Mr. *Blandy*'s, which had been made at his Houſe, the *Sunday* Se'nnight before his Death, by herſelf; that ſhe ſet it in the common Pantry, where all the Family uſed to go, and obſerved Nobody to be buſy there afterwards; but on *Monday* the Priſoner told her ſhe had been ſtirring her Papa's Water-gruel, and eating the Oatmeal out of the Bottom; that ſhe gave him a half-pint Mug of it that *Monday* Night, before he went to Bed; that ſhe ſaw the Priſoner take the Tea-ſpoon that was in the Mug, ſtir it about, and then put her Fingers to the Spoon, and rub them together, and then he drank ſome Part of it; that on *Tueſday* Morning ſhe did not ſee him when firſt he came down Stairs, and the firſt Time ſhe ſaw him was between Nine and Ten o'Clock, when Miſs *Blandy* and he were together; that he then ſaid he was not well, and going to lie down; that on *Tueſday* Evening *Robert Harman* bid her warm her Maſter ſome Water-gruel, for he was in Haſte for Supper; that ſhe warmed him ſome of the ſame, which Miſs *Blandy* carried into the Parlour, and ſhe believes he eat of it, for there was about half left in the Morning; that ſhe met him that Night, after the Water-gruel, as he was going up to Bed; as ſoon as he got into the Room, he called for a Baſon to reach, and ſeemed to be very ſick, by reaching ſeveral Times; the next Morning, about Six o'Clock, ſhe carried him up his Phyſic, when he told her he had had a pretty good Night, and was better; but he had vomited in the Night, as ſhe judges by the Baſon, which ſhe had left clean, and was then about half full; that on *Wedneſday* the Priſoner came into the Kitchen, and ſaid to her, that as her Maſter had taken Phyſic, he might want Water-gruel, therefore ſhe might give him the ſame again, and not leave her Work to make freſh, as ſhe was buſy ironing; to which ſhe anſwered, that it was ſtale, if there was enough of it; that it would not take much Time, and ſhe would make freſh, and accordingly did ſo; that ſhe had the Evening before taken up the Pan, and diſliked the Taſte, and thought it ſtale, but was now willing to taſte it again; that ſhe put the Pan to her Mouth, and drank ſome of it, and then obſerved ſome Whiteneſs at the Bottom, and told *Betty Binfield*, that ſhe never ſaw any Oatmeal Settlement ſo white before, whereupon *Betty Binfield* look'd at it, and ſaid, Oatmeal this! I think it looks as white as Flour; ſhe then took it out of Doors, where there was more Light, and putting her Finger to the Bottom of the Pan, found it gritty; upon which ſhe recollected, that ſhe had heard that Poiſon was white and gritty, which made her fear this might be Poiſon; ſhe therefore locked it up in a Cloſet, and on *Thurſday* Morning carried it to Mrs. *Mounteney*'s, where Mr. *Norton* ſaw it. She tells you, that about ſix Weeks before Mr. *Blandy*'s Death, ſhe was not very well herſelf, and Miſs *Blandy* then aſked her what was the Matter with her, and what ſhe had eat or drank; to which ſhe anſwered, That ſhe knew not what ailed her, but ſhe had taken nothing more than the reſt of the Family; upon which the Priſoner ſaid to her, *Suſan*, have you eat any Water-gruel? for I am told it hurts me, and may hurt you. To which ſhe anſwered, Madam, it cannot affect me, for I have eat none. She then mentions a Converſation, that *Betty Binfield* told her ſhe had with the Priſoner on the ſame Subject; but that you will hear from *Betty Binfield* herſelf. She then tells you, that on the *Wedneſday* Morning, after ſhe had given her Maſter his Phyſic, ſhe ſaw *Ann Emmet* the Chair-woman; and ſaid to her, Dame, you uſed to be fond of Water-gruel, here's a fine Meſs for you, which my Maſter left laſt Night; and thereupon warmed it, and gave it her; that the Woman ſat down on a Bench in the Kitchen, and drank ſome of it, but not all; and ſaid the Houſe ſmelt of Phyſic, and every Thing taſted of Phyſic, and ſhe muſt go out and reach before ſhe could finiſh it; that ſhe went out to the Waſh-houſe, as ſhe believes; that in about half an Hour ſhe followed her, and then found her in the Neceſſary-houſe reaching, and, as ſhe ſaid, purging; that the old Woman ſtaid there an Hour and an half, during which Time ſhe went frequently to her, and carried her Surfeit-water; ſhe ſaid ſhe was no better, and deſired ſome fair Water; upon that ſhe perſuaded her to come into the Houſe; but ſhe ſaid ſhe was not able without Help; that then ſhe led her in, and put her in a Chair by the Fire, where the Coughing and Reaching continued; that ſhe ſtaid in the Houſe about half an Hour, and grew worſe; and ſhe thought her in a Fit, or ſeized with Death; that about Nine of the Clock that Morning, ſhe went up to Miſs *Blandy*, and acquainted her, that her Dame had been very ill, and complained that the Smell of Phyſic had made her ſick, and at the ſame Time told her, that ſhe had eat nothing but a little of her Maſter's Water-gruel, which could not hurt her; to which the Priſoner ſaid, *that ſhe was glad ſhe was not below Stairs, for ſhe ſhould have been ſhocked to have ſeen her poor Dame ſo ill.* She tells you, that ſometimes the Priſoner talked affectionately of her Father, and at other Times but middling, and called him an *old Villain* for uſing an only Child ſo. Sometimes ſhe wiſhed for his long Life, and ſometimes for his Death; and would often ſay, *that ſhe was very unkward*; *and that if her Father was dead, ſhe would go to* Scotland, *and live with Lady* Cranſtoun. That by her Father's Conſtitution he might live twenty Years; but ſometimes would ſay, ſhe did not think he looked ſo well. She remembers Dr. *Addington* being ſent for on *Saturday* Evening; and tells you, that the Priſoner was not debarred going into her Father's Room till *Sunday* Night, when Mr. *Norton* brought her down with him, and told this Witneſs not to ſuffer any Perſon to go into her Maſter's Room, except herſelf, who looked after him. That about Ten of the Clock, on *Monday* Morning, the Priſoner came into the Room after Mr. *Norton*; that ſhe then fell on her Knees to her Father, and ſaid, *Sir, Baniſh me where you pleaſe, do with me what you pleaſe, ſo you do but forgive me*; *and as for* Cranſtoun, *I will never ſee him, ſpeak to him, or write to him more, as long as I live, if you will forgive me:* To which the Deceaſed made Anſwer, *I forgive thee, my Dear, and I hope God will forgive thee*; *but thee ſhouldſt have conſidered better, before thee attempteſt any Thing againſt thy Father*; *thee ſhouldſt have conſidered I was thy own Father:* That the Priſoner then ſaid, *Sir, as to your Illneſs I am intirely innocent:* To which the Witneſs replied, Madam, I believe you muſt not ſay you are intirely innocent, for the Powder left in the Water-gruel, and the Paper of Powder taken out of the Fire, are now in ſuch Hands, that they muſt be publickly produced. The Witneſs then told her, that ſhe believed ſhe had herſelf taken, about ſix Weeks before, a Doſe in Tea, that was prepared for her Maſter: To which the Priſoner anſwered, *I have put no Powder in Tea, I have put Powder in Water-gruel*; *if you have received any Injury, I am entirely innocent*; *it was given me with another Intent:* The Deceaſed hearing this, turned himſelf in his Bed, and ſaid, *Oh, ſuch a Villain! Come to my Houſe, eat of the beſt and drink of the beſt my Houſe could afford, ſhould take away my Life, and ruin my Daughter. Oh! my Dear, thee muſt hate that Man*; *thee muſt hate the Ground he goes on*; *thee canſt not help it:* That the Priſoner replied, *Sir, your Tenderneſs to me is like a Sword to my Heart*; *every Word you ſay is like Swords piercing my Heart, much worſe than if you were to be ever ſo angry*; *I muſt down on my Knees, and beg you will not curſe me.* To which her Father anſwered, *I curſe thee, my Dear! how ſhouldſt think I could curſe thee! No*; *I bleſs thee, and hope God will bleſs thee, and amend thy Life. Do, my Dear, go out of the Room*; *ſay no more, leſt thee ſhouldſt ſay any Thing to thy own Prejudice: Go to thy Uncle* Stevens, *take him for thy Friend: Poor Man! I am ſorry for him.* And that then the Priſoner went directly out of the Room. This Witneſs further tells you, that on the *Saturday* before, ſhe was in the Kitchen about Twelve of the Clock at Noon, when the Priſoner having wrote the Direction of a Letter to her Uncle *Stevens*, and going to the Fire to dry it, ſhe obſerved her put a Paper or two into the Fire, and ſaw her thruſt them down with a Stick; that *Elizabeth Binfield* then putting ſome freſh Coals on, ſhe believes kept the Paper from being conſumed; ſoon after which the Priſoner left the Kitchen, and ſhe herſelf acquainted *Betty Binfield* that the Priſoner had been burning ſomething; that *Betty Binfield* aſked where; and the Witneſs pointed to the Corner of the Grate; whereupon *Betty Binfield* moved a large Coal, and took out a Paper, and gave it to her; that it was a ſmall Piece of Paper, with Writing upon it, *viz. The Powder to clean the Pebbles*, to the beſt of her Remembrance. She did not read it herſelf, but *Betty Binfield* did, and told her what it was; that about Eleven or Twelve of the Clock that Night ſhe delivered this Paper to *Betty Binfield* again, but it had never been out of her Pocket till that Time. She tells you, that before this, upon the ſame *Saturday* Morning, ſhe had been in her Maſter's Room about Seven of the Clock, to carry him ſomething to drink, and when he had drank it, ſhe ſaid to him, Sir, I have ſomething to communicate to you, which nearly concerns your Health and your Family; I believe you have got ſomething in your Water-gruel that I am afraid has hurt you, and I believe Miſs *Blandy* put it in, by her coming into the Waſh-houſe on *Monday*, and ſaying, that ſhe had been ſtirring her Papa's Water-gruel, and eating the Oatmeal out of it: Upon which he ſaid, *I find I have ſomething not right, my Head is not right as it uſed to be, nor has been for ſome Time:* This Witneſs told him, that ſhe had found a Powder in the Pan; upon which he ſaid to her, *Doſt thee know any Thing of this Powder? didſt thee ever ſee any of it?* To which ſhe anſwered, No, none but what ſhe ſaw in the Water-gruel; he then

then asked her, *Dost know where she had this Powder, or canst guess?* To which she replied, *I cannot guess any where, except from Mr.* Cranstoun; *my Reason to suspect that is, Miss* Blandy *has lately had Letters oftener than usual:* Her Master then said, *Now you mention it, I remember, when he was at my House, he talked of a particular Poison they had in his Country: Oh! that Villain! that ever he came into my House.* She likewise told him, that she had shewn the Powder to Mr. *Norton*, but he could not tell what it was, as it was wet; but whatever it was, it ought not to be there; her Master expressed some Surprize, and said, *Mr.* Norton *not know! that's strange! a Person so much used to Drugs.* She told him, Mr. *Norton* thought it would be proper for him (her Father) to seize her Pockets, with her Keys and Papers: To which he said, *I cannot do it; I cannot shock her so much.—But canst not thee take out a Letter or two, which she may think she has dropped by Chance?* The Witness told him, No, Sir, I have no Right, she is your Daughter; you may do it, and nobody else. She tells you, she cannot say how long before this it was, that *Ann Emmet* had been sick with the Tea; that Miss *Blandy* then sent her Whey and Broth, a Quart or three Pints at a Time, once a Day, or every other Day; that she herself once drank a Dish of Tea on a *Sunday* Morning, out of her Master's Dish, which was not well relished, and she thought somebody had been taking Salts in that Cup; and this was about six Weeks and three Days before her Master's Death; that she found no ill Effect from it till after Dinner that Day; she had then a Hardness at her Stomach, which she apprehended was from eating plentifully of Beans at Dinner; that afterwards she seemed to have some Indigestion, and had a remarkable Trembling upon her; that she had no other Symptoms for three Days, but afterwards, for about three Days more, she was troubled with a Reaching every Morning. She says, she tasted the Water-gruel twice; once on the *Tuesday*, when she was mixing it for her Master, and again on the *Wednesday*, but found no remarkable Disorder till about Two o'Clock on the *Wednesday* Morning before her Master's Death, when she was seized with Convulsions. She says, that her Throat continued troublesome for six or seven Weeks after she had drank the Tea, and continued ill for three Weeks after her Master's Death; she remembers once that the Prisoner had a large Box of Linnen and some Pebbles from Mr. *Cranstoun*, in the Spring, before her Master's Death, and a small Box of *Scotch* Pebbles afterwards, about three Months before his Death; that the Prisoner shewed the Pebbles to many of her Acquaintance, but the Witness never heard of Powder to clean them; she tells you, that about a Year before his Death, her Master had a Cold, but she does not remember he was so ill as to send for the Apothecary; that he used to be equally complaining of the Gravel, Gout, and Heart-burn for twelve Years; knows nothing particular of any Complaint but the Heart-burn, and that he may have complained of all the Time she has lived in the House; but she is not positive.

She says, the Prisoner's Behaviour to her Father, in general, seemed to be dutiful, but she used undutiful Expressions in her Passions; that there had been no Conversation between her Master and the Prisoner, before her asking Forgiveness, but a Message sent by him to her, that he was willing to forgive her, if she would bring that Villain to Justice; in all he said afterwards, he seemed to speak of his Daughter, as if he believed her innocent of any Intention to hurt him, and looked on *Cranstoun* as the first Mover and Contriver of all, and had said, *Poor unfortunate Girl! that ever she should be led away by such a Villain to do such a Thing!* She believes he thought his Daughter unacquainted with the Effects of the Powder; that the Prisoner, during his Illness, kept him Company, and directed every Thing for him as for herself; the Prisoner knew her Father was ill on *Monday* and *Tuesday* Nights, but won't take upon her to say, that she knew what was the Cause of it; but she knew that the Chairwoman had been ill on the *Wednesday* Morning, before she told the Witness that the old Water-gruel would serve for her Father.

The next Witness is *Elizabeth Binfield*, who tells you, that she was a Servant to the Deceased almost three Years before his Death; that he first complained of unusual Pains and Prickings, about a Fortnight before his Death; that she has often heard the Prisoner mention Walkings, and Music, that she had heard in the House; that she thought it to be her Mother; and three Quarters of a Year before her Master's Death, the Prisoner told her that the Music presaged his Death, and continued talking in the same Way to the Time of it; that she has often heard her say, he would die before *October*; that the Prisoner told her, that Mr. *Cranstoun* had informed her, that a famous Woman, one Mrs. *Morgan*, who lived in *Scotland*, or *London*, but which the Witness cannot say, had said so; that the Prisoner used to appear glad when she spoke of the Prospect of her Father's Death, for that then she should be released from all her Fatigues, and be happy. She tells you, she heard the Prisoner say, that her Father complained of a Ball of Fire in his Guts, before the *Monday* on which he took the Water-gruel; she tells you, that she remembers that *Ann Emmet*, the Chairwoman, was ill about five or six Weeks before this Time, and that the Prisoner ordered her White-wine Whey and Broth; that she herself made the Broth two or three Times, two Quarts at a Time; she says, that on *Saturday*, the 10th of *August*, the Paper was taken out of the Fire by herself, which she looks upon, and says, she really believes it to be the same which she gave to *Susan Gunnell*, had again from her, and then delivered to Dr. *Addington* and Mr. *Norton*. She tells you, that when *Susan Gunnell* was ill, the Prisoner asked this Witness, *if* Susan *had taken any of her Father's Water-gruel*; and upon her answering, Not that I know, the Prisoner said, *If she does, she may do for herself, may I tell you:* With this Conversation she acquainted *Susan Gunnell*, about a Month or six Weeks before her Master's Death, in which Particular she is confirmed by *Susan Gunnell*. She says further, that she heard the Prisoner say, *Who would grudge to send an old Father to Hell for* 10,000*l?* And this she introduced by talking of young Girls being kept out of their Fortunes. She has heard the Prisoner often *curse her Father*, and call him *Rascal* and *Villain*; she says, that Mr. *Cranstoun* had been at her Master's about three Quarters of a Year before his Death, and she believes her Master did not approve of his being so much with his Daughter, as she judged by his Temper; but she does not believe he debarred his Daughter from keeping him Company. She says, that upon *Saturday*, the 10th of *August*, she was in the Kitchen when her Master was shaving, and the Prisoner was there; and her Master said he had once like to have been poisoned at a Public-house; to which the Prisoner answered, That she remembered it very well: Her Master said, that one of the Company died immediately, the other is now dead, but it is my Fortune to be poisoned at last; and then looked hard at the Prisoner, who appeared in great Confusion, and seemed all in a Tremble; her Master said further, that it was white Arsenic that was put into their Wine. This Witness then tells you, that she sat up with the Prisoner the Night her Father died, till Three o'Clock, but the Prisoner went to Bed about One; that they had no Discourse at all of her Father; but the Prisoner asked her if she would go away with her, and offered, if she would go to the *Bell*, or the *Lion*, and hire a Post-Chaise, she would give her fifteen Guineas at getting into the Chaise, and ten Guineas more when they got to *London*; that on the Witness refusing to comply with this Request, the Prisoner burst into a Laughter, and said she was only joking. She tells you further, that she heard the Prisoner tell Dr. *Addington* that she had given the Powder to her Father before, and then it was in Tea; that she was afraid of a Discovery, so flung it away, and filled the Cup up again, which *Susan Gunnell* drank, and was ill for a Week after. She says, that upon *Monday*, the 5th of *August*, the Prisoner came into the Wash-house, and said that she had been in the Pantry, eating Oatmeal out of her Father's Gruel, which she little regarded then; but the same Day in the Afternoon she saw the Prisoner in the Pantry take a Tea-spoon, and stir the Water-gruel which was in a Pan, and then rubbed it between her Fingers; that on the *Tuesday* Evening the Prisoner came into the Kitchen to her, and said, Betty, *if one Thing should happen, will you go into* Scotland *with me?* To which she said, *Madam, I do not know. What*, says the Prisoner, *you are unwilling to leave your Friends?* To which the Witness replied, that if she should go there, and not like it, it would be expensive travelling. She says, that on *Monday* Morning, the 12th of *August*, she went on a Message from the Prisoner, to beg of her Father that she might speak one Word with him, which being granted, the Prisoner went up; and that she afterwards met the Prisoner coming out of her Father's Room, when she clasped the Witness round the Neck, burst out a-crying, and said to her, Susan *and you are the two honestest Servants in the World; you deserve to be imaged in Gold for your Honesty; half my Fortune will not make you Amends for your Honesty to my Father.* She tells you, that her Master had been out of order about twelve Months before this Time; and that it was at the Time when *Susan Gunnell* was ill by drinking the Tea, that the Prisoner cautioned her about *Susan*'s drinking her Father's Water-gruel.

Dr. *Addington* having been appealed to by the last Witness, in the Course of her Evidence, is again called up, and confirms all that this Witness has said, except, he does not remember the Circumstance of *Susan Gunnell*'s being ill with the Tea.

He says, that the Prisoner always told him she thought it an innocent Powder, but said, *it was impossible to express her Horror*, that she was the Cause of her Father's Death; tho' she protested that she thought it innocent when she gave it; for Mr. *Cranstoun* had assured her that he used to take it himself, and called it a Love-Powder; that she had a Letter from him, directing her to give it in Gruel, as she had informed him it did not mix in Tea; that *for her own Part she desired Life for no other Purpose, than only to go thro' a severe Penance for her Sins*; that on her being pressed by him to discover all she knew relating to *Cranstoun*, her Answer was, that *she was fully conscious of her own Guilt, and would not add Guilt to Guilt, for she looked on* Cranstoun *as her Husband, tho' the Ceremony had not passed between them.* He tells you further, that he does not remember that she gave him any satisfactory Answer to any of the Questions which he put to her, which he has repeated to you, and which are very material ones, but always persisted that she was intirely ignorant of the Effects of the Powder, till she saw them on her Father; and often said, Pray God send it may not kill him, after he had told her, and her Father too, the Danger of her Father, and that he apprehended her to be undone: He then tells you he attended *Susan Gunnell*, who had the same Symptoms with the Deceased, but in a less Degree; he also attended *Ann Emmet*, who had the same Symptoms, and told her that she was poisoned.

Alice Emmet is then called, who is Daughter to *Ann Emmet* the old Chairwoman, who gives you an Account that her Mother was Chairwoman at Mr. *Blandy*'s in *June* last, in the Time of Hay-harvest; that she was then taken sick, was seized in the Night-time with a Vomiting and Purging, and this Witness went in the Morning to the Prisoner, by her Mother's Desire, and acquainted her with the Condition she was in; that the Prisoner said she was sorry, and would send her something to drink, which she did in about an Hour or two afterwards.

The next Witness is Mr. *Littleton*, who had been Clerk to the Deceased about two Years, and tells you he came Home from his Father's in *Warwickshire*, upon the 9th of *August* last; that the next Morning the Prisoner, her Father, and himself, were at Breakfast together; that they stayed for the Deceased some Time; that when he came, he appeared to be ill and in great Agony; that he had always a particular Cup to himself; that he tasted his Tea, and did not like it, but said it had a gritty bad Taste, and asked the Prisoner if she had not put too much of the black Stuff in it (meaning Bohea Tea); the Prisoner said, it was as usual; he then tasted it again, and said it had a bad Taste, and looked very *particularly* at her; she seemed in a Hurry, and walked out of the Room; the Deceased then poured the Tea into the Cat's Bason, and went away. Soon after the Prisoner came into the Room again, when he told her that he thought the Deceased was very ill, for that he could not eat his Breakfast; on which she asked what he had done with it; and upon his acquainting her that it was poured into the Cat's Bason, she seemed a good deal confused. That the next Day, being *Sunday* Morning, Mr. *Blandy* of *Kingston* came to their House, and went to Church along with him; that after they returned from Church, the Prisoner desired this Witness to walk with her and Mr. *Blandy* in the Garden, when she put a Letter into his Hand, and bid him direct it as usual, which he understood

underſtood to be to Mr. *Cranſtoun*, (having been uſed to direct others before) to ſeal it, and put it in the Poſt. He tells you, he had then heard ſo much, that he opened the Letter, tranſcribed it, carried it to Mr. *Norton*, and read it to the Deceaſed, who only ſaid, *Poor love-ſick Girl! what won't a Girl do for a Man ſhe loves?* This Letter he has now looked at; tells you, that it is wrote worſe than uſual, therefore he cannot ſwear whether 'tis her Hand or no, but he can ſwear 'tis the ſame ſhe gave him; the Letter itſelf has been read to you, and I will make no Remarks upon it. He tells you, that after Mr. *Cranſtoun* was gone from *Henley* in *Auguſt* 1750, he has often heard the Priſoner ſay, that ſhe heard Muſic, which portended Death in the Family, and ſometimes thought it might be herſelf, ſometimes her Father, becauſe he was ſo much broken; that he has heard her ſay, Death would happen before *October*; that he has often heard her curſe her Father, damn him for a *Rogue* and a *toothleſs old Dog*, within two Months of his Death, and a great while before; that he has told her himſelf, that he thought Mr. *Blandy* ſeemed broken; upon which ſhe ſaid ſhe thought ſo too, and that the Muſic portended his Death.

Robert Harman is called next, who tells you, that he was Servant to Mr. *Blandy* at the Time of his Death; that the Night his Maſter died, the Priſoner aſked him where he ſhould live next; on which he told her he did not know; and ſhe then aſked him if he would go away with her; and upon his ſaying he did not care to do ſo, ſhe told him no Hurt would come to him, but it would be 500*l.* in his Way, and wanted him to go away then immediately. He ſays, the Priſoner behaved well to her Father, and all the Family, as far as he knows, and never heard her ſwear about her Father.

The next Witneſs is *Richard Fiſher*, who was one of the Jury on Inſpection of the Body of the Deceaſed. On *Thurſday*, the 15th of *Auguſt*, he was informed that Miſs *Blandy* was gone over *Henley-Bridge*, and went to her at the *Angel*; when he came into the Room, he told her he was ſorry for her Misfortune, and aſked her, if ſhe would not be glad to go Home again? She ſaid ſhe ſhould, but could not get through the Mob; upon which he got a covered Poſt-chaiſe, and carried her Home. As they were going, ſhe aſked him, if ſhe was to go to *Oxford* that Night; that he told her he believed not; when he brought her to her Father's Houſe, he delivered her up to the Conſtable; that after this he was upon the Jury, and when he went to her again, ſhe aſked him how it was likely to go with her; upon which he told her, he was afraid very hardly, unleſs ſhe could produce Letters or Papers of Conſequence to bring *Cranſtoun* to Juſtice. Upon which ſhe ſaid, *Dear Mr.* Fiſher, *I have burnt thoſe Letters that would have brought him to Juſtice*, and gave a Key out of her Pocket to ſearch a Drawer for Letters; but none being found, ſhe ſaid, *My Honour to him* (*meaning* Cranſtoun) *will prove my Ruin.*

Mrs. *Lane* is then called, who ſays, ſhe went to the *Angel* along with her Huſband, when the Priſoner was there; the firſt Word ſhe heard her Huſband ſay was, if ſhe was guilty, ſhe would ſuffer according to Law; upon which the Priſoner ſtampt on the Ground, and the firſt thing ſhe heard her ſay was, *O that damned Villain!* then pauſed a little, and went on again, *But why do I blame him? I am more to blame myſelf, for it was I gave it him, and knew the Conſequence.* Upon being aſked, whether ſhe ſaid, *I knew*, or *I know*, the Witneſs tells you, that ſhe will not be poſitive which, but the Priſoner was in a Sort of Agony; whichever Way it was, it may make ſome little Difference, but nothing material.

Mr. *Lane*, the Huſband of the laſt Witneſs, is then called, and tells you, that he went into the Room before his Wife; that the Priſoner roſe and met him, told him he was a Stranger to her, but as he appeared like a Gentleman, ſhe aſked him what they would do with her? That he told her, ſhe would be committed to the County Gaol, and tried at the Aſſizes; if her Innocence appeared, ſhe would be acquitted; if not, ſhe would ſuffer accordingly. Upon which ſhe ſtampt with her Foot, and ſaid, *O that damned Villain! But why do I blame him? I am more to blame.*— That then Mr. *Littleton* came in, which took off his Attention; that he did not hear what followed, ſo as to be able to give an Account of it.

The Letter from the Priſoner to Captain *Cranſtoun*, without any Date to it, which was opened by *Littleton*, has then been read to you, and with that the Counſel for the Crown conclude their Evidence.

The Priſoner in her Defence complains of hard Uſage ſhe has met with, denies her ever ſpeaking ill of her Father, owns herſelf to be paſſionate, and complains that Words of Heat, upon Family-Affairs, have been miſconſtrued and applied to an ill Intention in her; that ſhe was not in her Senſes when ſhe loſt her Father, nor in a proper Dreſs to make her Eſcape when ſhe went over *Henley-Bridge*; that ſhe was taken in at the *Angel* by the Woman of the Houſe out of mere Compaſſion, and was then deſirous to put herſelf under the Protection of the Town-Serjeant; that, during her Confinement, ſhe was not ſuffered to have decent Attendance for a Woman; that ſhe was affronted by her own Servants, cruelly traduced, and heavily ironed, without any reaſonable Cauſe; that ſhe thought the Powder innocent, and never had a Thought of hurting her Father; but her own Ruin is effected by ſuch an Imputation upon her, and her Appearance here, without her being convicted. She then calls her Witneſſes, and the firſt is

Ann James, who tells you ſhe lives at *Henley*, and uſed to waſh at Mr. *Blandy*'s Houſe; that ſhe remembers that ſome time before Mr. *Blandy*'s Illneſs, there was a Difference between the Priſoner and *Elizabeth Binfield*, and that the latter was to go away; and that ſhe has heard *Elizabeth Binfield* curſe the Priſoner, and damn her for a Bitch, and ſay, ſhe would not ſtay; that ſince this Affair happened, ſhe heard her ſay (ſpeaking of the Priſoner), Damn her for a black Bitch, ſhe ſhould be glad to ſee her go up the Ladder, and ſwing. She tells you, that when this Converſation happened, the Priſoner was gone to Gaol; that it was in Mr. *Blandy*'s Kitchen; and that Nurſe *Edwards*, *Mary Seymour*, and *Mary Banks*, were preſent.

Elizabeth Binfield is then called up again, and abſolutely denies the Words ſhe is charged with: She ſays, ſhe never acquainted the Witneſs with any Quarrel ſhe had had, to the beſt of her Remembrance, but that ſhe had ſome few Words of Difference with the Priſoner, and had ſaid, that ſhe was to go away.

Mary Banks is then called, who ſays, That ſhe was in Mr. *Blandy*'s Kitchen while he was dead in the Houſe; but ſhe does not remember who was in Company, nor any Converſation that paſſed between *Elizabeth Binfield* and *Ann James*, till the Words are directly put into her Mouth, and then ſhe recollects that *Elizabeth Binfield* ſaid, ſhe ſhould be glad to ſee Miſs *Blandy*, that black Bitch, go up the Ladder to be hanged; but ſhe tells you, this was on the Night that Mr. *Blandy* was opened, and that the Priſoner was then in the Houſe.

Theſe two Witneſſes are called to impeach the Credit of *Elizabeth Binfield*, as having a Prejudice againſt the Priſoner; but I ſee no great Streſs to be laid on their Evidence, for they manifeſtly contradict one another, but do not falſify her in any one Thing ſhe has ſaid.

The next Witneſs that ſhe calls is *Edward Herne*, who was a Servant to Mr. *Blandy* eighteen Years ago, and has left his Place about twelve Years; but he has been very ſeldom without going three or four Days a-Week to his Houſe ever ſince; that the Priſoner's general Behaviour to her Father and the Family was as well as any Body could do, with Affection and Duty, as far as ever he ſaw; that on the *Monday* Night before Mr. *Blandy* died, he went to the Houſe, and that neither the Priſoner nor he could ſpeak for ſome Minutes, which he attributed to her great Concern; that ſhe was put into his Cuſtody that Night; that on hearing the Groans of her Father, he went in to him, at her Deſire, to enquire how he did; that he never heard her ſwear, or ſpeak diſreſpectfully of her Father: He ſays, he was not in the Way when ſhe went over *Henley-Bridge* (being ſent for to dig a Grave, he being the Sexton); that he has ſeen her ſince her Confinement at *Oxford*, and ſhe told him, that Captain *Cranſtoun* had before put ſome Powder in her Father's Tea; that ſhe turned about, and when ſhe turned again he was ſtirring it in; that on a Report that Captain *Cranſtoun* was taken, ſhe wrung her Hands, and ſaid, *She hoped in God it was true, that he might be brought to Juſtice as well as herſelf; that as ſhe was to ſuffer the Puniſhment due to her Crime, he might do ſo too*; but at the ſame time ſhe declared, that when *Cranſtoun* put the Powder into the Tea, and ſhe herſelf did ſo afterwards, ſhe knew no ill Effects of it, or ſaw any Harm from it; but if he were taken, it would bring the whole to light; for ſhe was innocent, and knew no more of its being Poiſon than any Perſon there.

Thomas Cawley, the next Witneſs, ſays, That he has known the Priſoner twenty Years and upwards; that he was intimate in the Family, and never ſaw any other than the Behaviour of a dutiful Daughter from her.

Thomas Staverton, That he has known the Priſoner five or ſix-and-twenty Years; that he has lived near the Family, and always thought that her Father and ſhe were very happy in each other. He has obſerved that Mr. *Blandy* was declining in his Health; for four Years or more he ſeemed to ſhrink, and believes he was about ſixty-two Years of Age.

Mary Davis is the next Witneſs; ſhe lives at the *Angel* by *Henley-Bridge*, and remembers the Priſoner coming over, the Day her Father was opened; that ſhe was walking along, with a great Crowd after her; that ſhe went to her, and aſked her what was the Matter, and where ſhe was going? The Priſoner ſaid, ſhe was going to walk for the Air, for that they were going to open her Father, and that ſhe could not bear the Houſe; the Mob followed ſo cloſe, that ſhe invited the Priſoner into her Houſe, which ſhe accepted, and was walking gently; and had not the Appearance of making an Eſcape.

Robert Stokes tells you, he knows the laſt Witneſs Mrs. *Davis*, and ſaw the Priſoner with her in her Houſe the Day her Father was opened; that he was ordered by the Mayor to take Care of the Priſoner, which ſhe ſaid ſhe was very glad of, becauſe the Mob was about; and he did not obſerve any Inclination or Attempt whatſoever to make an Eſcape.

This, Gentlemen, is the Subſtance of the Evidence on both Sides, as nearly as I can recollect it. I have not wilfully omitted or miſ-ſtated any Part of it; but, if I have, I hope the Gentlemen who are of Counſel on either Side, will be ſo kind as to ſet me right.

A very tragical Story it is, Gentlemen, that you have heard, and upon which you are now to form your Judgment, and give your Verdict.

The Crime with which the Priſoner ſtands charged, is of the moſt heinous Nature and blackeſt Dye, attended with Conſiderations that ſhock human Nature, being not only Murder, but Parricide——the Murder of her own Father.——But the more atrocious, the more flagrant the Crime is, the more clearly and ſatisfactory you will expect that it ſhould be made out to you.

In all Caſes of Murder, it is of Neceſſity, that there ſhould be Malice aforethought, which is the Eſſence of, and conſtitutes the Offence: But that Malice may be either expreſs, or implied by the Law: Expreſs Malice muſt ariſe from the previous Acts or Declarations of the Party offending; but implied Malice may ariſe from Numbers of Circumſtances, relating either to the Nature of the Act itſelf, the Manner of executing it, the Perſon killing, or the Perſon killed, from which the Law will as certainly infer Malice, as where it is expreſs.

Poiſon, in particular, is in its Nature ſo ſecret, and withal ſo deliberate, that wherever that is knowingly given, and Death enſues, the ſo putting to Death can be no other than wilful and malicious.

In the preſent Caſe, which is to be made out by Circumſtances, great Part of the Evidence muſt reſt upon Preſumption, in which the Law makes a Diſtinction: A ſlight or probable Preſumption only has little or no Weight: but *a violent Preſumption* amounts in Law to full Proof, that is, where Circumſtances ſpeak ſo ſtrongly, that to ſuppoſe the contrary, would be abſurd: I mention this to you, that you may fix your Attention on the ſeveral Circumſtances that have been laid before you, and conſider, whether you can collect from them ſuch a Preſumption, as the Law calls *a violent Preſumption*, and from which you muſt conclude the Priſoner to be guilty: I would obſerve further, that where *that* Preſumption neceſſarily ariſes from Circumſtances, they are more convincing and ſatisfactory, than any other Kind of Evidence, becauſe Facts cannot lye.

I cannot now go through the Evidence again, but you will conſider the whole together, and from thence determine, what you think it amounts to. Thus far is undeniably true, and agreed on all Sides, that Mr. *Blandy* died by Poiſon; and that *that* Poiſon was adminiſtered to him by his

Daughter, the Priſoner at the Bar. What you are to try, is reduced to this ſingle Queſtion, Whether the Priſoner, at the Time ſhe gave it to her Father, knew that it was Poiſon, and what Effect it would have?

If you believe, that ſhe knew it to be Poiſon, the other Part, *viz.* that ſhe knew the Effect, is conſequential, and you muſt find her guilty: On the other hand, if you are ſatisfied, from her general Character, from what has been ſaid by the Evidence on her Part, and from what ſhe has ſaid herſelf, that ſhe did not know it to be Poiſon, nor had any malicious Intention againſt her Father, you ought to acquit her. But if you think ſhe knowingly gave Poiſon to her Father, you can do no other than find her guilty.

The Jury conſulted together about five Minutes, and then turned to the Court.

Cl. of Arraigns. Gentlemen, are you all agreed on your Verdict?

Jury. Yes.

Cl. of Arr. Who ſhall ſay for you?—*Jury.* Our Foreman.

Cl. of Arr. Mary Blandy, hold up thy Hand *(Which ſhe did)*. Gentlemen of the Jury, look upon the Priſoner: How ſay you, is *Mary Blandy* Guilty of the Felony and Murder whereof ſhe ſtands indicted, or Not Guilty?—*Jury.* Guilty.

Cl. of Arr. What Goods or Chattels, Lands or Tenements, had ſhe at the Time of the ſame Felony and Murder committed, or at any Time ſince, to your Knowledge?

Jury. None.

Cl. of Arr. Hearken to your Verdict as the Court hath recorded it. You ſay that *Mary Blandy* is guilty of the Felony and Murder whereof ſhe ſtands indicted; and that ſhe had not any Goods or Chattels, Lands or Tenements, at the Time of the ſaid Felony and Murder committed, or at any Time ſince, to your Knowledge; and ſo you ſay all.

Cl. of Arr. Mary Blandy, hold up thy Hand. You have been indicted of Felony and Murder. You have been thereupon arraigned, and pleaded thereto Not Guilty, and for your Trial you have put yourſelf upon God and your Country, which Country have found you Guilty. What have you now to ſay for yourſelf, why the Court ſhould not proceed to give Judgment of Death upon you according to Law?

Cryer. Oyez! My Lords the King's Juſtices do ſtrictly charge and command all Manner of Perſons to keep Silence, whilſt Sentence of Death is paſſing on the Priſoner at the Bar, upon Pain of Impriſonment.

Mr. Baron LEGGE.

Mary Blandy, you have been indicted for the Murder of your Father, and for your Trial have put yourſelf upon God and your Country: That Country has found you Guilty.

You have had a long and a fair Trial, and ſorry I am, that it falls to my Lot to acquaint you, that I am now no more at Liberty to ſuppoſe you innocent, than I was before to preſume you Guilty.

You are convicted of a Crime ſo dreadful, ſo horrid in itſelf, that human Nature ſhudders at it—*The wilful Murder of your own Father!*—A Father, by all Accounts, the moſt fond, the moſt tender, the moſt indulgent that ever lived:—That Father with his dying Breath forgave you:—May your heavenly Father do ſo too!

It is hard to conceive, that any Thing could induce you to perpetrate an Act ſo ſhocking, ſo impoſſible to reconcile to Nature or Reaſon. One ſhould have thought, your own Senſe, your Education, and even the natural Softneſs of your Sex, might have ſecured you from an Attempt ſo barbarous and ſo wicked.

What Views you had, or what was your Intention, is beſt known to yourſelf: With God and your own Conſcience be it. At this Bar, we can judge only from Appearances, and from the Evidence produced to us: But do not deceive yourſelf; remember you are very ſhortly to appear before a much more awful Tribunal, where no Subterfuge can avail; no Art, no Diſguiſe can ſcreen you from the Searcher of all Hearts: *He revealeth the deep and ſecret Things, he knoweth what is in the Darkneſs, and the Light dwelleth with him.*

Let me adviſe you to make the beſt and wiſeſt Uſe of the little Time you are likely to continue in this World: Apply to the Throne of Grace, and endeavour to make your Peace with that Power, whoſe Juſtice and Mercy are both infinite.

Nothing now remains but to pronounce the Sentence of the Law upon you; which is,

That you are to be carried to the Place of Execution, and there hanged by the Neck until you are dead: And may God of his infinite Mercy receive your Soul!

The Priſoner then addreſſed herſelf to the Judge in this Manner:

" My Lord, as your Lordſhip has been ſo good to ſhew ſo much Candour " and Impartiality in the Courſe of my Trial, I have one Favour more " to beg, which is, that your Lordſhip would pleaſe to allow me a little " Time, till I can ſettle my Affairs, and make my Peace with God."

To which his Lordſhip replied,

" To be ſure, you ſhall have a proper Time allowed you,"

Miſs *Blandy* having received Sentence of Death, was re-conducted to the Caſtle, from whence ſhe came. Many People believed, that ſhe behaved not only through the whole Courſe of her Trial, but afterwards, with ſuch a decent Reſolution, as does not often attend a Conſciouſneſs of Guilt; tho' great Part of Mankind (it muſt be owned) ſeem fully convinced of even her Intention to deſtroy her Father. Be that as it will, her Conduct before the Judges was not only uncenſured, but even applauded, by a Majority of the Spectators who were Witneſſes of it. Nor did any material Alteration diſcover itſelf in the Tenor of her Behaviour, tho' her Spirits ſometimes a little failed her, betwixt the Day of her Trial and that of her Execution.

It would be endleſs, however, notwithſtanding this undoubted Truth, to recite the palpable Falſhoods, and inhuman Calumnies, induſtriouſly propagated of her, and diſperſed throughout the Nation, in almoſt every Part of that Interval. Sometimes it was reported that ſhe had poiſoned herſelf, and ſometimes that ſhe had laid upon herſelf violent Hands in a different Manner; tho' ſhe diſcovered, on all Occaſions, to the Miniſter who attended her, the moſt perfect Abhorrence of Suicide, and of every Thing that had but even the leaſt Tendency to it. Several Perſons affirmed, that ſhe was ſo perfectly hardened, that ſhe would not acknowledge herſelf guilty of any Crime; the Reverſe of which is true, as can be atteſted both by the aforeſaid Miniſter, and other Perſons of Character and Reputation. She has frequently ſaid, that ſhe deſerved Death for deſtroying her Father, tho' ſhe did not think herſelf ſo guilty as if ſhe had *deſignedly* and *intentionally* perpetrated ſo black a Crime. This Declaration ſhe conſtantly perſiſted in; tho' that Point of Conduct gave uncommon Offence to vaſt Numbers of People.

During the aforeſaid Interval, Miſs *Blandy* attended Divine Service in the Chapel as often as her Health would permit; and the Crowds of People, who flocked thither to gaze upon her, did not drive her from thence; and when any thing of that Kind happened, as well as at all other proper Seaſons, the Miniſter of the Caſtle attended her in her own Apartment. She often profeſſed herſelf a ſincere Penitent, and ſaid ſhe was covered with Contrition for every Sin ſhe had committed, and particularly that which occaſioned the Loſs of her dear Father's Life. When ſuch Profeſſions as theſe were made, ſhe pretty frequently ſhed Tears, and diſcovered the moſt apparent Emotions of Grief. This can be atteſted by ſeveral, as well as the aforeſaid Miniſter, whoſe Teſtimony will be deemed authentic in all other Caſes. Notwithſtanding which, the contrary to this has been aſſerted by many Perſons; but then ſome of them have been ſuch as have not only had little Regard to Truth, but been incapable of all tender Sentiments.

She always profeſſed a full Perſuaſion of the Truth and Excellency of the Chriſtian Religion in general, and a cloſe Attachment to the Tenets, Doctrines, and Uſages of the Church of *England* in particular. Nor did any Thing, during the whole Courſe of her Confinement, ſo extremely ſhock her as the Charge of Infidelity, which ſome uncharitable Perſons, a little before her Death, brought againſt her, on Account of her Intimacy with *Cranſtoun*. That *Cranſtoun* was an Infidel, there may be Reaſon enough to believe; but that ſhe was ſo, becauſe ſhe had placed her Affections upon him, will by no means follow. It appears, that he was a Man of infinite Art and Deſign; and therefore may very naturally be ſuppoſed to have adapted himſelf entirely to her Genius and Diſpoſition, in order the more effectually to carry into Execution his wicked Deſigns: And that this was really the Caſe, with her dying Breath ſhe poſitively affirmed. He never, as to the Miniſter attending her a little before her Death ſhe declared, uttered any Thing in her Company, thro' the whole Courſe of her Acquaintance with him, that could be deemed ſhocking to pious Ears, or that in the leaſt favoured of Infidelity. On the contrary, if ſhe may be credited in ſome of her laſt Moments, he gave her many inſtructive Leſſons, and talked perfectly in the Style of a Chriſtian. And this he might do, becauſe he found it agreeable to her. 'Tis but charitable, therefore, conſidering her Education, to believe, that ſhe never openly profeſſed any Diſlike to the Principles of Chriſtianity.

She could diſcourſe pertinently and clearly upon all the common, and ſome other theological Topics: From whence it may be rationally inferred, that ſhe had not only been in a tolerable Degree converſant with the Scriptures; but likewiſe read, with ſome Attention, the Works of ſeveral of our moſt celebrated Divines. And this ſhe owned herſelf to have done. This Point would not have been ſo copiouſly inſiſted upon here, had ſhe not deſired it might be cleared up in a particular Manner; and had not the Imputation of Infidelity, in ſome of her laſt Moments, given her infinite Uneaſineſs and Concern.

She was viſited by ſeveral Clergymen, beſides the Miniſter of the Caſtle who conſtantly attended her, one of whom was a Perſon of ſuperior Rank and Character in the Univerſity. To all of theſe ſhe expreſſed herſelf much in the ſame Manner, and conſtantly perſiſted in her firſt Declaration. She was preſſed by them in the ſtrongeſt Terms, to confeſs the Truth, and not go out of the World with a Lie in her Mouth. But this ſhe ſaid ſhe ſhould do, if ſhe affirmed that ſhe had a Deſign to deſtroy her Father when ſhe gave him the fatal Powder, or that ſhe then knew there was any poiſonous Quality lodged in it. She talked in ſuch a plauſible, or rather pathetic Strain, and gave ſuch convincing Reaſons for the Truth of what ſhe affirmed, that ſome of her Enemies themſelves, after one or two Viſits, became greatly prejudiced in her Favour.

Some Attempts were made to procure her a ſhort Reſpite; for it was never believed, that a Pardon could be obtained, at leaſt before the Apprehenſion of the Villain *Cranſtoun*. But all the Avenues to the Royal Clemency were ſhut up; ſo that every Meaſure purſued on this Occaſion proved ineffectual. Nor did ſhe ever entertain any Hopes of Succeſs, tho' a Lady of great Intereſt and Diſtinction, whoſe innate Goodneſs renders her one of the brighteſt Ornaments of the preſent Age, made ſeveral Efforts in her Favour. The Prejudices ſhe had to ſtruggle with had taken too deep Root in ſome Men's Minds, to be effaced by any Sentiments of Tenderneſs and Compaſſion.

She herſelf obſerved, and ſpoke with great Commendation of them, that the Judges, as well as the worthy Sheriff and his Deputy, behaved towards her with great Candour and Moderation.

On *Monday*, *April* the 6th, 1752, the Day deſtined for her Execution, the Under-Sheriff, attended by one of Miſs *Blandy*'s Friends, viſited her a little after Eight o'Clock in the Morning. She then diſcovered ſome Anxiety and Apprehenſions, in relation to her future State, that had never before appeared. She ſaid, that many Sins, both of Omiſſion and Commiſſion, which ſhe had formerly conſidered as Trifles, ſeemed at that Time to be very black and enormous to her. The Miniſter, who was then alſo preſent, took a freſh Opportunity from hence to preſs her once more to declare the Truth, in relation to her Intention and Knowledge of the noxious Quality of the fatal Powder, by urging that a Failure herein would be a Crime of a much deeper Dye, than thoſe which filled her with ſuch terrible Apprehenſions. But to this ſhe immediately replied, That ſhe ſhould perſiſt in her former Declaration to the Moment of her Death; and that this ſhe would impart to the People attending her Execution. The Under-Sheriff, and the Gentleman attending him, alſo begged, that ſhe would not impoſe upon herſelf, as well as upon the World, in theſe her laſt Moments. To which ſhe anſwered much in the ſame Terms as ſhe had done before. She likewiſe

appeared after this to be ſomething more calm and compoſed. And the Miniſter, in order ſtill more to comfort her, told her, that the Devil frequently preſented former Sins as much more heinous than they really were, to even ſome of the beſt Chriſtians themſelves, when they were upon the Confines of Eternity, in order to ruffle and diſcompoſe them; and that therefore, probably, the Scene that at preſent ſeemed to diſturb her, was nothing more than one of his Illuſions: But however that might be, ſhe had no Reaſon to be afraid of any of her Sins, if ſhe ſincerely repented of them, as ſhe had always aſſured him ſhe did, and placed an unſhaken Confidence in the Mercy of God, through the Merits of Chriſt; and neither thoſe Merits, nor that Mercy, to ſincere Penitents, would admit of any Limits. This gave her great Conſolation, inſomuch that ſhe ſoon reſumed her former Calmneſs, and declared herſelf not only willing, but even inclinable to die.

About Nine o'Clock ſhe came out of her Bed-chamber, and was attended by the Miniſter to the Place of Execution. Here he read ſome of the Commendatory Forms of Prayer, and ſhe joined moſt fervently with him. After this was ended, he ſaid to her, "Madam, you may now, if "you think proper, and have a ſufficient Flow of Spirits, ſpeak to the "People." She then addreſſed herſelf to them, with a clear and audible Voice, in the following Terms: "Good People, give me Leave to "declare to you, that I am perfectly innocent, as to any Intention "to deſtroy, or even hurt my dear Father; that I did not know, or "even ſuſpect, that there was any poiſonous Quality in the fatal Powder "I gave him; tho' I can never be too much puniſhed for being even "the innocent Cauſe of his Death. As to my Mother's and Mrs. *Po-*"*cock*'s Deaths, that have been unjuſtly laid to my Charge, I am not "even the innocent Cauſe of them, nor did I in the leaſt contribute to "them. So help me God in theſe my laſt Moments! And may I not "meet with eternal Salvation, nor be acquitted by Almighty God, in "whoſe awful Preſence I am inſtantly to appear, if the whole of what "is here aſſerted be not true! I from the Bottom of my Soul forgive all "thoſe concerned in my Proſecution; and particularly the Jury, not-"withſtanding their fatal Verdict." She then aſcended the Ladder, and ſpoke again to the following Effect: "Good People, take Warning by "me to be on your Guard againſt the Sallies of any irregular Paſſion; "and pray for me, that I may be accepted at the Throne of Grace."

After which, ſhe was turned off; and, in about Half an Hour's Time, cut down. The Body was then carried to a neighbouring Houſe, and put into a Coffin; from thence it was conducted, about Five o'Clock in the Afternoon, in a Hearſe, to *Henley*; and interred about Eleven o'Clock in the Chancel of the Church there, where the Bodies of her Father and Mother had been depoſited. Miſs *Blandy* ſuffered in a black Bombazine ſhort Sack and Petticoat, with a clean white Handkerchief drawn over her Face. Her Hands were tied together with a ſtrong black Ribband, and her Feet, at her own Requeſt, almoſt touched the Ground. The Number of People attending her Execution was computed at about 5000; many of whom, and particularly ſeveral Gentlemen of the Univerſity, were obſerved to ſhed Tears. She behaved with ſuch Serenity and Compoſure, and with ſuch a decent Reſolution, as greatly ſurpriſed many of the Spectators; and ſuch as ſome there preſent thought nothing but a Conſciouſneſs of the Truth of what ſhe had aſſerted, and a well-grounded Hope of future Felicity, could inſpire. Contrary to what is obſerved at other Executions, there was almoſt a profound Silence during the Time of this. In fine, the whole was ſo well conducted, and made ſuch a deep Impreſſion upon the Minds of the People preſent, that the Circumſtances attending Miſs *Blandy*'s Execution will not ſoon be forgotten at *Oxford*.

Copy of Miſs Blandy's *Declaration delivered at the Place of Execution in* Oxford, April 6*th*, 1752.

I *Mary Blandy* do declare, that I die in a full Perſuaſion of the Truth and Excellency of the Chriſtian Religion, and a ſincere, tho' unworthy Member of the Church of *England*. I do likewiſe hope for a Pardon and Remiſſion of my Sins by the Mercy of God, through the Merits and Mediation of our moſt bleſſed Lord and Saviour Jeſus Chriſt. I do alſo farther declare, that I did not know or believe that the Powder, to which the Death of my dear Father has been aſcribed, had any noxious or poiſonous Quality lodged in it; and that I had no Intention to hurt, and much leſs to deſtroy him, by giving him that Powder. All this is true, as I hope for eternal Salvation, and Mercy from Almighty God, in whoſe moſt awful and immediate Preſence I muſt ſoon appear. I die in perfect Peace and Charity with all Mankind, and do from the Bottom of my Soul forgive all my Enemies, as alſo thoſe Perſons who have in any Manner contributed to, or been inſtrumental in bringing me to the ignominious Death I am ſoon to ſuffer. This is my laſt Declaration, as to the Points contained in it; and I do moſt earneſtly deſire that it may be publiſhed after my Death. Witneſs my Hand,

Mary Blandy.

XLVII. *The* CASE *of* John Swan *and* Elizabeth Jefferys, *for the Murder of* Joseph Jefferys.

Q. *WHETHER the Priſoners ſhould be tried on the firſt or ſecond Indictment found againſt them?*

The CASE.

John Swan, Servant to Mr. *Joſeph Jefferys*, of *Walthamſtow* in *Eſſex*, and *Elizabeth Jefferys* his Niece, were indicted at the Aſſizes held at *Chelmsford* in *Eſſex*, in the Summer 1751, for the Murder of the ſaid *Joſeph Jefferys*; *Swan* for giving the mortal Wound, and *Elizabeth Jefferys* for aiding and aſſiſting, *&c.* therein. To which Indictment they both pleaded Not Guilty: But their Trial was then put off to the following Aſſizes.

In *March* 1752, at the following Aſſizes held at *Chelmsford*, before the Hon. Sir *Martin Wright* and Sir *Michael Foſter*, the following Indictment was found againſt *Swan* for Petty Treaſon, and *Elizabeth Jefferys* for Murder, *viz.*

'*John Swan*, late of the Pariſh of *Walthamſtow*, in the County of '*Eſſex*, Labourer, late Servant to *Joſeph Jefferys* in his Life-time, now 'deceaſed, was indicted, for that he, not having the Fear of God before 'his Eyes, but being moved and ſeduced by the Inſtigation of the Devil, 'on the 3d Day of *July*, in the 25th Year of the Reign of our Sovereign 'Lord *George* the Second, King of *Great Britain*, &c. with Force and 'Arms at the Pariſh aforeſaid, in the County aforeſaid, in and upon the 'ſaid *Joſeph Jefferys*, then the Maſter of the ſaid *John Swan*, in the 'Peace of God, and of our ſaid Lord the King, then and there being, 'feloniouſly, traitorouſly, wilfully, and of his Malice aforethought, did 'make an Aſſault; and that the ſaid *John Swan* a certain Piſtol, of the 'Value of Six-pence, then and there charged with Gunpowder and 'leaden Bullets, (which he the ſaid *John Swan* in his Hand then and 'there had and held) to, againſt, and upon the ſaid *Joſeph Jefferys*, his 'then Maſter, then and there feloniouſly, traitorouſly, wilfully, and of 'his Malice aforethought, did ſhoot and diſcharge; and that he the 'ſaid *John Swan*, with the leaden Bullets aforeſaid, out of the Piſtol 'aforeſaid, then and there by Force of the Gunpowder aforeſaid, ſhot 'and ſent forth, as aforeſaid, him the ſaid *Joſeph Jefferys*, his then 'Maſter, in and upon the left Side of his Head, then and there feloni-'ouſly, traitorouſly, wilfully, and of his Malice aforethought, did ſtrike, 'penetrate, and wound, giving to the ſaid *Joſeph Jefferys* then and there, 'with the leaden Bullets aforeſaid, ſo as aforeſaid ſhot, diſcharged, and 'ſent forth out of the Piſtol aforeſaid, by the ſaid *John Swan*, in and 'upon the ſaid left Side of the Head of him the ſaid *Joſeph Jefferys*, one 'mortal Wound of the Width of half an Inch, and of the Depth of 'four Inches; of which ſaid mortal Wound the aforeſaid *Joſeph Jefferys* 'then and there inſtantly died. And *Elizabeth Jefferys*, late of the ſaid 'Pariſh, Spinſter, was indicted, for that ſhe, then and there feloniouſly, 'wilfully, and of her Malice aforethought, was preſent, aiding, help-'ing, abetting, comforting, aſſiſting, and maintaining the ſaid *John* '*Swan*, the Felony and Murder aforeſaid, in Manner and Form afore-'ſaid, to do and commit; and that he the ſaid *John Swan*, then and 'there, in Manner and Form aforeſaid, feloniouſly, traitorouſly, wilfully, 'and of his Malice aforethought; and that ſhe the ſaid *Elizabeth Jef-'ferys*, then and there, in Manner and Form aforeſaid, feloniouſly, 'wilfully, and of her Malice aforethought, did kill and murder the ſaid '*Joſeph Jefferys*, againſt the Peace of our ſaid Lord the King, his Crown 'and Dignity.'

When they were arraigned upon this Indictment, an Objection was taken by the Counſel for the Priſoners to their being tried on the above Indictment, as another had been found againſt them at the laſt Aſſizes; againſt *Swan* for the Murder of the ſaid *Joſeph Jefferys*, and *Elizabeth Jefferys* for aiding, aſſiſting, *&c.* the ſaid *Swan* in the ſaid Murder; and to which Indictment they had both pleaded Not Guilty: That if they were tried on this Indictment, and were acquitted, they muſt be a ſecond Time tried for their Lives on the former Indictment for the ſame Offence, which was contrary to Law.——After near three Hours Debate between the Counſel on both Sides, the Court were of Opinion, that the Priſoners muſt be tried on the laſt Indictment found againſt them, and the former Indictment quaſhed: whereupon they both pleaded Not Guilty. The Fact was plainly proved againſt them; and they making little or no Defence, *Swan* was found guilty of Petty Treaſon, and *Jefferys* of Murder.——The printed Trial contains nothing remarkable in it, no Arguments of the Counſel on either Side on the Point of Law, on which of the two Indictments the Priſoners ſhould be tried, nor any Speeches or Arguments, only the examining the Witneſſes, and is a plain Narrative of the Evidence, and how the Murder happened: The Subſtance of which is acknowledged, and contained in the Confeſſion of *Elizabeth Jefferys* and *John Swan*, as followeth.

The Confeſſion of Elizabeth Jefferys, *concerning the Murder of her Uncle* Joſeph Jefferys.

I *Elizabeth Jefferys* do freely and voluntarily confeſs, That I firſt enticed and perſuaded *John Swan* and *Thomas Mathews* to undertake and perpetrate the Murder of my deceaſed Uncle; which they both conſented to do the firſt Opportunity: That, on the 3d Day of *July* 1751, myſelf

myself and *John Swan* (*Mathews*, to my Knowledge, not being in the Houſe) agreed to kill my ſaid Uncle; and accordingly, after the Maid was gone to Bed, I went into *John Swan*'s Room, and called him, and we went down together into the Kitchen; and having aſſiſted *Swan* in putting ſome Pewter and other Things into a Sack, I ſaid I could do no more: And then I went up into my Room; and afterwards *Swan* came up, as I believe, and went into my Uncle's Room, and ſhot him; which done, he came to my Door, and rapped. Accordingly I went out in my Shift, and *John Swan* opened the Street-door and let me out: That done, I alarmed the Neighbourhood. And I do ſolemnly declare, That I do not know that any Perſon was concerned in the Murder of my deceaſed Uncle, but myſelf, and *John Swan*; for that *Mathews* did not come to my Uncle's Houſe the Day before, or Night in which the Murder was committed, as I know of.

ELIZABETH JEFFERYS.

Miſs *Jefferys* further confeſſed, That her Uncle took her from her Father when ſhe was five Years old; and that, when ſhe was ſixteen, her ſaid Uncle debauched her: That ſhe lived in a continued State of Inceſt with him (having had two Miſcarriages by him), till about a Year before his Death, when he ſlighted her in Favour of another Woman. His repeated Neglects of her, and his threatening to alter his Will, which ſhe knew had been made entirely in her Favour, were the Motives that induced her to perpetrate the Murder for which ſhe is ſentenced to die.

Swan confeſſed, That he alone murdered his Maſter Mr. *Jefferys*, by ſhooting him with a Piſtol loaded with Pieces of Bullets: That there was no Stab given; but that the ſeveral Wounds were given by the Pieces of the Bullets, and by the Splinters of the Piſtol, that burſt when it was fired off: And that *Mathews* was not at the Houſe for five Days before the Murder was committed: But owned, that both he and Miſs *Jefferys* had offered *Mathews* five or ſix hundred Pounds to ſhoot Mr. *Jefferys*, but that he refuſed to do it; and that they called him Villain for declining to commit the Murder: Upon which he reſolved to do it himſelf, and agreed with Miſs *Jefferys* what Time to commit it.

Thus much is inſerted to let the Reader into the Caſe, and as an Introduction to Mr. Juſtice *Foſter*'s Opinion, upon which of the two Indictments the Priſoners ſhould be tried; with the Determination of the Court thereon, and his Lordſhip's Obſervations on Indictments for Murder and Petty Treaſon.

The Caſe of John Swan *and* Elizabeth Jefferys *.

"AT *Chelmsford* Aſſizes, in the Summer 1751, *John Swan* and *Elizabeth Jefferys* were indicted for the Murder of *Joſeph Jefferys*; *Swan* for giving the mortal Wound, and *Jefferys* for being preſent, aiding and abetting; and they both pleaded Not Guilty: But their Trial was poſtponed to the next Aſſizes.

"In the mean time the Attorney-General, who had received Orders to proſecute at the Expence of the Crown, was ſatisfied from the Evidence laid before him, that *Swan* was in the actual Service of the Deceaſed at the Time the Murder was committed, *or at leaſt when the Deſign was firſt laid*. He therefore thought it adviſeable to prefer another Bill againſt them for the Parts they reſpectively took in the ſame Murder, charging *Swan* with Petty Treaſon, and *Jefferys* with Murder. Accordingly at the next Aſſizes ſuch Bill was preferred and found, and the Priſoners were arraigned upon it.

"The Priſoners pleaded in Abatement *Ore tenus*, that another Indictment was depending for the ſame Offence; and pleaded over to the Treaſon and Felony. The Counſel for the Crown did not inſiſt upon drawing up the Plea in Form (as was done in *Layer*'s Caſe, *Vol.* VI. *p.* 237.), but demurred *Ore tenus*; and the Counſel for the Priſoners joined in Demurrer.

"Mr. Juſtice *Wright*, who ſat on the Crown Side, deſiring the Company of Mr. Juſtice *Foſter*, who went that Circuit with him, at the arguing the Plea, he went into Court, and ſat there 'till that Matter was determined, and the Jury ſworn.

"The Priſoner's Counſel inſiſted, that they ought not to have been arraigned on this new Bill, pending the former Indictment, on which Iſſue is already joined: Becauſe, if they plead to Iſſue on this Indictment, they may be liable to be tried twice for one and the ſame Fact. It will be in the Option of the Crown, after Iſſue is joined upon both Indictments, to proceed to Trial upon either of them; and if the Priſoners ſhould be acquitted upon one, they may ſtill be tried upon the other. For though *Auterfoits acquit* of Murder may be a good Bar to an Indictment of Petty Treaſon for the ſame Fact, or *Auterfoits acquit* of Petty Treaſon, to an Indictment of Murder; yet the Priſoners having pleaded to Iſſue on both Indictments, they may be told they come too late with their Plea in Bar, Iſſue being already joined on the Fact.

"They therefore preſſed that the Trial on the firſt Indictment might go on, before the Priſoners ſhould be called upon to plead to the ſecond; for ſaid they, if the Priſoners ſhould be found guilty on that Indictment, the Ends of public Juſtice will be fully anſwered. And if they ſhould be acquitted, and the Counſel for the Crown ſhould think proper to proceed on this new Bill, the Priſoners ought to be left at Liberty to avail themſelves of that Acquittal, as they ſhall be adviſed.

"The Court was of Opinion, that the Charge in the Bill laſt found muſt be anſwered, notwithſtanding the Pendency of the former; for *Auterfoits Arraign* is no Plea in this Caſe. Pehaps the Bill laſt found is better adapted to the Nature of the Caſe than the former, and the King's Counſel muſt be at Liberty to proſecute in ſuch Manner as may beſt anſwer the Ends of public Juſtice. But at the ſame Time the Court muſt take Care, that the Priſoners be not expoſed to the Inconvenience of undergoing two Trials for one and the ſame Fact.

With regard to the Priſoner *Jefferys*, the Offence charged in both Indictments is exactly the ſame, as well in Conſideration of Law as in Point of Fact; with regard to *Swan*, the Fact in both is the ſame; and ſo is the ſubſtantial Part of the Charge, *Wilful Murder of Malice prepenſe*: But falling under a different Conſideration in the ſecond Indictment, mercy from the Relation the Priſoner is ſuppoſed to ſtand in to the Deceaſed. And if that Relation ſhould not be made out in Proof, yet ſtill he may be found guilty of Murder upon that Indictment.

"And therefore, as the Ends of public Juſtice would be fully anſwered with regard to both the Priſoners, by trying them on the Indictment for Petty Treaſon and Murder, the Court propoſed to the King's Counſel that the firſt Indictment ſhould be quaſhed by Conſent, to which they agreed; which was accordingly done, and the Court proceeded to the Trial of the Priſoners on the ſecond Indictment, on the Iſſue of Not Guilty.

"The Court in this Caſe followed the Precedent in *Cro. Car.* 147. Sir *William Withypole*'s Caſe. Only they took in the Conſent of the King's Counſel, which I think they needed not to have aſked; the Juſtice of the Caſe was ſufficient Warrant for what they did.

"Before the Jury was called; the Judges agreed between themſelves, that if the Priſoners ſhould not think fit to challenge at all, they might be tried together; but if they ſhould inſiſt on their Challenges, they muſt be tried ſeparately †: Becauſe they cannot join in their Challenges, the Number of their peremptory Challenges being differently limited, *Swan*'s to 35, and *Jefferys*'s to 20.

"The Court informed them of this; and the Priſoner *Swan* declaring that for his Part he waved all Benefit of Challenging, the Priſoner *Jefferys* challenged (*one*) two or three, and a Jury was ſworn. The Priſoners were found guilty, *Swan* of Petty Treaſon, and *Jefferys* of Murder.

"While the Caſe of the King againſt *Swan* was depending, and before the ſecond Bill was preferred, a Queſtion was made, Whether *Swan* could be convicted on the Indictment for Murder, if it ſhould come out in Evidence that he was Servant to the Deceaſed at the Time the Fact was contrived or committed; and conſequently that his Offence was Petit Treaſon.

"There is a Caſe cited in the printed Trial of *Coke* and *Woodburne*, 6 *St. Tr.* 224. which, *if ſuch Caſe there ever was*, hath, as far as the Authority of it goeth, determined that Queſtion. "At the Summer Aſſizes "at *Dorcheſter* 1712, a Woman was indicted before Mr. Juſtice *Eyre* ‡ "for the Murder of another Woman; upon Evidence it appeared that the "Perſon murdered was her Miſtreſs, which made the Crime Petit Treaſon. The Judge directed this Matter to be ſpecially found; and upon "Conference with all the Judges it was held ſhe ought to be acquitted "upon this Indictment, as ſhe accordingly was, and was afterwards in-"dicted for Petit Treaſon, and convicted and executed." This Caſe is not to be found in any Report printed or MS. that I have met with, or heard of. Nor have I, upon a ſtrict Inquiry, met with any Footſteps of ſuch Caſe among the Minutes of Proceedings on the Crown Side in the County where the Caſe is ſuppoſed to have ariſen; though the Minutes from 1708 to 1722 have been carefully ſearched. For theſe Reaſons, and what is ſuggeſted in the Note, I conclude that no ſuch Caſe ever exiſted.

"Lord Chief Juſtice *Hale*, 1 *Hale* 378. is very full and expreſs on the other Side of the Queſtion. "A Perſon who is guilty of Petit Treaſon "may be indicted of Murder; *for it is a Species of Murder*, and a Pardon "of Murder pardoneth Petit Treaſon."

"Lord Chief Juſtice *Coke* having cited the Opinion in *Dyer* 235. ſaith, "*That Petit Treaſon is Murder and more.*" 6 *Co.* 13. *b.* And from thence it hath been inferred that Petit Treaſon and Murder are in Conſideration of Law different Offences, or that the Crime of Murder is merged in Petit Treaſon. But this Inference will not hold, however true the Chief Juſtice's Doctrine may be. There is undoubtedly, in Conſideration of Law, a greater Degree of Malignity in the one than in the other, ariſing from that Degree of Allegiance, however low, which the Murderer owed to the Deceaſed at the Time the Fact was committed or conceived in his Heart. But certainly the Difference, in Point of Malignity, between Murder and Manſlaughter is infinitely greater; and conſequently in that reſpect it may with equal Propriety be ſaid, that *Murder is Manſlaughter and more.* And yet in Judgment of Law they are the ſame Offence, differing only in the Degree of Malignity, 4 *R.* 46. *Keil.* 103, 104. when conſidered in relation to one and the ſame Fact. And by a Parity of Reaſon Lord Chief Juſtice *Hale*, 2 *Hale* 251. concludeth, that Petit Treaſon and Murder are to be conſidered in the ſame Light, as one Offence, differing only in Degree.

"But though I am ſatisfied that the Law conſidereth Petit Treaſon and Murder as one Offence, differing only in Circumſtance and Degree; yet whether it may be adviſeable to proceed upon an Indictment for Murder againſt a Perſon plainly appearing to be guilty of Petit Treaſon, is a Matter that deſerveth great Conſideration; and probably determined the Attorney-General to prefer a freſh Bill for Petit Treaſon in *Swan*'s Caſe. For though the Offences are to moſt Purpoſes conſidered as ſubſtantially the ſame, yet as there is ſome Difference between them with regard to the Judgment that is to be pronounced upon a Conviction, and a very material one with regard to the Trial, a Perſon indicted for Petit Treaſon *being intitled to a peremptory Challenge of* 35, I think if the Proſecutor be apprized of the true State of the Caſe, as he may be if he uſeth due Diligence, he ought to adapt the Indictment to the Truth of the Fact.

"But if, through a Miſtake on the Part of the Proſecutor, or through the Ignorance or Inattention of the Officer, a Bill be preferred as for Murder, and it ſhould come out in Evidence that the Priſoner ſtood in that Sort of Relation to the Deceaſed which rendereth the Offence Petit Treaſon, I do not think it by any Means adviſeable to direct the Jury to give a Verdict of Acquittal. For a Perſon charged with a Crime of ſo heinous a Nature ought not to have the Chance given him by the Court of availing himſelf of a Plea of *Auterfoits Acquit*. In ſuch a Caſe I ſhould make no Sort of Difficulty of diſcharging the Jury of that Indictment, and ordering a freſh Indictment for Petit Treaſon. In this Method the Priſoner will have Advantage of his peremptory Challenges, and the public Juſtice will not ſuffer. And on the other Hand, in Caſe of an Indictment for Petit Treaſon, if it be proved that the Defendant

* From Mr. Juſtice *Foſter*'s Reports, p. 104—107. and 326—328.

† Vide *Noble*'s Trial, Vol. IX. p. 11. for a different Opinion.

‡ Juſtice *Eyre* did not go the Weſtern Circuit in the Summer 1712. *Ward* and *Price* went at that Time. This Information I (Mr. Juſtice *Foſter*) have from Mr. *Maddock*, Clerk of Aſſize of the Weſtern Circuit.

killed the Deceaſed with ſuch Circumſtances of Malice as amount to Murder, but the Relation of Servant, *&c.* is not proved, I have no Sort of Doubt that on ſuch an Indictment the Defendant may be found guilty of Murder, and acquitted of the Treaſon. For Murder, 1 *Hale*, 378. 2 *Hale*, 184. is included in every Charge of Petit Treaſon, *Felonicè, Proditoriè, & ex Malitiâ præcogitatâ* MURDRAVIT.

"The Treaſon is a Circumſtance of Aggravation, of which the Defendant may be acquitted, and yet found guilty of the ſubſtantial Part of the Charge; juſt as a Man, upon an Indictment of Murder, may be acquitted of that, and found guilty of Manſlaughter. "Becauſe," ſay the Books, "Manſlaughter is included in the Charge of Murder."

"I will go one Step further, I offer it as my private Opinion, which is ſubmitted to the Judgment of the Learned. Put the Caſe, that a Perſon is brought to his Trial upon an Indictment for Petit Treaſon, and that one Witneſs only can be produced, or that the Proſecutor is not furniſhed with any Evidence except the Depoſitions taken before the Coroner, or Informations taken on Oath before Juſtices of the Peace purſuant to the Statutes; and let it be ſuppoſed, that thoſe Witneſſes *are living, but unable to travel*, or *kept out of the Way by the Procurement of the Defendant*. 1, 2 *Phil.* and *M.* 13. 2, 3 *Ph.* and *M.* 10. *Vid. Keil.* 55. 1 *Hale* 305. 2 *Hale*, 284. What is to be done in this Caſe? Is the Defendant to be acquitted of the whole Charge? I think not. I think this Evidence, though not ſufficient to convict of Petit Treaſon, is ſtill admiſſible Evidence, and proper to be left to the Jury, as upon a Charge of Murder; and the Jury, if they are ſatisfied, may find the Defendant guilty of the Murder, and acquit him of the Treaſon, for the Reaſons juſt now given, 2 *Hale*, 184. *Intereſt Reipublicæ ne Maleficia remaneant impunita.*"

The Priſoners were both executed *March* 28, 1752, at *Bucket's-Hill*, near the *Bald-faced Stag*, on *Epping-Foreſt*, near the Place where the Fact was committed; and *Swan* was hanged in Chains.

"At a Meeting of the Judges at the Lord Chief Juſtice *Lee*'s Chambers, in *June* 1752, to conſider of the Act of the laſt Seſſion, for the better preventing the horrid Crime of Murder, it was agreed by much the greater Part of the Judges, that the Judgment for diſſecting and anatomizing, and touching the Time of Execution, ought to be pronounced in Caſes of Petty Treaſon, though Murder is only mentioned, except in the Caſe of Women *. And in that Caſe too, the Time of Execution may be a Part of the Judgment.

"There was ſome Doubt, whether Hanging in Chains might ever be made Part of the Judgment; but on Debate it was agreed by nine Judges, that in all Caſes within the Act, the Judgment for Diſſection and Anatomizing only ſhould be Part of the Sentence: And if it ſhould be thought adviſeable, the Judge might afterwards direct the Hanging in Chains by ſpecial Order to the Sheriff, purſuant to the Power given for that Purpoſe in the Proviſo †."

* Though the 1 *E.* VI. c. 12. enacteth, that wilful Poiſoning ſhall be deemed *Murder* of Malice prepenſed, and that the Offender ſhall *ſuffer and forfeit* as in other Caſes of wilful Murder; yet if the Wife or Servant poiſon Huſband or Maſter, they are conſtantly indicted for Petty Treaſon, and ſuffer the Pains peculiar to that Offence. Petty Treaſon is conſidered in no other Light than as an aggravated Murder.

† Before this Time, there was *ſome Difficulty* about Hanging in Chains.

For in the Year 1741, when *James Hall* pleaded Guilty to the Indictment of Petty Treaſon, for the Murder of his Maſter, *John Penny*, of *Clement's-Inn*, Gent. the Rev. Dr. *Penny*, Dean of *Litchfield*, his Brother, and the Relations, applied to the Court at the *Old-Bailey*, before Sentence was paſſed, that they would be pleaſed to make an Order, That *James Hall might be hung in Chains*.——Sir *Daniel Lambert*, then Lord Mayor, ſpoke to Sir *John Strange*, the Recorder of *London*, about it; when the Recorder told the Relations, "The Court never made any Order in ſuch Caſes; that they muſt apply to the King, the Body being at his Majeſty's Diſpoſal."——The King was then at *Hanover*; and the Relations applied by Petition to the Regency, at their firſt Sitting (at *Whitehall*) after the Seſſions, about it, when they were told by Mr. *Sharpe*, Clerk to the Council, "That the Regency, or the Council, never made any Order in ſuch Caſes; and that the Court who tried the Priſoner ſhould have done it." Under this Difficulty, Dean *Penny*, who was acquainted with the Archbiſhop of *Canterbury*, and with his Grace the Duke of *Newcaſtle*, (to whom he had been Chaplain) ſent in to the Regency, and begged as a Favour to ſpeak to thoſe two Noble Lords; who were pleaſed to come out to the Dean, who then told them what the Court at the *Old-Bailey* had ſaid; whereupon their Graces went in, and acquainted the Regency with the Difficulty the Relations were in; upon which an Order was made *for hanging him in Chains*, and Mr. *Sharpe* came out and told them of it; but ſaid, it was inſerted therein, That it was *on the Petition* of the Relations of the deceaſed: And *Hall* was executed at the End of *Catherine-Street*, in the *Strand*, on *Monday Sept.* 14, 1741, and hanged in Chains at *Sheppard's-Buſh*, juſt beyond *Kenſington* Gravel-Pits, on the *Acton* Road, in *Middleſex*.

XLVIII. The Trial of JAMES STEWART, in *Aucharn* in *Duror* of *Appin*, for the Murder of COLIN CAMPBELL of *Glenure*, Eſq. Factor for his Majeſty on the forfeited Eſtate of *Ardſhiel*; before the Circuit Court of Juſticiary, held at *Inverary* in *Scotland*, on *Thurſday* the 21ſt, *Friday* the 22d, *Saturday* the 23d, and *Monday* the 25th of *September*, 1752, by his Grace *Archibald* Duke of *Argyll*, Lord Juſtice-General, and the Lords *Elchies* and *Kilkerran*, Commiſſioners of Juſticiary.

The Criminal Letters, Libel or Indictment.

GEORGE, by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith: To our Lovits,——Macers of our Court of Juſticiary, Meſſengers at Arms, our Sheriffs in that Part, conjunctly and ſeverally, ſpecially conſtitute, greeting: Foraſmuch it is humbly meant and complained to us, by our Right Truſty *William Grant* of *Preſtongrange*, Eſq; our Advocate, for our Intereſt, and alſo by our Lovit *Janet Mackay*, Daughter to the Honourable *Hugh Mackay* of *Bighouſe*, Eſq. and Relict of the deceaſed *Colin Campbell* of *Glenure*, for herſelf, and on Behalf of *Elizabeth* and *Lucy Campbells*, her infant Children, with Concourſe of our ſaid Advocate, for our Intereſt, upon *James Stewart* in *Aucharn* in *Duror* of *Appin*, commonly known or reputed to be the natural Brother of *Charles Stewart* of *Ardſhiel*, attainted, and preſent Priſoner in *Fort-William*; and upon *Allan Stewart*, commonly called *Allan Breck Stewart*, Son to *Donald Stewart*, alias *Vic Ean Vic Allifter*, ſometime in *Inverchomrie* in *Rannoch*; and ſince, or ſometime after the eighteenth Day of *April*, 1746, a Cadet or Soldier in the *French* King's Service, or reputed in this Country to have been ſuch.

That whereas, by the Law of God, and the Laws of this and all other well-governed Realms, Murder is a moſt heinous Crime, and ſeverely puniſhable, eſpecially when the ſame is committed deliberately, *and by lying in wait*, and from a Malice conceived againſt the Perſon ſo murdered, on Account of the faithful Diſcharge of the Duty of his Office.

Yet true it is, and of Verity, that the ſaid *James Stewart* and *Allan Stewart*, commonly called *Allan Breck Stewart*, complained upon, are guilty, Actors, or Art and Part of Murder, aggravated as aforeſaid, in ſo far as the Barons of our Court of Exchequer in *Scotland* having, by Commiſſion dated the twenty-third Day of *February*, 1748-9 Years, appointed the ſaid *Colin Campbell* of *Glenure* to be Factor upon the Lands and Eſtate of *Ardſhiel*, forfeited to us by the Attainder of the ſaid *Charles Stewart*, and lying within the Shire of *Argyll*, and in the Neighbourhood of *Glenure*, the Houſe of the ſaid *Colin Campbell*, and alſo appointed him Factor on that Part of the forfeited Eſtate of *Lochiel*, called *Mamore*, lying in the Shire of *Inverneſs*, and in the Neighbourhood of *Fort-William*, and upon the forfeited Eſtate of *Allan Cameron* of *Callart*, in the Shire of *Inverneſs*, adjoining to the ſaid Lands of *Mamore*, and lying betwixt *Fort-William* and *Appin*; he, the ſaid *Colin*, entered upon the ſaid Office, and proceeding in the faithful Execution thereof, did, among other Things, at *Whitſunday* 1751, cauſe to be removed the ſaid *James Stewart* from *Glenduror*, a Farm or Poſſeſſion that had been held by him on the ſaid Eſtate of *Ardſhiel*: And in the Month of *April*, in this preſent Year 1752, the ſaid *Colin Campbell* had taken Meaſures for cauſing to be removed at the Term of *Whitſunday*, or fifteenth Day of *May*, now laſt bypaſt, certain other Perſons who were Tenants or Poſſeſſors of Farms upon the ſaid Lands or Eſtate of *Ardſhiel*; which Proceeding was by the ſaid *James Stewart*, for Reaſons known to himſelf, ſo much reſented, that, without any Warrant or Authority from the Tenants, or Perſons themſelves, ſo intended to be removed, he the ſaid *James Stewart*, in the Month of *April* laſt, came in Perſon to *Edinburgh*, and cauſed to be preſented, in Name of the ſaid Tenants, to our Lords of Seſſion, a Bill of Suſpenſion of the ſaid intended Removing, upon divers affected Reaſons, that were either falſe or frivolous; and having procured an Order for anſwering the ſaid Bill, and a Siſt of Execution in the mean Time, he returned into the Country, and cauſed the Tenants intimate the Siſt to the ſaid *Colin Campbell*; who thereupon repaired to *Edinburgh*, where an Anſwer having been made to the ſaid Bill, the ſame was refuſed by the Lord Ordinary, and the ſaid *Colin Campbell* returned to his own Houſe at *Glenure*, where he might be in the Way to attend the Duty of his Office, and to cauſe the ſaid Removing to be put in Execution, and the new Tenants introduced to the Lands on the ſaid fifteenth Day of *May* laſt.——And on Account of the ſaid *Colin Campbell*'s accepting of the ſaid Office, and of the above-mentioned and other

other his Proceedings in the faithful Discharge of the Duty thereof, the said *James Stewart*, and *Allan Breck Stewart*, conceived a most groundless and unjust Resentment, Malice, and Enmity against him, and at length entered into a wicked Conspiracy, barbarously to murder the said *Colin Campbell*, and to bereave him of his Life by the Hands of the said *Allan Breck Stewart*, who had but then lately come back from foreign Parts into that Country, and intended soon to go again beyond Sea; and, during his said last Abode in the Country, had chiefly frequented the House and Company of the said *James Stewart*.——And, in Prosecution of this wicked Conspiracy, upon *Monday* the eleventh Day of *May* last, on the Morning of which Day the said *Colin Campbell* left his own House of *Glenure*, to go to *Fort-William*, in the Country of *Lochaber*, about the Distance of sixteen computed Miles Northward, in order to transact some Business relating to his Factory on the Estate of *Lochiel*, and from whence he was certainly expected to return to the Lands of *Ardshiel* before *Friday* in the same Week, being the fifteenth Day of the said Month, when certain Tenants on the Lands of *Ardshiel* were to be removed, as above-mentioned, and others introduced in their Room; the said *Allan Breck Stewart* went from the House of *John Stewart* of *Fasnacloich*, which lies near to *Glenure*, to the House of the said *James Stewart* at *Aucharn*, lying in the same Neighbourhood, at the Distance of about four Miles Northward; and there the said *James Stewart* was informed, either by the said *Allan Breck Stewart*, or by his own Son *Charles Stewart*, or by *Stewart*, Daughter to the said *John Stewart* of *Fasnacloich*, that they heard, or were informed, that the said *Colin Campbell* of *Glenure* was to go to *Lochaber* that Day, and that he was to persist or proceed in the intended Removing of the Tenants of *Ardshiel* (as the said *James Stewart* has, among other Things, acknowledged in his judicial Declaration taken before the Sheriff-substitute of *Inverness*); and there, after receiving such Advice, in the Evening of the same Day, the said *Allan Breck Stewart* laid aside his own Cloaths, which he had brought with him, being a blue Coat, scarlet Vest, and black Breeches of Shag or Velvet, which were believed to have been brought by him from *France*, and which was a remarkable or distinguishing Dress in that Part of the Country; and then and there the said *James Stewart* furnished him, the said *Allan Breck Stewart*, with a Suit of his, the said *James*'s, own Cloaths, being a dark coloured short Coat, with silver Buttons, Trowsers, and a blue Bonnet, in which the said *Allan* dressed himself that Evening.—And also next Morning of *Tuesday* the twelfth of *May* last, when he left the said *James Stewart*'s House, where the said *Allan* left behind him his own *French* Cloaths aforesaid, together with his Hat, and then set out, in order to lie in wait for the said *Colin Campbell* on his Way, when he should return from *Fort-William* to the Lands of *Ardshiel*, which Lands are bordered on the North-east with the Lands belonging to *Alexander Stewart* of *Ballachelish*, whose House stands near to the Ferry of *Ballachelish*, upon a narrow Arm of the Sea called *Lochlevin*, that separates the Country of *Appin* on the South, from that of *Mamore*, Part of *Lochiel*'s Estate, on the North Side of it, and by which Ferry of *Ballachelish* it was known or expected, that the said *Colin Campbell* would pass, in his Return from *Fort-William*; and, to the said Place of *Ballachelish*, the said *Allan Breck Stewart* directly went from the House of the said *James Stewart* at *Aucharn*, on this *Tuesday* the twelfth of *May* last; and from thence, the same Day, accompanied by *James Stewart* the younger of *Fasnacloich*, went to *Glenco*'s House in *Carnoch*, about three Miles farther Eastward, where the Dowager Lady of the House is Sister to the said *Charles Stewart* late of *Ardshiel*, and to her the said *James Stewart* is natural Brother; and, from thence, he went that same Day to the House of *Callart*, which sometime belonged to *Allan Cameron* of *Callart*, attainted, and was still inhabited by *Helen Stewart* his Widow, and also Sister to the said *Charles Stewart* of *Ardshiel*, and to the said *James Stewart*, at which House he lodged all that *Tuesday* Night;—and next Day, being *Wednesday*, the thirteenth of *May* last, the said *Allan Breck Stewart* came back, after calling again at *Carnoch*, to the House of *Alexander Stewart* of *Ballachelish*, near the Ferry aforesaid, where he remained the Night following;—and, upon *Thursday* the fourteenth of the said Month of *May* last, when it might be certainly expected, that the said *Colin Campbell* would return from *Fort-William* to the Lands of *Ardshiel*, and Country of *Appin*, by the said Ferry of *Ballachelish*, the said *Allan Breck Stewart* waited about the said House, till about Twelve of the Clock that Day; and then, under Pretence of going a-fishing, walked up along a Burn or Rivulet near to the said House to the higher Grounds, from whence he had a Prospect of the high Road leading from *Fort-William* to the Lands of *Ardshiel*, and Access by a short Passage into the Wood of *Lettermore*, standing upon the Lands of *Ardshiel*, and adjoining to the said Road on the South Side, about a Mile distant from the House and Ferry of *Ballachelish*; and, having posted himself in the said Wood, near to the high Road, by which the said *Colin Campbell* was to pass, at a convenient Station for his wicked Purpose, where he had brought, or caused to be brought and placed, one or two Guns, or Muskets, loaded, with which he continued some time concealed in the Wood; and, at length, about Five or Six o'Clock in the Afternoon of the said fourteenth Day of *May* last, the said *Colin Campbell* having passed the Ferry of *Ballachelish*, and been conveyed by the said *Alexander Stewart* of *Ballachelish* from the Ferry to the Entrance of the Wood of *Lettermore*, as he continued his Journey, passing on Horseback along, or through the said Wood, accompanied by *Donald Kennedy*, a Sheriff's Officer of *Argyll-shire*, who was on Foot, and had got some Space before him, the Road being bad for Horses, and by *Mungo Campbell*, Writer in *Edinburgh*, a young Man, who was then riding a little Way before him; and behind him, at some Distance, was *John Mackenzie*, Servant to the said *Colin*, and also on Horseback.

And then and there the said *Allan Breck Stewart* fired upon the said *Colin Campbell* from behind his Back, and shot him through the Body with two Balls, of which Wounds the said *Colin Campbell* died upon the Spot, in less than an Hour after.

Whereupon the said *Allan Breck Stewart* absconded, and, from that Time, appeared no longer openly in the Country; but, during the Night following, or about Three o'Clock in the Morning of *Friday* the fifteenth Day of *May* last, he came to *Carnoch*, the House of *John Macdonald* of *Glenco* above-mentioned, where he knocked at a Window when the Family were all in Bed; and the said *John Macdonald* of *Glenco*, and *Isobel Stewart* his Stepmother, got up, and went to the Door to the said *Allan*, who then told them, that the said *Colin Campbell* had been shot dead the Evening preceding, in the Wood of *Lettermore*, and that he, the said *Allan*, was leaving the Country, and going the Moor-road, and was come to take Leave of them, the said Lady, and *Glenco* her Son-in-law, which he immediately did, and went away, without entering the House, tho' he was invited by the Lady to come in, and take some Refreshment there.

That, in the mean Time, the said *James Stewart*, complained upon, remained at his own House at *Aucharn*, from which, on the Morning of *Thursday*, the fourteenth of *May* last, he sent a Letter by *John Maccol* his Servant, to *Charles Stewart*, Writer in *Auchintour*, in which, *inter alia*, he writes, "As I have no Time to write to *William*, "let him send down immediately 8 *l. Sterling*, to pay four Milk Cows I "bought for his Use at *Ardshiel*." And as he, the said *James*, hath judicially declared, (when examined at *Fort-William*, on the second of *June* last, in Presence of *George Douglas*, Sheriff-substitute of *Invernesshire*) he did not see the said *Allan Breck Stewart* after the Murder; but upon Notice being brought to the said *James Stewart*, complained on, at his own House at *Aucharn*, immediately after it happened, on the said *Thursday* Evening, by the said *John Mackenzie*, Servant to the said now deceased *Colin Campbell*, who, having left the said *Mungo Campbell* to attend the Corpse where it lay, rode away to get Help or Assistance for transporting the same to some fit House or Place; the said *James Stewart*, complained upon, appeared noways surprised or concerned at the News of the Murder; and neither he, nor any of his Family, went to look after the Corpse, or to assist in the carrying it, as others of the Neighbourhood did. And, upon the Morning, or about Noon of the Day following the Murder, being *Friday* the fifteenth of *May* last, the said *James Stewart*, complained upon, sent *Alexander Stewart*, travelling Packman in *Appin*, to *William Stewart*, Merchant in *Maryburgh*, with Directions to get from the said *William* five Pounds *Sterling*, or five Guineas; and then told the said Packman, that his Friend *Allan Breck Stewart* was going to leave the Country; and that it was *incumbent* on him, the said *James*, to supply him with Money; whereupon, the said Packman, that same Day, repaired to *Fort-William*, and delivered his said Message from the said *James Stewart*, to the said *William Stewart*, who immediately caused his Wife bring the Packman *three Guineas*,—with which the Packman returned the next Day, being *Saturday*, the sixteenth of *May* last, back to the said *James Stewart*'s House at *Aucharn*; and, upon his Arrival there, found the said *James Stewart* Prisoner, in the Custody of a Party of Soldiers; and the said Packman being allowed to converse privately with the said *James Stewart* and his Wife; and having informed him, that he had only received three Guineas from *William Stewart* at *Maryburgh*, the said *James Stewart* took out of his Purse two Guineas, which he gave to his Wife, desiring her to give the same to the Packman; to go with these, and the three Guineas he already had, and also with *Allan Breck Stewart*'s Cloaths, to him, the said *Allan*: And, accordingly, on the Evening of that same *Saturday*, after the said *James Stewart* had been carried off Prisoner to *Fort-William*, his Wife brought the said *Allan Breck Stewart*'s Cloaths above-mentioned, to the Packman, and delivered the same tied up in a Bundle to him, containing a Pair of red Breeches, besides the black Breeches above-mentioned, that were the Property of the said *Allan* himself; and, at the same time, delivered to the Packman the *two Guineas* above mentioned, which she had received from her said Husband for that Purpose, and directed the Packman to go with *the Cloaths and the five Guineas*, and deliver the same to the said *Allan Breck Stewart*, whom he would find or hear of at the House of *John Maccol*, Bouman, having the Charge of Milk Cows upon a Farm or Shealing belonging to *Dougal Stewart* of *Appin*, at a remote or solitary Place called *Koalisnacoan*; and the said Packman, after getting his Supper at *Aucharn*, set out on this Errand accordingly that same Night:—That, in the mean Time, in the Afternoon of the said *Saturday*, the sixteenth of *May* last, the said *Allan Breck Stewart* was seen by the said *John Maccol*, *Appin*'s Bouman, in the Heugh of *Corrynakiegh*, a Part of the Farm of *Koalisnacoan*; where, as the Bouman was cutting Fire-wood, he heard a Whittle, and, looking about, observed a Man, at a considerable Distance, beckon to him, whom, upon his going up to him, he found to be the said *Allan Breck Stewart*, who saluted him, by asking him how he did? And the Bouman returned the Salute, and told the said *Allan*, he was afraid it was no good Action occasioned his being in *such a solitary Place*; upon which the said *Allan* asked him, what he meant by that? And the Bouman answered, That he would, without doubt, be suspected of *Glenure*'s Murder, who, he heard, was shot in the Wood of *Lettermore*; and that there were *two Men* seen go from the Place where the Action was committed; to which the said *Allan* replied, That, if he was rightly informed, there was *but one Person* concerned in the Murder; and, talking further of the Matter, said, he did not doubt the Family of *Ardshiel* would be suspected of the Murder; and that he believed *James Stewart* and his Son would be taken up, in consequence of their Difference with *Glenure* about the *Lands*; but that their being taken up, would not be of any Consequence to them, as there would be no Proof, *unless their own Tongues betrayed them*: And, upon the Bouman's saying, that he wished he, the said *Allan*, would leave his Neighbourhood, *Allan* told him he could not, *till he was supplied with Money* and Victuals; and insisted with the Bouman, that he should go to the Strath of *Duror* (where the said *James Stewart*'s House of *Aucharn* lies) for *Money*, and to the Lady *Glenco* for a Peck of Meal; both which the Bouman appearing to decline, the said *Allan* added, that he, the Bouman, must go to *Fort-William* with a Letter, (which the said *Allan* then wrote with a Wood-Pigeon's Quill he had gathered among the Trees,) to *William Stewart*, Merchant in *Maryburgh*, who, he said, would give him Money upon Receipt of the Letter; and the Bouman having also refused to comply with this Proposition, giving for his Excuse, that he heard that all that went to *Fort-William* at that Time were taken into Custody, the said *Allan* further told him, that unless he should be supplied, from some *other Quarter*, before *next Day*, that he, the Bouman must go to *Fort-William*, notwithstanding these Difficulties, and that he, *Allan*, was *surprised* there was *no Money sent him*, though it was *promised to be sent him to that Place*.

——That very early in the Morning of *Sunday*, the ſeventeenth of *May* laſt, the ſaid *John Maccol*, Bouman, went out of his Houſe, to look after ſome Cattle that he apprehended were amongſt his Corns, and then obſerved, coming towards him from the Weſtward, a Man, whom, at a Diſtance, he took to be *Allan Breck Stewart*; but, upon his nearer Approach, found him to be the ſaid *Alexander Stewart*, Packman, who, upon his coming up to him, after the ordinary Salutations, aſked the Bouman, if he had ſeen *Allan Breck Stewart?* which the Bouman having denied, the ſaid Packman told him, that *he had Money and Cloaths* for the ſaid *Allan*, which he (*Allan*) had *tryſted*, (or agreed with ſome other Perſon) to receive at that Place from any one who ſhould be *ſent after him with it*; and then the Bouman *owned* he had ſeen him, the ſaid *Allan*, and that he was then in the Heugh of *Corrynakiegh*, and told the Packman, that if he went to an Eminence, which he pointed out to him, and *whiſtled*, that the ſaid *Allan Breck* would probably *appear to him*; but this the Packman declined, complaining that he was ſo fatigued with travelling the whole Night, that he would not go, having been lately upon his own Buſineſs at *Fort-William*, and having been obliged to go there again on the ſaid *James Stewart*'s Errand above-mentioned; and therefore deſired the ſaid Bouman to deliver the *five Guineas*, which he then gave him, to the ſaid *Allan Breck Stewart*, together with *a Bundle of Cloaths*, which he, the Packman, had left at *the Root of a Fir-tree* then in their View, which he pointed out to the ſaid Bouman, who promiſed to deliver both to the ſaid *Allan* as deſired; whereupon the Packman, being much fatigued, went to Sleep in the Bouman's Houſe;—and in the Evening of the ſame *Sunday*, the ſeventeenth of *May* laſt, after the ſaid *John Maccol*, Bouman to *Appin*, was gone to Bed, he was awaked by the ſaid *Allan Breck Stewart* his knocking at the Window of his the ſaid Bouman's Houſe, whereby the Board or Shutter of his ſaid Window fell in; whereupon the ſaid Bouman got up from his Bed, and went out, when he found the ſaid *Allan Breck Stewart* retired at ſome Diſtance from his Houſe, who, firſt of all, told him, he ſtood in great need of a Drink; upon which the Bouman went into his Houſe, and returned with a Noggan or Diſh full of Milk and Water that had been boiled, which Noggan the Bouman carried in his Hand, in Company with the ſaid *Allan*, till they came together to the Brink of a Burn or Rivulet, not far from the Bouman's Houſe; and, at this Meeting, the ſaid *Allan Breck* aſked the Bouman, whether there had any Body come to that Place with a *Meſſage for him?* which the Bouman anſwered in the Affirmative, and then gave the ſaid *Allan* the *five Guineas* he had received from *Alexander Stewart*, the Packman; upon which the ſaid *Allan Breck Stewart* ſaid, he hoped that would do without his ſending to *William Stewart* at *Fort-William*, and enquired if *any Thing elſe* had been brought for him? whereupon the Bouman delivered to him the *Bundle of Cloaths* above-mentioned, that had been left by *Alexander Stewart*, the Packman, for that Purpoſe, at the *Fir-tree*; and then the ſaid *Allan* requeſted and intreated the Bouman to meet him at that Place next Morning early, that he might deliver to him *the dark coloured Coat* mounted with *Silver Buttons*, and a Pair of *Trowſers*, which the ſaid *Allan* then wore, and had upon him, and which he told the Bouman were the Property of the ſaid *James Stewart* in *Aucharn*, to the End that the Bouman might reſtore and deliver theſe Cloaths to the ſaid *James*, or to *Margaret Stewart* his Wife; and the ſaid Bouman promiſed to meet the ſaid *Allan* next Morning, as he deſired;—and accordingly the Bouman repaired next Morning before Sun-riſe to the Place appointed, at the Side of the Rivulet, for their Meeting, where he did not find or ſee the ſaid *Allan* himſelf, but found there the black or dark coloured Coat and Trowſers before deſcribed, together with his own Noggan or Diſh, in which he had brought the Milk and Water to the ſaid *Allan*; and, in one of the Pockets of the ſaid ſhort Coat, the ſaid Bouman found a ſmall *Powderhorn*, of a flat Make, with ſome Carving upon the Horn, and red Wax on the Inſide thereof, for mending a Slit or Hole:——That from this Place the ſaid *Allan Breck Stewart* withdrew from that Country *a-croſs the Moors*, as he propoſed, by going a-croſs Mountains and Deſarts, where there was no Dwelling-houſe for the Space of about eighteen computed Miles Eaſtward, to the Country called *Rannoch*, in the North-weſt Corner of *Perth-ſhire*, where the Mother of the ſaid *Allan Breck Stewart*, and other Friends or Relations of his live; amongſt whom he kept himſelf concealed for a few Days, and was there ſeen with the aforeſaid *French* Dreſs, and a Pair of *red Breeches*; after which he withdrew from that Country, and has not been ſince ſeen or heard of in this Kingdom, that the Complainers have been able to learn.——And in a Letter wrote by the ſaid *James Stewart*, ſince he was taken into Cuſtody on Account of the ſaid Murder, bearing Date at *Fort-William* the nineteenth Day of *May* laſt, and addreſſed, *To Mr. John Macfarlane, Writer to the Signet*; wherein the ſaid *James* profeſſes great Deteſtation of the Murder, and great Deſire that the ſaid *Allan Breck Stewart* might be apprehended, and, for that Purpoſe, deſcribes the Perſon and Dreſs of the ſaid *Allan*; he, *inter alia*, ſays, that he, the ſaid *Allan*, wore a Pair of *red Breeches*.

From all which, and other Facts and Circumſtances that will be proved againſt the ſaid Perſons complained upon, and particularly the Threatenings of Death and Deſtruction, which the ſaid *James Stewart*, and the ſaid *Allan Breck Stewart*, above complained upon, have been heard to utter againſt the ſaid *Colin Campbell* of *Glenure*, now bereaved of his Life, by the horrid Murder and Aſſaſſination aforeſaid, it will be made evident and proved, that the ſaid *James Stewart*, and *Allan Breck Stewart*, complained upon, and each of them, are guilty, Actors, or Art and Part of the ſaid horrid Murder.

And as a Part of this Proof, there will be produced certain Documents in Writing, and other Particulars enumerated and contained in an Inventory or Liſt thereof, ſigned by the Complainers, or either of them, Copies of which Liſt or Inventory will be delivered to, or ſerved upon, the Perſons complained upon, at the Time of executing this Libel; and the ſaid written Documents, and other Particulars themſelves, will, before Trial, be lodged in the Hands of the Clerk to the Circuit Court of Juſticiary, before which the Perſons complained upon are to be tried, that they may ſee the ſame.

At leaſt, at the Time and Place aforeſaid, the ſaid *Colin Campbell* of *Glenure* was barbarouſly murdered, and the ſaid *James Stewart*, and *Allan Breck Stewart*, above complained upon, are guilty, Actors, or Art and Part of the ſaid Murder.

All which, or Part thereof, being found proven by the Verdict of an Aſſize, before our Lords Juſtice-General, Juſtice-Clerk, and Commiſſioners of Juſticiary, in a Circuit Court of Juſticiary, to be holden by them, or any one or more of their Number, within the Burgh of *Inverary*, upon the twenty-firſt Day of *September* next to come, N. S. the ſaid *James Stewart*, and *Allan Breck Stewart*, complained upon, both, or one or other of them, who ſhall be ſo convicted, ought to be puniſhed with the Pains of Law, to the Terror of others to commit the like execrable Crime in Time coming. Our will is, *&c.*

Ex deliberatione Dominorum Commiſſionariarum Juſticiarii. ROBERT LEITH.

LIST of the Perſons Names and Deſignations, that are to paſs upon the Aſſize of the ſaid James Stewart, *and the ſaid* Allan Breck Stewart.

ARGYLL-SHIRE.

Donald Campbell of *Airds.*
Dugald Stewart of *Appin.*
Colin Campbell of *Carquhin.* —— 1
John Maclean of *Lochbuie.*
Donald Campbell, younger, of *Scammadale.*
Duncan Campbell in *Oban.*
Duncan Campbell at *Aroſs.*
Archibald Campbell of *Knockbuie.*
Dugald Macdugal of *Gallanach.* —— 2
Donald Campbell, Bailie of *Lochinnel.*
James Fiſher of *Duren.*
Alexander Duncanſon of *Kills.* —— 3
Archibald Campbell of *Ormſary.*
John Richardſon, Merchant at *Inverary.*
Duncan Campbell of *South-Hall.* —— 4
Hector Macniel of *Ardmeaniſh.* —— 5
Archibald Campbell of *Clachanſeil.*
James Campbell, late Bailie of *Inverary.* 6
James Campbell of *Raſcheilly.* —— 7
James Campbell of *Rudale.* —— 8
Angus Campbell of *Ardiarich.*
Collin Gilleſpie of *Bailliemoir.* —— 9
Colin Campbell of *Skipniſh.* —— 10
Duncan Campbell of *Glendaraul.* —— 11
Hugh Campbell of *Lix.*
Alexander Campbell of *Ballochiel.*
Colin Campbell of *Kildalvin.*
Colin Campbell of *Ederlin.* —— 12
Niel Campbell of *Duntroon.* —— 13
Archibald Campbell of *Jura.*
Duncan Maclauchlan of *Croich.*
John Campbell, younger, of *Ottir.*
Archibald Campbell of *Daill*, in *Craigniſh.* 14
Niel Campbell of *Dunſtaffiniſh.* —— 15

BUTE-SHIRE.

Archibald Davie in *Glenroſſie*, in *Arran.*
John Brown in *Glenſhervig.*
Donald Brown there.
Alexander Fullertoun in *Brodick.*
Thomas Macninch in *Clachlands.*
Duncan Macmaſter in *Lamblaſh.*
William Hunter in *Letter.*
Andrew Macbryde in *Monimore.*
John Macbryde in *Achincairn.*
James Stewart in *Mid-Kiſkidale.*
Alexander Stewart in *South-Kiſkidale.*

CH. ARESKINE.
ALEX. FRASER.
HEW DALRYMPLE.

N. B. The Execution of the Criminal Letters, againſt *James Stewart* perſonally, was upon the 21ſt Day of *Auguſt*, 1752; and the Executions againſt *Allan Breck Stewart*, at *Aucharn*, was upon the 24th Day of the ſaid Month of *Auguſt*, and at the Market-Croſs of *Inverary*, the 25th Day of the ſaid Month of *Auguſt.*

Curia itineris juſticiarii, S. D. N. Regis, tenta apud burgum de Inverarii, viceſimo primo die Menſis Septembris, Anno Domini milleſimo ſeptingenteſimo quinquageſimo ſecundo, N. S. per nobilem et præpotentem Principem Archibaldum Ducem de Argyll, Dominum Juſticiarium Generalem, et Patricium Grant de Elchies, armigerum, et Dominum Jacobum Ferguſon de Kilkerran, Dominos Commiſſionarios Juſticiarii dicti, S. D. N. Regis.

Curia legitimè affirmata.

HIS Majeſty's Advocate moved, That the Criminal Letters at his Inſtance, for his Majeſty's Intereſt, and alſo at the Inſtance of *Janet Mackay*, Daughter to the Honourable *Hugh Mackay* of *Bighouſe*, Eſq. and Relict of the deceaſed *Colin Campbell* of *Glenure*, for herſelf, and on Behalf of *Elizabeth* and *Lucy Campbells*, her infant Children, with Concourſe of his ſaid Majeſty's Advocate, for his Majeſty's Intereſt, againſt *James Stewart* in *Aucharn* in *Duror* of *Appin*, commonly known or reputed to be the natural Brother of *Charles Stewart*, late of *Ardſhiel*, attainted; and *Allan Stewart*, commonly called *Allan Breck Stewart*, Son to *Donald Stewart*, alias *Vic Ean Vic Alliſter*, ſometime in *Inverchomrie* in *Rannoch*, and ſince, or ſometime after the eighteenth Day of *April*, 1746, a Cadet or Soldier in the *French* King's Service, or reputed in this Country to have been ſuch, might be called. And the ſame being accordingly done, and the above *Allan Stewart*, commonly called *Allan Breck Stewart*, being oft and divers Times called publickly by the Macer of Court, and thrice called at the outer Door of the Court-houſe, to have compeared and underlyen the Law for the Crime of Murder committed by him upon the ſaid deceaſed *Colin Campbell* of *Glenure*, in Manner at Length mentioned in the ſaid Criminal Letters, he having been lawfully cited for that Effect, but not compearing,—the Lord Juſtice-General, and Lords Commiſſioners of Juſticiary, Decern and Adjudge *Allan Stewart*, commonly called *Allan Breck Stewart*, Son to *Donald Stewart*, alias *Vic Ean Vic Alliſter*, ſometime in *Inverchomrie* in *Rannoch*, and ſince, or ſometime after the 18th Day of *April*, 1746, a Cadet or Soldier in the *French* King's Service, or reputed in this Country to have been ſuch, to be an Outlaw and Fugitive from his Majeſty's Laws; and ordain him to be put to the Horn, and all his moveable

moveable Goods and Gear to be escheat and inbrought to his Majesty's Use, for his not compearing this Day and Place, to underly the Law for the Crime of Murder committed by him upon the deceased *Colin Campbell* of *Glenure*, as is more fully mentioned in the Criminal Letters raised against him thereanent, at the Instance of *William Grant* of *Prestongrange*, Esq. his Majesty's Advocate, for his Majesty's Interest, and also at the Instance of *Janet Mackay*, Daughter to the Honourable *Hugh Mackay* of *Bighouse*, Esq. and Relict of the said deceased *Colin Campbell* of *Glenure*, for herself, and on Behalf of *Elizabeth* and *Lucy Campbells*, her infant Children, with Concourse of his Majesty's Advocate, for his Majesty's Interest; the said *Allan Stewart*, commonly called *Allan Breck Stewart*, having been lawfully cited for that Effect, oft times called, and not compearing.

ARGYLL, *I. P. D.*

Intrat. James Stewart indicted and accused at the Instance of his Majesty's Advocate, for his Majesty's Interest, and also at the Instance of *Janet Mackay*, Daughter to the Honourable *Hugh Mackay* of *Bighouse*, Esq. and Relict of the said deceased *Colin Campbell* of *Glenure*, for herself, and on Behalf of *Elizabeth* and *Lucy Campbells*, her infant Children, with Concourse of his Majesty's Advocate, for his Majesty's Interest, as guilty, Actor, or Art and Part of the Crime of Murder, committed in the Manner mentioned in the Criminal Letters raised thereanent, against him, and *Allan Stewart*, commonly called *Allan Breck Stewart*, Son to *Donald Stewart*, alias *Vic Ean Vic Allister*, sometime in *Inverchomrie* in *Rannoch*, and since, or sometime after the eighteenth Day of *April*, 1746, a Cadet or Soldier in the *French* King's Service, or reputed in this Country to have been such.

Procurators for the Prosecutors.

The Right Honourable *William Grant* of *Prestongrange*, Esq. his Majesty's Advocate.
Mr. *James Erskine*, Advocate, Sheriff-depute of *Perth-shire*.
Mr. *John Campbell* younger, of *Levenside*, Advocate.
Mr. *Robert Campbell* of *Asnich*, Advocate.
Simon Frazer, Esq. Advocate.

Procurators for the Pannel.

Mr. *George Brown* of *Colstoun*, Advocate, Sheriff-depute of the Shire of *Forfar*.
Mr. *Thomas Millar*, Advocate, Sheriff-depute of the Stewartry of *Kirkcudbright*.
Mr. *Walter Stewart* younger, of *Stewart-Hall*, Advocate.
Mr. *Robert Macintosh*, Advocate.

His Majesty's Advocate moved, that the Criminal Letters against the Pannel, and the before-named *Allan Breck Stewart*, might be read. And the same was accordingly done.

Lord Justice-General. "*James Stewart*, you have heard the Criminal "Letters against you read. What have you to say to them?"

James Stewart, "My Lords, I am not guilty of the Crime of which I "am accused, and I refer to my Lawyers to make my Defence."

Mr. WALTER STEWART for the Pannel.

My Lord Justice-General,

I Appear as Counsel for this Prisoner, *James Stewart*, who now stands at your Lordship's Bar, charged as being accessary to one of the foulest and most barbarous Murders that has occurred in any Country; the Murder not only of an innocent Gentleman, but, as will be proved, the Pannel's own intimate Friend; and that without the smallest Provocation, save what greatly enhances his Guilt, *viz. Glenure*'s being in the faithful Discharge of his Duty in an Office entrusted to him by the Public. He is charged with causing *Allan Breck Stewart* lie in wait for this unhappy Gentleman, and take him off by a base and inhuman Assassination. I am sensible, my Lord, that the Pannel, accused of a Murder attended with so many aggravating Circumstances, must appear before your Lordship, his Jury, and the World, in a very unfavourable View. A certain Indignation naturally arises in every humane Breast against one suspected of so horrid a Crime; and this must not be a little increased by the malicious Stories and Insinuations industriously spread, which the Pannel, from his close Confinement, has had no Opportunity of contradicting. But now, as he has put himself for his Trial upon God and his Country, by pleading not guilty, until that Country finds him guilty, the Presumption is for Innocence. This he has a Title to demand.—All I shall ask, however, is, that as I know his Judges, so I hope his Jury, and all who now hear me, will lay aside any Prejudice against him, and will form no Opinion, until the Circumstances of the Libel, the Defences which I am now to offer against it, and the Proof of both, be attentively considered. For myself, my Lord, I must say (and I believe I may say the same for all the Gentlemen on the same Side with me), did I, after the strictest Inquiry, suspect the Pannel to be accessary to this Murder, it would be the last Action in my Life to stand up in his Defence: But, my Lord, we have gone thro' this Libel with the greatest Attention, and have taken a View of the several Facts, which, after a Precognition of above a thousand Witnesses, are set forth to support the Charge against the Pannel; we have heard from the Pannel's own Mouth his Defences against this Charge, which he avers he can prove; we have heard, from the Unprejudiced, the general Character he bears in the World, and, from the whole, cannot help concluding, that he is not guilty. We look upon ourselves as standing up for Innocence, when defending this Pannel. It is therefore our Duty to defend him with that Warmth which Innocence claims as its Due.

In the Entry of this Trial, my Lord, I cannot help complaining of most intolerable Hardships, which this Pannel has undergone since *May* last, when he was first incarcerated. My Lord Advocate's Humanity, his Tenderness to Pannels, I can, from my own little Experience in Trials, subscribe to. The unjustifiable Steps I am now to complain of, I must therefore lay to the Charge of the private Prosecutors. I dare say my Lord Advocate as little knew of them, as he will now, when he hears, approve of them. The Pannel, since the Month of *May* last, has been kept in the closest Confinement. For the first six Weeks, no Mortal was allowed Access to him: After that, indeed, for some short Time, Admittance was given to his Wife, and one or two more; but any who could be thought proper Persons to prepare Defences for his Trial, were carefully denied Access to him. And again, for a considerable Time before his Trial, he was close confined, and all Admittance refused. When his Counsel came to this Place, and wanted to see him, we were told that none were to be admitted without a Warrant from the Duke of *Argyll*; and a Petition was actually drawn, to be presented to your Grace, when a Message came allowing us Access. His Sons and his Servants too have suffered the same close Imprisonment. And all this not only contrary to Humanity, but directly in the Face of the Act of Parliament 1701, which discharges close Imprisonment after eight Days, under the severest Penalties. By the Precaution of this private Prosecutor too, the Bar has been in a Manner shut up against this Pannel; all the old experienced Counsel, tho' not brought to maintain the Charge against him, have been retained from giving him their Assistance; otherways, in all Probability, I had not now been employed to open his Defence. The Pannel's House and his Repositories have been three several Times searched, and Papers carried off by near Relations of the Prosecutors, attended by a military Force, and without any Warrant. His Wife and his Sons, who by the Laws of God and Man cannot be called as Witnesses against him, have been examined upon Oath; some of them five different Times, to catch at any Discordance, had there been any, in their Declarations; and these very Declarations are now proposed to be brought in Proof against the Pannel, while the Declarants themselves are alive, and ought, by the fundamental Laws of this Kingdom, to be examined in Presence of the Pannel and Jury. These are Hardships, my Lord, which, Thanks be to God! meet with no Encouragement in this now a free Country. The Time was, indeed, when the feeble Law was unable to protect the Innocent, when the Rules of Justice were broke to pieces by the ruffian Hands of Power; then our unhappy Country groaned under the intolerable Yoke of arbitrary Power; then was scarce the Form of a Trial; the Best, the Greatest of our Country, even an *Argyll*, fell a Sacrifice to the Will of Tyranny. But now, my Lord, the Days which our Fathers wished to see, and did not see, we have the Happiness to enjoy. A fair Trial, which the Noblest could not obtain, the Meanest are now intitled to, under the Protection of Laws, guarded by a Government ever watchful for the Good of its Subjects, under which the Keenness of private Prosecutors will meet with no Countenance or Encouragement. The Pannel enjoying the Privileges of every free-born *Briton*, is now to stand Trial before the Judges and Jury of his Country; and as his Judges will shew the greatest Impartiality, he expects the same from the Gentlemen of the Jury. They will judge of the Proof brought before them, having in their Eye the Example of Almighty God, by whose holy Name they have sworn to do justly, before whose awful Tribunal there is no Judgment formed from Names or personal Prejudices, but every Man is judged according to his Works. They will consider, that as they are to answer to God, so they have to answer to the World, who will make a narrow and impartial Scrutiny into their Verdict. At the same Time I cannot help saying, that, amid all the Hardships this Pannel has suffered, I hope it is one Piece of good Fortune, that he is to be tried by Gentlemen of the same County with himself, who, from their more particular Knowledge of the Pannel, and his Character in the World, should be best Judges what Proof is necessary to fix upon him so black a Crime.

In order that your Lordships may more fully understand the Defences now to be offered for the Pannel, I will beg leave to lay before the Court an Account of the Facts, which have given rise to this Prosecution, as they really happened; and as we have got them from the Pannel's own Mouth, at a Time when it was little his Interest to hide the Truth from us. The Pannel, my Lord, was in Possession of a Farm in the Estate of *Ardshiel* called *Glenduror*, and was Tacksman of another called *Lettermore*, which he had subset for about 70*l. Scots* a Year, when *Glenure* was appointed Factor on the Estate of *Ardshiel* in *February* 1749. That Gentleman continued the Friendship which he had before entertained for the Pannel in a very particular Manner. He gave him the Management of the whole Estate of *Ardshiel*, Power to put in and remove Tenants, and to raise the Rents as he should think proper, and took yearly from the Pannel his Bill for the Rent of the Estate, at which it had been surveyed by the Barons of Exchequer, leaving him to apply the Overplus to the Use of *Ardshiel*'s Children. This Agreement will be instructed by Discharges and Letters under *Glenure*'s own Hand. Sometime before *Whitsunday* 1751, *Glenure* applied to the Pannel to yield the Farm of *Glenduror*, which he then possessed, to Mr. *Campbell* of *Bolaveolan*, a particular Friend of his, who offered an additional Rent. This the Pannel immediately complied with, without waiting a Warning, and took the Farm of *Auchorn*, where he now lives, from Mr. *Campbell* of *Airds*, but still continued to uplift the Rents of *Ardshiel*, in Terms of his Agreement with *Glenure*. Sometime in *April* last, *Glenure* executed a Warning against the Subtenant in *Lettermore* to remove from that Farm at *Whitsunday* 1752; and likeways against several other Tenants of the Lands of *Ardshiel*. The Pannel does acknowledge, that he did expostulate with *Glenure* upon this, telling him, he thought it hard to turn them out, since they offered to give more additional Rent than any others would, and likeways to take the Oaths to the Government. But *Glenure* still persisted in his Resolution; upon which the Pannel, being occasionally in *Edinburgh*, at the Desire of the Tenants, made out a short Memorial of the Fact, and presented it to one of the Barons of Exchequer, who disapproved greatly of *Glenure*'s Procedure; but could do nothing towards putting a Stop to the Removing, as a Quorum of the Barons was not to be had until the next Exchequer Term. But he kept the Memorial, promising to represent the Case to the whole Barons; and added, that he had no doubt but they would give an Order to the Factor to continue the Tenants in their Possessions. The Pannel upon this advised with Counsel, how the Tenants might be kept in Possession until the Exchequer Term; and, by their Advice, applied for a Suspension of the Removing to the Court of Session: And a Bill of Suspension being accordingly presented, a Sist was obtained, and the Bill ordered to be answered; which Sist was intimated to

Glenure,

Glenure, upon the Pannel's returning into the Country; and he, not knowing the Forms, having carried with him the principal Bill of Suſpenſion, and *Glenure* immediately giving in Anſwers, the ſame were adviſed without the Bill, and it was refuſed. This Scheme of a Suſpenſion having failed, and *Glenure* perſiſting in his Reſolution of ejecting the Tenants upon the Term-day at which they were warned to remove, the Pannel, upon a ſecond Application from the Tenants, wrote to *Alexander Stewart*, Notary Public, to come, upon the 15th of *May*, that they might proteſt, and take an Inſtrument againſt *Glenure*, if he proceeded to Ejection; and when *Alexander Stewart* excuſed himſelf, the Pannel ſent a Letter, by Expreſs, on the 14th of *May*, to *Charles Stewart*, Notary in *Auchintour*, to come on the ſame Errand, and, in a Poſtſcript, bid him tell *William Stewart* to ſend down 8*l. Sterling*, to pay four Milk Cows which he had bought for his Uſe at *Ardſhiel*, and which the Tenants had refuſed to deliver until they got the Price, tho' *William Stewart* had wrote for them. This Poſtſcript is laid hold of by the Proſecutors, as a Circumſtance to fix this Murder upon the Pannel. But this, my Lord, I am not ſurpriſed at; other Letters of his ſhare the ſame Fate, tho', if poſſible, leſs criminal than this one: By what Conjuration, or what mighty Magic they can be made ſo, I own I cannot conjecture.

The Pannel, in further Proſecution of this Plan of taking a Proteſt, on *Thurſday* the 14th, had engaged *James Stewart* younger of *Faſnacloich*, and *John Stewart* younger of *Ballacheliſh*, to be preſent on the 15th, and witneſs his Proteſt. But, on the *Thurſday* Evening, the Pannel received the melancholy Accounts of *Glenure*'s being murdered in the Wood of *Lettermore*. Theſe are the Facts which gave riſe to that inveterate Malice, which the Libel ſays induced the Pannel to conſpire the Death of *Glenure*. The Words are: "And, on Account of the ſaid *Colin Campbell*'s accept-" ing the ſaid Office, and of the above-mentioned and other his Pro-" ceedings in the faithful Diſcharge of the Duty thereof, the ſaid *James* " conceived Reſentment," *&c.* How unjuſt this Concluſion is, I do humbly ſubmit to your Lordſhips. After *Glenure* was made Factor, your Lordſhip ſees, they continued in the greateſt Friendſhip: You ſee the Pannel managing the Eſtate of *Ardſhiel* under *Glenure*, removing from his Poſſeſſion of *Glenduror*, at *Glenure*'s Deſire, without putting him to the Trouble of a Warning, and going and reſiding under Mr. *Campbell* of *Airds*. He had no Poſſeſſion in *Ardſhiel* Eſtate, as *Lettermore* was ſubſet; his Management of the Eſtate was not taken from him, and he was ſtill allowed to remit Part of the Rents to *Ardſhiel*'s Family. He has no Connexion, by Blood or otherways, with the Tenants warned to remove; there is not ſo much as one of them of his Name. The Eſtate was annexed forever to the Crown, and was in a few Months to fall into the Hands of Commiſſioners, appointed by his Majeſty, who would probably reſtore the Tenants, as they offered more Rent than thoſe put in by *Glenure*. Can any Mortal believe, that the Pannel, becauſe *Glenure* was to execute a Removing againſt theſe Tenants, ſhould enter into ſo execrable a Deſign, as to aſſaſſinate that Gentleman by the Hands of *Allan Breck*, on the 14th, when we ſee him purſuing quite another Scheme, ſending for a Notary and Witneſſes to take a Proteſt againſt him on the 15th? In all Caſes of Murder, I do humbly apprehend, it is of Neceſſity, that there ſhould be Malice aforethought, which is the Eſſence of, and conſtitutes the Crime; and all Paſſions, particularly one of ſo extraordinary a Nature as this Malice, muſt have had ſome Cauſe. I do ſubmit to your Lordſhips, if there is the ſmalleſt Appearance of that Malice, or any Thing like a Cauſe aſſigned for it. But, even taking the Story as it ſtands in the Libel, it is a Tale that can gain Credit with no Mortal. What earthly Purpoſe could the Pannel ſerve by ſuch a deſperate Piece of Villainy? Would the Murder of *Glenure* prevent the Removal of the Tenants? Would not the Murder of *Glenure* deprive him of the Liberty which that Gentleman had given him to upliſt the Rents? Would it not put it out of his Power to help his Brother *Ardſhiel*'s Family? The Pannel is allowed to be a judicious Man, prudent in his Actions beyond moſt Men of his Rank in the World. Can it be believed he would do a Thing ſo directly contrary to his Intereſt? Suppoſe him capable of the Crime, we muſt ſuppoſe him the greateſt Fool, as well as the greateſt Monſter that ever diſgraced Humanity. But, is this his Character? No, my Lord, as he is a ſenſible Man, ſo all who know him will ſay, he is a humane, peaceable, good-natured Man, looked upon as a Father where he lives; Strangers were happy to get their Children under his Care, as in Fact he is Tutor and Curator at this very Time to ſeveral Orphans, who have not the ſmalleſt Relation to him.

Here, my Lord, I will for a little leave the Pannel, and give an Account of *Allan Breck Stewart*, who is charged as the Committer of this Murder, having entered into a wicked Conſpiracy with the Pannel for that Purpoſe. Whether he was the actual Murderer or not, the Pannel knows not; neither is it my Buſineſs to ſay. I ſhall only point out what Connexions was betwixt the Pannel and *Allan Breck*, leaving it to your Lordſhip, and the Jury, to judge, if the Circumſtances of theſe Connexions, as I ſhall now open them, or even as they are laid in the Libel, are ſufficient to fix upon the Pannel his being a Conſpirator in this execrable Plot. At the ſame Time, there is no Queſtion but the Proſecutors muſt fix the actual Murder upon *Allan Breck*, otherwiſe the Charge againſt the Pannel entirely flies off.

This *Allan Breck Stewart*, my Lord, was the Son of one *Donald Stewart*, a particular Friend, and diſtant Relation of the Pannel's. He died while his Children were Infants, and, upon his Death-bed, committed them to the Care of his Friend, naming him Tutor and Curator to them. The Pannel faithfully executed this Truſt, took Care of the Children's Education, and managed their Effects to the beſt Advantage. *Allan* turning extravagant, when he grew up to Man's Eſtate, and having ſpent what was left him by his Father, inliſted in his Majeſty's Service, without clearing Accounts with the Pannel, who uſed to ſupply him with Money, and pay little Debts for him, even after he became a Soldier, though he knew he had already given him more than his Patrimony. This the Pannel thought he owed to the Memory of his deceaſed Friend. *Breck* continued in his Majeſty's Service until the Battle of *Preſton*, where being taken Priſoner by the Rebels, he inliſted with them, continued with them during the Rebellion, and afterwards made his Eſcape into *France*, and inliſted in the *French* Service, where he ſtill continues. Since he firſt went over, he has been in uſe, now and then, of coming back to *Scotland*, and ſtaying a few Months with his Relations; he commonly landed firſt at *Edinburgh*, and lodged in the Houſe of one *Hugh Stewart*. There he ſeldom went out but in the Night, and more than once narrowly eſcaped being apprehended as a Deſerter. When he came up to *Rannoch* or *Appin* among his Relations, he uſed to ſtroll about without any ſettled Reſidence; and where-ever he came, he generally threw off his *French* Cloaths, as they were remarkable and improper for that hilly Country, and borrowed from any Acquaintance, where-ever he happened to be at the Time. Among others, he uſed to viſit at the Pannel's Houſe, though he came ſeldomer there than to other Places in the Neighbourhood, as the Pannel uſed to take a good deal of Freedom in blaming his Conduct and Extravagance. About the Beginning of *March* laſt he came over from *France*, was at the Houſes of *Balachallan* and *Annat*, and went from thence to *Glenbucky*'s Houſe, where he continued until the End of *March*, and while there he threw aſide his *French* Cloaths, and wore Cloaths belonging to *Glenbucky*, or his Brother. In the Beginning of *April* he came to the Pannel's Houſe, immediately before the Pannel went to *Edinburgh*, and ſtaying a Day or two, went off with a dark coloured ſhort Coat with clear Buttons, and other Parts of the Country Dreſs, which he had picked up about the Pannel's Houſe, and continued ſtrolling about the Country in that Dreſs, until the latter End of *April*, when he returned to the Pannel's Houſe, and ſtaid a ſingle Night. On the 11th of *May*, about One o'Clock Afternoon, he returned, and found the Pannel upon a Field, where his Servants were covering Potatoes. They continued there about a Quarter of an Hour in the Hearing of the Servants, when an Expreſs came from Mr. *Campbell* of *Airds* to the Pannel, deſiring him to come to him at *Keil* upon Buſineſs; upon which the Pannel walked with *Breck* from the Field to the Houſe, at about fifty Yards Diſtance, and leaving him there without going in, went directly to *Keil*; continued there until betwixt Ten and Eleven at Night, when returning Home he found there ſeveral Strangers beſides *Allan Breck*. They ſupped all together, and continued in one Room until they went to Bed. *Breck* lay in the Barn with the Pannel's Sons, and one *Archibald Cameron*. The Pannel had no private Conferences with him; they were not one Moment by themſelves, nor ever in Company, but before the Family and the Strangers. Early in the Morning of *Tueſday* the 12th, before *Breck* was out of Bed, and without ſeeing or ſpeaking with him, the Pannel went to *Appin*'s Houſe, and *Breck* was gone before he returned, and the Pannel has never ſeen him ſince. What Cloaths he carried off, he does not know; but he has authoriſed *me* to ſay, that what is laid in the Indictment may be true, that he went off in the ſhort Coat which he uſed before. That he went to *Ballacheliſh*, from that to *Glenco*'s Houſe, and then to *Callart*, and, on *Wedneſday*, came back to *Ballacheliſh*, where he ſtaid all Night. On the *Thurſday*, in the Forenoon, he aſſiſted *Ballacheliſh*'s Servants in carrying out Dung, and, after Dinner, he got a Rod, and went a-fiſhing, continued ſome Time in Sight of *Ballacheliſh* and his Servants, who were carrying out the Dung; but going a little up the Water, a riſing Ground intercepted their View, and they ſaw no more of him.

This, my Lord, is a true Account of the Connexion betwixt the Pannel and *Allan Breck* preceding the Murder, as it will come out upon Proof. I will draw this Concluſion, that this horrid Conſpiracy muſt have been laid and concerted between them in a few Seconds, while the Pannel was walking from his Potatoe Ground to his Houſe, at fifty Yards Diſtance; for at no other Time had they any private Conference. The changing the Cloaths, your Lordſhip ſees, was altogether unknown to the Pannel, and what *Breck* was in uſe to do at the Pannel's Houſe, and over the whole Country. But taking the Story as it ſtands in the Libel, who can poſſibly believe that the Pannel would have given *Breck* his own Cloaths to diſguiſe himſelf for committing this Murder, or that *Breck* would have put on this Diſguiſe four Days before the Murder happened? The Libel ſays, *Glenure* was certainly expected on the *Thurſday* to return from *Fort-William* to *Ardſhiel*. Would *Breck* then have put on his Diſguiſe on the *Monday*, and gone about publickly in it? No, ſurely, my Lord; Children would have conducted a Plot better than this; and yet upon this Circumſtance of changing Cloaths, as incredible as it is falſly repreſented, ſtands one Half of the Proſecutor's Hopes (if the Libel contains them all) of fixing this Crime upon the Priſoner.

I proceed to lay before your Lordſhip the Sequel to *Glenure*'s Murder. Betwixt Six and Seven on *Thurſday* Evening, *Mackenzie*, *Glenure*'s Servant, called at the Pannel's Houſe, and informed him, that his Maſter was ſhot dead in the Wood of *Lettermore*. The Libel ſays, that the Pannel appeared nowiſe ſurpriſed or concerned at the News; and that neither he, or any of his Servants, went to look after the Corpſe. *Mackenzie* will not, dare not ſay ſo. The Pannel ſhewed that Surprize, that deep Concern, which every innocent Man muſt feel at ſo unexpected and melancholy an Accident. He directed *Mackenzie* the neareſt Road to *Glenduror*, to call Mr. *Campbell* of *Bolaveolan*, *Glenure*'s Friend, and, in the mean Time, ſent ſuch of his Family as could be ſpared, and ſeveral of his Neighbours, to take Care of the Corpſe. On *Friday* Morning, the Day after the Murder, the Pannel received a Meſſage from *Allan Breck*, by *Donald Stewart*, Nephew to *Ballacheliſh*, who had ſeen him in the Fields about Nine o'Clock in the Evening before, when *Breck* told him, that as *Glenure* was killed, there would be a ſtrict Search for his Murderer; and he being a Deſerter, it was proper for him to keep out of the Way; he was therefore reſolved to leave the Country immediately; that he would hide himſelf for a Day or two in the Deſart of *Koaliſnacoan*; and as he had no Money, he begged of *Donald Stewart* to go to the Pannel, and inform him of this, and intreat him to ſend a little Money to him at *Koaliſnacoan*. *Donold Stewart* then ſaid to him, that he hoped he had no hand in *Glenure*'s Murder himſelf: Upon which he took God to witneſs he had none; but his being a Deſerter to the Highland Army, was the only Cauſe of his abſconding, as he was ſure he would be hanged, without Mercy, if he was ſeized. Upon receiving this Meſſage, the Pannel ſent *Alexander Stewart*, Packman, to *Fort-William*, to one *William Stewart*, a Merchant there, to get five Guineas from him,

to

him, telling him, at the ſame time, that it was for the Uſe of *Allan Breck Stewart*, who was going off the Country, as he was a Deſerter, to ſhun the Search which would be made for the Murderer of *Glenure*. Upon the Packman's Return, he found the Pannel in the Cuſtody of a Party of Soldiers; and as he had got but three Guineas from *William Stewart* at *Fort-William*, the Pannel gave him other two, and bid him go to *Koaliſnacoan*, where he would find *Allan Breck*, and give him the five Guineas. Upon which the Packman went home with the Pannel's Wife, who, he is ſince informed, gave him *Breck*'s *French* Cloaths, which he had left at the Pannel's Houſe the *Monday* before, but which the Pannel knew nothing of. As to the long Epiſode in the Indictment, narrating the Converſations betwixt *Allan Breck* and the Bouman, as the Pannel knows nothing of them, they ſhall paſs unnoticed by me. Only I beg leave to make this ſingle Obſervation to the Gentlemen of the Jury, that when this Part of the Libel comes under their Conſideration, they will obſerve, that it can be proven by the Oath of but one Witneſs, and that Witneſs ſwearing only to what he heard *Allan Breck* ſay; conſequently the miſtaking one Word muſt be of the moſt fatal Conſequence, for this Reaſon, Hearſay Evidence is altogether rejected in Law. They will likewiſe conſider, that what *Allan Breck* ſays, is ſaid by one who wanted to clear himſelf to the Bouman of the Murder of *Glenure*, which the Bouman charged him with; for which Reaſon he might be tempted to throw out Inſinuations againſt others. Let the Jury keep theſe Hints in their Eye, and then let them give what Weight to this Part of the Libel their Conſciences can allow them. The Pannel was taken into Cuſtody on the 16th; on the 19th it was rumoured in *Fort-William*, where he was incarcerated, that *Allan Breck* was the Murderer of *Glenure*. No ſooner does the Pannel hear this, but he writes a Letter to Mr. *Macfarlane*, Writer to the Signet, expreſſing the greateſt Abhorrence and Deteſtation at the Murder; tells him that *Allan Breck* was ſuſpected to be the Committer of it, as he was that Day ſeen near the Place where *Glenure* was killed, and immediately diſappeared. He expreſſes his Deſire of having him brought to Juſtice; gives a particular Deſcription of his Looks and Dreſs; and further ſays, he was probably gone South, to take the firſt Opportunity of going abroad; and that he commonly lodged in the Houſe of *Hugh Stewart* at the Back of the *Fountain-well*, when he came to *Edinburgh*. This Letter too is brought as a Point of Dittay againſt the Pannel. What ſtrange and unaccountable Torturing of the moſt upright Actions muſt there be, to make this criminal? This Pupil, this Relation, this Friend's Son of his, whom he had ſupplied with a little Money, to keep him out of the Hands of the military Law as a Deſerter, no ſooner does he hear him named as being guilty of this horrid Murder, but he does all in his Power to have him brought to Juſtice: Strange it is indeed to make this a Crime! What ſhould the Pannel have done? Should he have concealed the ſuſpected Murderer? No, my Lord, he acted a more honourable Part, ſuch a Part as this Court will approve of; ſuch a Part as every Member of it would have acted himſelf.

As I have taken up too much of your Lordſhip's Time already, I ſhall but juſt mention ſuch Defences as occur in Point of Law, leaving them to be inſiſted on by the Gentlemen who are to ſupport me.

And, in the firſt Place, however willing the Pannel may be to ſtand the Iſſue of his Trial, it is our Buſineſs, as Counſel for him, to lay hold of every Handle againſt it. I therefore ſubmit to the Court, whether this Pannel, who is only charged as Acceſſary, can be tried before the Principal, *Allan Breck*, be firſt diſcuſſed. I do moſt humbly contend, he cannot; 1*mo*, Becauſe, if the contrary Practice were allowed, Probation might be led againſt the Principal, tho' abſent, contrary to the fundamental Law of this Nation; and it muſt firſt be proven he, the Principal, committed the Crime, *primo debet conſtare de corpore delicti*, before the Acceſſary can be convicted. 2*do*, If the Acceſſary muſt defend the abſent Principal, it may be of the moſt fatal Conſequence to both, tho' innocent. The Principal's greateſt Enemies may be led as Witneſſes, and ſuch Defences as would have been ſufficient to exculpate him entirely, may be omitted. 3*tio*, Theſe Principles are followed by the Opinions of all Lawyers who write upon the Criminal Law, and likeways by the Practice of neighbouring Nations, particularly that of *England*; where the Principal muſt be attainted after Verdict or Confeſſion, before any Judgment can be given againſt the Acceſſary. But, 4*to*, What I now plead, I humbly apprehend to be the Law of *Scotland*; for ſo it is expreſly ſaid, *Reg. Mag. ch.* 26. *b.* 4. *Quon. Attach. ch.* 83. and 29 *ſtat. David.* II. And, agreeable to theſe, is the Opinion of our great Criminal Lawyer Sir *George Mackenzie*, laid down in the ſtrongeſt Terms in his Title *Art. Part.* Paragraph 9th. 5*to*, I muſt object for the Pannel to the Relevancy of this Libel, that the Facts and Circumſtances mentioned in it, though they ſhould be fully proven, are not ſufficient to infer his being acceſſary to this Murder. Every Libel is a Syllogiſm: The major Propoſition contains the Crime, and the Laws againſt that Crime; the minor contains the Facts charged againſt the Pannel; and the Concluſion is, that, from theſe Facts, he is guilty of the Crime, and deſerves to ſuffer the Pains of Law. Now, if the Facts charged do not amount to the Crime, the Concluſion muſt be falſe, and the Libel irrelevant. This, I humbly apprehend, is the preſent Caſe. From the above Narration of the Facts, and what Obſervations I have already made upon them, I hope your Lordſhips will be of Opinion, that the Circumſtances charged in the Libel are ſo extremely vague and trivial, that they are not ſufficient to bring the Pannel under ſo much as a Suſpicion of being guilty of this horrid Crime laid to his Charge.

If your Lordſhips ſhall think proper to repel theſe Defences, and to remit the Pannel on this Indictment to the Knowledge of an Aſſize, we humbly hope you will allow us a Proof of all Facts and Circumſtances that can tend to his Exculpation; particularly of his Friendſhip with *Glenure*; of *Allan Breck*'s being a Deſerter, and being in uſe to put off his *French* Cloaths, and put on Cloaths belonging to the Family where he happened to be at the Time; of the Pannel's having no private Conference with him preceding the Murder; of the Meſſage which the Pannel got from him after the Murder, bidding him ſend him a little Money to *Koaliſnacoan*, where he was going; and, in general, of all other Defences that may occur as neceſſary to the Pannel in the Courſe of his Trial. I will conclude, my Lords, with a ſingle Word to the Gentlemen of the Jury, that the more flagrant, the more atrocious any Crime is, the more clearly and diſtinctly they will require it to be made out to them: That as the Crime is propoſed to be fixed upon the Pannel by preſumptive Evidence alone, they will be cautious in diſtinguiſhing betwixt ſuch Preſumptions as are concluſive, and ſuch as are not ſo; between ſuch Preſumptions as can ariſe from no other Cauſe but the Pannel's being in a Conſpiracy to Murder *Glenure*, and ſuch as are more naturally conſtrued to have ariſen from other Cauſes. If they find ſuch Preſumptions; as that they can, before Almighty God, bring in a Verdict *guilty*, it is their Duty to do ſo, and the Law will have its Vengeance. But let them have this always in their Eye, that better twenty guilty eſcape, than that one innocent Man ſhould ſuffer Death by their Verdict.

Mr. Robert Mackintosh for the Pannel.

My Lord Juſtice-General, and Lords Commiſſioners of Juſticiary,

I Appear alſo to contribute my ſmall Mite towards the Defence of this Pannel, who has the Misfortune to be accuſed of a Crime, which every body muſt admit to be of the deepeſt Dye; and, as laid in the Indictment, attended with the moſt aggravating Circumſtances; and I do it, my Lords, not out of an Opinion of my being in any Degree equal to the Taſk, a Share of which I have undertaken; but rather that a poor Man, ſtanding Trial for his Life, may not not be abſolutely deſtitute of Aſſiſtance, when uncommon Endeavours have been uſed to deprive him of abler Help.

My Lords, I dare ſay, every one who ſpeaks in this Cauſe, on whatever Side, will begin with expreſſing a Deteſtation of the Crime now charged againſt the Pannel; if not in accuſing the Pannel, yet in this we ſhall all agree, to condemn the miſerable Perſon, whoſe Conſcience accuſes himſelf of it; whether he now ſtands at the Bar, or whether he flies from the avenging Sword of Juſtice. I muſt acknowledge, that if the Pannel has been guilty of, or acceſſary to this Murder, beyond all Controverſy it conſtitutes him one of the greateſt Criminals that this or any other Country can afford. Murder is a heinous Crime, whether it is the Fate of the Eminent or the Obſcure. But this Murder ſeems to be a Complication of all Guilt; and as my Duty calls me to plead in Defence of one labouring under ſuch an Accuſation, I cannot do it but with the utmoſt Concern. The very Mention of ſuch Barbarity and Iniquity, as was juſt now rehearſed, could not fail to move every humane Breaſt; but the reading of an Indictment, ſuch as we have a little while ago heard, is enough to inſpire Horror even in the Innocent. It is ſtill harder upon me, when I conſider the unhappy Sufferer in that dreadful Scene, which is now to be the Subject of Trial; one, againſt whoſe Life I ſhould be the laſt Man to excuſe the ſmalleſt Attempt; one whom I knew, whom I regarded, whom I had the Honour to be in Friendſhip with: His Death, had it been common, would have affected me; but his Murder afflicts me. I ſincerely regret it, for his own ſake, for the ſake of his Friends, for the ſake of the poor diſconſolate Lady, who now weeps over her own Widowity, and the orphan State of her infant Children; I regret it for the ſake of the whole Land, that ſtands polluted by the cruel Shedding of innocent Blood; and, in a particular Manner, do I regret it for the ſake of the Highlands of *Scotland*, for which I own, from private Connexions, I cannot help having a Regard, and which I am afraid have, by this unlucky Accident, ſuffered a deep political Wound, that it may take Time to rub off the Effects of; as being able to furniſh ſo eminent an Inſtance of Barbariſm, in ſpite of the noble Attempt of the Legiſlature, and of all in the Adminiſtration, to poliſh and civilize them, to reduce them to the righteous Plan of the Government of this Country, and to a conſtitutional Equality with the reſt of the united Kingdom.

My Lords, for theſe Reaſons do I moſt heartily join in deploring this fatal Cataſtrophe. At the ſame Time, my Lords, the Defence I am now to plead, fixes my Attention upon a more agreeable Proſpect; that of Innocence, and not of Guilt; and the Importance of the Iſſue juſtly challenges my moſt ſanguine Efforts. We have before us the Life and Fortune of a Man, a Countryman, I believe an innocent, tho' accuſed one: I muſt believe him innocent, not only as I am yet ignorant of any Proof that I think ſhould convict him, but more, as I have not been able, in a very ſtrict Inveſtigation, to diſcover from himſelf any Symptom of Guilt; and as the Perſuaſion of Innocence may give Courage to defend, ſo I perſuade myſelf I need make no Apology, if I am able to ſpeak with that Earneſtneſs and Freedom that becomes the Conſequence of what is at Stake. And, on the other hand, I hope to be excuſed, if I fail in that Accuracy and Diſtinctneſs, which I could wiſh to obſerve, from a juſt Regard to the Dignity of this High Court, and to the Preſence of a crouded, and I dare ſay, an intereſted Audience, who are ready to ſwallow with Greedineſs every Word that ſhall be ſpoke on this Subject.

My Lords, before I go farther, I cannot omit obſerving, what I am extremely ſenſible of, and that is, the Diſadvantages under which this Pannel enters upon a Trial for himſelf, and all that is dear to him in this World, for what concerns all that is precious to him in another; Diſadvantages which we ſhare in, who appear as his Counſel. But when I ſay ſo, I would not be underſtood as meaning to inſinuate any Reflexion upon the Conduct of the honourable Gentleman who proſecutes for his Majeſty: He does the Duty of his Office, the Duty which he owes to his King and Country; and gave an early Proof in this Matter of that Candour for which he is remarkable on all Occaſions, by turning a general Indictment into a ſpecial and circumſtantiate Charge. But, to uſe his own Words, when hindered from doing what his humane Inclination equally led him to, his Lordſhip is here but half a Purſuer: There are others concerned in carrying on this Proſecution; and I am afraid their juſt Reſentment of a Murder, which they had all the Reaſon in the World to be zealous in ſearching out the Committers of, has made them unguarded to Meaſures which I ſhould be ſorry to ſee retaliate; and puſhed them beyond the Bounds of what I would call Humanity, perhaps think Juſtice; and yet, while I cannot approve of their Conduct, I am loth, if I could avoid it, to be ſevere againſt it, not knowing, whatever I now think, how far Rage might have got the Aſcendant of Reaſon with myſelf, if in their Place. One Thing

is obvious, that though it is true, that the Juſtice of our Law agrees with the common Law of Reaſon, in preſuming every Man innocent till he is proved guilty, yet we have Reaſon to fear we come here oppreſſed with Prejudice, to create and propagate which, againſt this unfortunate Pannel, no Pains, no Expence has been ſpared, with manifeſt Intent to prejudge him in his Trial; and in this have ſome People been wiſe in their Generation; well knowing, that as preſumed Innocence is a great Advantage in a Trial, ſo believed Guilt is no ſmall Step to Conviction, and often anticipates the juſt Foundations of it, which can ariſe only in Proof. When I ſee, and am ſorry for this, my Lords, in one View, yet do I moſt rejoice at it in another, as it ſhews the Weakneſs of the Cauſe that has needed ſuch artificial Feet to ſupport it, even in the Beginning, and which being removed, as I hope they ſoon will be, the Superſtructure built upon the falſe Baſis will alſo fail. There are other Things too, which the Law of the Land would intitle us to complain of, and which a few Years more Experience might make it better become me to exclaim againſt: A cloſe Confinement of the Pannel, contrary to the ſacred Charter of Liberty, which this Nation boaſts of; and which illegal Proceeding was only removed of late by the Interpoſition of this Court; Impriſonment of Witneſſes to be adduced againſt him, where none had Acceſs to them but the private Proſecutors, or their Agents, removed at a Diſtance from the Check of my Lord Advocate's Superintendance, whoſe Office, though it intitles him to inveſtigate the Proof of public Offences, yet renders a Privilege, dangerous to be indulged to every injured Party, ſafe in his Hands. The Pannel has had but ſhort Warning to prepare for his Trial, tho' he was at great Diſtance from the Capital, from which only he could have Counſel and Aſſiſtance: And it is but very lately ſince his Counſel had Acceſs to ſee himſelf; not for ſome Time after we were in this Place. Theſe Things I only mention, as my Brother his already fully opened them; and I mention them, my Lords, as what may have ſome Weight with the Jury, who are to try the Pannel, (and whom I now conſider myſelf as addreſſing) to remove the Prejudices that are ſo naturally, tho' inſenſibly, imbibed without Doors, and which eſpecially ariſe in the Mind from the unavoidable, tho' inconvenient Situation, in which a ſuppoſed Criminal muſt appear, even when as yet the Law preſumes him not guilty, loaded with Irons, and ſurrounded with Guards.

My Lords, I do not mention, as a Diſadvantage to the Pannel, the Place of his Trial. I think it can be none: There are Reaſons why this Place may be more proper for the Trial than any other, whether the Pannel be guilty or innocent; that he may be either acquit or condemned, and Juſtice may take place where the Crime was committed. And one Advantage the Pannel moſt ſurely profits of by the Trial being here, *viz.* the Preſence of the Prince who preſides in it, and who, in a ſpecial Manner, is the Father of his own Country, as he juſtly appears to be of this Part of the Kingdom. This of itſelf is more than ſufficient to balance a Diſadvantage, were it poſſible to ſuppoſe any could ariſe from the Opportunity that affords it: At the ſame Time, I would, with great Deference, obſerve (and I hope I may do it without giving Offence, which I am ſure I do not mean to do), that there may be ſomething in this, which calls upon the Jury to be cautious; and I hope an Attention to it will have the Effect to make them rather lean to the favourable Side, than be diſpoſed to make any Stretch againſt the Pannel. It is the Privilege of the Subjects of this Country to be tried by one another: Yet, when we have this Advantage, and it is an ineſtimable one, ſtill it is to be tried by Men of like Paſſions, *i. e.* like Infirmities with ourſelves; and all Men are more or leſs ſuſceptible of Prejudice. I hope, however, I may ſafely truſt to the Honour of ſuch a Jury as will be put upon the Pannel's Trial, that they will, if any ſuch there are, lay aſide all Regard to Country Alliances or Connexions, diveſt themſelves of all Prejudices, and ſit down to the Trial with a candid Reſolution to yield only to the Force of Truth; deſiring rather to ſee Innocence thereby vindicated, than Guilt, unwiſhed-for Guilt condemned, and inclined to give the Caſt of Favour on the favourable Side, unleſs the Proof ſhall come out very clear and convincing. Trials in this Country are open and public, and the Eyes of the World are a Check both upon Judges and Jury; and as this Murder has been, and juſtly, the Subject of an extended Speculation, ſo will the Trial for it: I hope, be the Iſſue of it what it will, it ſhall be ſo conducted, as to reflect nothing on any concerned in it; and, I ſhall only add, that, could I ſuſpect that the Law of my Country, or the Court, could put any on the Pannel's Jury, who would overlook their Obligations to Impartiality, which I dare ſay is impoſſible in this preſent Caſe, I would put ſuch in Mind, that, if they have no Regard to the Pannel, they ſhould regard themſelves; for, as the old Philoſopher ſaid, Nobody is happy before he die; what is the Pannel's Fate To-day, may be ours To-morrow, and what is Proof againſt him, may be againſt another long after this. Every Trial, therefore, tho' it preſently affects only thoſe who are under it, is in a material Senſe the Cauſe of thoſe who do try, of the Public, and of Poſterity.

My Lords, having ſaid ſo much in general, (and I think I could ſay no leſs) it ſhould be my Province now to ſtate what has occured to me for the Defence of the Pannel againſt this Indictment.

And here, my Lords, we have a moſt barbarous, indeed a ſhocking Murder, charged againſt two Perſons; but with this material Diſtinction between the two, that the one is by the Indictment charged as the actual Murderer, by himſelf; the other Mortal along with him at the Perpetration of it; and the other is only alledged acceſſary thereto, as having been in a previous Conſpiracy with the Murderer: And the Pannel now to be tried, is this Conſpirator.

My Lords, I do not diſtinctly ſee, from the Indictment as laid againſt *Brack*, what Proof there will be of his being the actual Murderer. I ſhould at preſent imagine, from the Way in which the Story is told, that there can be no Proof, at leaſt no direct, no ſatisfying Proof. But be that as it will, one Thing I am ſure of, from the Nature of the Thing; it is impoſſible there can be any direct Proof of a Conſpiracy, to which only the two Perſons accuſed were privy: And therefore it is, we ſee my Lord Advocate has very properly, and, I think, very candidly, as I ſaid before, ſpecified his Charge of Accemon againſt the Pannel, into theſe Circumſtances, from which his Lordſhip infers the Acceſſion or Conſpiracy. And it is upon the Relevancy, or Import of theſe Circumſtances, that I fall to ſpeak to your Lordſhips. For it is not to be imagined, that, by diſputing the Relevancy of the Indictment, we mean to call in Queſtion that Murder is a Crime: And, for my own Part, I as little contend, that, as the Law now ſtands, the Charge againſt the Pannel in the general Propoſition of the Libel is relevant, that he is guilty, Actor, Art and Part of the Murder of *Gleware*. And I do farther admit, that, if the Pannel has been acceſſary to, or the Former or Contriver of a Conſpiracy for perpetrating this horrid Murder, he is truly as much Art and Part thereof, as the actual Murderer: Nay, were that the Caſe, I ſhould not heſitate to pronounce him, if poſſible, a greater Criminal than the Miſcreant by whoſe Hands he accompliſhed the wicked Aſſaſſination. But it is my Buſineſs now to endeavour to ſhew, that the Circumſtances condeſcended upon in the Libel, and on which I muſt ſuppoſe the Proof is to reſt, are not tantamount to the general Charge; or, in other Words, that the Premiſſes of the Indictment, ſuppoſing them true, do not infer the Concluſion, much leſs will they ſupport it, when they appear in that Light which I hope the Proof will place them in, diveſted of the romantic Dreſs of Exaggeration, in which Fancy has dreſſed them. And when I attempt this, I own, my Lords, it is not with Deſign to influence your Lordſhips Interlocutor; for, as I have already admitted the general Propoſition of the Libel to be a relevant Charge, I ſuppoſe the Interlocutor of the Court will be confined to that. It was the Cuſtom, not many Years ago, for the Court to pronounce ſpecial Interlocutors upon ſuch Indictments as the one now under Conſideration, finding what Facts or Circumſtances, if proven, would infer the Charge: But your Lordſhips later, and, I think, better Practice, has been to evade that, as what, if it had any Effect to influence the Judgment of the Jury, did in ſo far deprive the Pannel of his rightful Privilege to be tried by the Jury, and not by the Court; or as, what indeed was more likely to happen, being a Thing that had no Effect at all, as the Jury would judge over again for themſelves, what the Court had ineptly judged of for them. I ſay, therefore, my Lords, I do not ſpeak ſo much for your Lordſhips, as for the Jury; willing, ſo far as I can, to guide their Attention to where I apprehend it ought chiefly to be fixed, in the Proof they are to hear; and to help them, if I can, to judge on what Part of it they ought to lay Streſs in forming an Opinion of this Cauſe.

There is only one Thing which I muſt ſubmit to your Lordſhips, and I which I ſhall but mention, as my Brother, who opened the Defence, has already offered it, and your Lordſhips may hear more of it in the Reply to my Lord Advocate; and that is, the prejudicial Queſtion how far the Pannel, charged with an Acceſſion to the Crime of another, can be tried for it, till the Principal is firſt diſcuſſed. Your Lordſhips well know, that an Acceſſary does of its own Nature follow a Principal; till, then, there be a Principal, there can be no Acceſſary, and the Principal being removed, the Acceſſary is alſo taken away; and therefore, till the one is convicted, there is no Room for trying the other; in like manner as the Principal being acquit, the Accomplices cannot be condemned. That the Law ſtood formerly ſo, is moſt certain; as appears from many Authorities, which I forbear citing. How far this is altered by the Act of Parliament, introducing the Law of Art and Part, will be ſubject to the Judgment of the Court, where I leave it. But I muſt at leaſt inform the Jury, that, however the Law ſtands in this Matter, it is undoubtedly certain, that they, or any Jury, cannot convict an Acceſſary, but upon this Suppoſition, that, if the Principal were under Trial before them, they would convict him, *Quando proceditur contra aliquem tanquam qui præſtiterit auxilium, debet conſtare principalem delinquiſſe.* And the Gentlemen of the Jury will take heed to this, that if they ſhall find Cauſe to convict the Pannel upon the Evidence that ſhall be brought before them, they do, in the moſt expreſs Manner, declare their Opinion, that *Brack*, and no other, was the Murderer of *Gleware*. Nor muſt they hold ſufficient for this Purpoſe the preſumptive Conviction, which ariſes from his flying Juſtice, and being fugitate and outlawed by the Sentence we heard this Day pronounced. The Law ſays expreſsly, That no Fugitation of a Principal is to be held for a Conviction againſt an Acceſſary; and indeed, why ſhould it? For the Confeſſion of the Principal, were he now here, would not be Evidence againſt the Pannel, and much leſs muſt his Abſence or Run-away have that Effect. So that the Jury muſt here conſider, that, before they can convict the Pannel, they muſt have ſuch Evidence againſt *Brack*, as would condemn him, were he on Trial. And ſo, leaving Mr. *Brack* till we ſee what Proof comes out againſt him, the Queſtion is at preſent, Upon what is the Charge of the Pannel's Guilt founded? or, Are the Circumſtances alledged in the Indictment ſufficient to ſupport the Accuſation of Art and Part againſt the Pannel?

And here, my Lords, I do not propoſe to entertain your Lordſhips with a nice Diſquiſition on the Law of Art and Part; ſuffer me only, in three Words, to mention that, ſo far as I can comprehend by the Law of *Scotland*, Art and Part is inferred from Circumſtances antecedent to, concomitant with, or ſubſequent upon the actual Commiſſion of a Crime. Now, my Lords, when I look to the Indictment before me, I am able only to perceive two Facts condeſcended upon, from which the Pannel's Acceſſion to this Murder is to be inferred; the Cloaths alledged to be furniſhed by the Pannel to *Brack* before the Murder, as a Diſguiſe to commit it in, and the Money ſent him after the Action, to enable him to go off the Country. Theſe, I ſay, my Lords, are, ſo far as it appears to me, the only two conſiderable Circumſtances to infer Acceſſion: For your Lordſhips will obſerve, there is an abſolute Blank as to the principal Period in which Guilt ought to appear, the actual Commiſſion of the Crime; at leaſt, ſo far as I can gather, there is not one concomitant Circumſtance alledged againſt the Pannel, which connects with the actual Murder. And, as for the Circumſtance of the Pannel's ſending the Money to a certain Place, where, as would appear from the Indictment, he had no Acceſs to know that *Brack* was; as to that, I ſay, and ſome other ones of leſſer Moment, which I likewiſe take Notice of, I take them to be deſigned as a Key to explain into a Connexion with the Murder, the two Facts already mentioned, by ſhewing a previous Knowledge of the Murder, which the Facts themſelves do not import, and yet without which they have no Weight. Upon theſe two

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cardinal Facts, then, attempted to be supported by the other leſſer Circumſtances, in my Apprehenſion, lies the Burden of the Proſecutors Charge. And I will beg leave to ſay a few Words to each of them.

But, before Particulars, give me leave, my Lords, as ſhortly as I can, to make an Obſervation or two upon the Nature of Proof in general.

And, my Lords, I think it is a common, but a well-founded Maxim, derived from better Authority than mine, that, in proportion to the Greatneſs of a Crime, ought the *Strength* of the Proof of it to be. The higher a Crime is, and the deeper it draws in its Conſequences, ſo much the clearer and ſtronger ought the Evidence of it to be: And indeed juſtly; for, I hope, bad as Men are, corrupted as human Nature is, it is not come that Length, that Vice is natural to Mankind. I rather perſuade myſelf, that it coſts ſome Pains, by rooted Habits, to extinguiſh the Sparks of Reaſon, which are the Seeds of Virtue. Here then, my Lords, is a Crime of ſo enormous a Size, that it is almoſt too big to believe; Murder, deliberate Murder, Aſſaſſination in Face of the Sun, in Defiance of all Law and Government. What Proof ſhould then be expected of ſo monſtrous an Offence? That one ſhould ſit down deliberately and coolly to form a Conſpiracy of bereaving another of his Life, in ſo horrid and barbarous a Manner; what Degree of Flagitioſity muſt not be proved to ſuppoſe one capable of it? Sure, though many Circumſtances be brought to eſtabliſh a Preſumption of Guilt, yet to believe it is no eaſy Matter. Muſt it then depend upon Gueſs-work? Is it to be tried upon queſtionable Evidence? or, Is a Jury to be perſuaded into it by Art? No, there muſt be the moſt palpable and inconteſtable Proof; and, unleſs the Evidence is full and plain, no Credit, I will venture to ſay, can be given to ſo black, ſo deteſtable, and ſo unnatural a Charge. It would almoſt require to ſee the Blood of the Innocent reeking on the Hands of the Guilty. But what have we here? Preſumptions built upon Preſumptions; Suſpicions, and theſe Suſpicions ſupported by others; Suſpicions without Proof, nay diſproved. We have firſt to get over the Belly of a good fair Character, which this Pannel had the Happineſs to poſſeſs, a blameleſs, moral Life in private. And, ſhould he all at once have deviated ſo far from the Paths of Virtue? Could he ſo ſuddenly ſhake off a Regard to all that is ſacred? I ſhould have expected to have heard urged againſt this Pannel, the abandoned Diſſoluteneſs of his Manners, the Barbarity of his Nature, that his Life was one continued Courſe of Wickedneſs; in ſhort, every Part of his Character devoted to Murder; that he was one inured to the Practice of it, and diſtinguiſhed by the moſt conſummated Guilt: Yet not one of theſe Circumſtances ſo much as alledged in all this aggravated Charge; and for a good Reaſon, *viz.* That the contrary is well known to be true by the Proſecutors themſelves. Next, my Lords, when we ſeek for a Cauſe of ſuch a Malice as could produce this Crime, we find a Cauſe that never ſubſiſted; a Cauſe noways adequate to the Effect: Reſentment; for what? For accepting an Office which ſomebody muſt have got; and none could have made a more favourable Uſe of, for the Friends of the Pannel, than this Gentleman did: (For which Reaſon they will be proved to have been in good Friendſhip long after that) Reſentment for turning out ſome Tenants from an Eſtate forfeit to the Crown; irrecoverably loſt to the Family with which the Pannel was connected. This is the Foundation; and what is the Superſtructure? Of a Piece with it truly. Why, the Murderer had on a Coat of the Pannel's when he committed the brutal Action, and got Money from him after it. Here is the Proof; a circumſtantiate Proof it is called.

My Lords, I have no Objection to circumſtantiate Proof; what the Law calls argumentative Evidence. I do admit, that it is a legal and proper Sort of Evidence, as much as direct Proof by Witneſſes. Every thing is legal Evidence, that is ſuch real and certain Proof as ought, in natural Juſtice and Equity, to be received: For what is Evidence of a Fact, but ſuch Teſtimony as the Nature of the Caſe requires to induce a moral Certainty of the Thing teſtified? And an Argument is nothing elſe than what gives Faith or Credit to a Thing in itſelf doubtful, which perfectly agrees with the Law-Definition of Proof or Proving, which is *fidem facere*. I will admit further, that circumſtantiate Evidence, when clear, is perhaps the moſt ſatisfying and convincing Proof of any. Circumſtances are inflexible Proofs: They will not bend to the Inclination of Parties: Witneſſes may be miſtaken, may be corrupted: Things can be neither; and therefore, ſo far as they go, deſerve unlimited, unreſerved Faith.

But then, my Lords, the Circumſtances muſt be clear, certain, and well connected: No Blank in the Chain, elſe all goes for nothing: The Arguments muſt be perſpicuous, nervous, and concluſive. The ſame Law that has ſaid, *crimina poſſe probari, vel teſtibus, vel documentis aut indiciis*, as it requires *idonei teſtes*, ſo does it *documenta apertiſſima, indicia indubitata, lucs meridiana clariora*. We muſt therefore, my Lords, carefully diſtinguiſh between circumſtantiate or argumentative Evidence, and bare Preſumption or even Probability; much more Suſpicion and Conjecture, with all which it has a near Affinity, and is therefore apt to be confounded with them; for they all depend on Facts or Circumſtances. But, ſays our great Criminal Lawyer, Sir *George Mackenzie*, Crimes cannot be proved by Preſumptions; for Preſumptions are only founded on Veriſimilitude, and what may be, may not be; whereas all Probations, eſpecially in Criminals, ſhould be infallible and certain; *concluſio ſemper debet ſequi debiliorem partem:* If otherways, ſays he, Judges (or Juries now) would be arbitrary. Probabilities, again, ſays a good Reaſoner, twenty of them allowed to be ſuch, are not equal to one Matter of Fact well atteſted; They may ſtrengthen the Fact, but cannot ſupply it: They cannot be Evidence themſelves, becauſe one Probability may be ſet againſt another, and ſo mutually deſtroy the Force of each other: And as for Suſpicions and Conjectures, who will pretend a Right to indulge them, where Life and Fortune are concerned?

Guarding then, my Lords, againſt theſe Things which are ready to miſlead, let us, and let the Jury, my Lords, examine cautiouſly and candidly the Circumſtances I mentioned, on which the Burden of the Indictment lies: Let us ſee if they approach a Proof; if they do not more participate of the Nature hardly of Preſumption, not at all Probability, rather Suſpicion and Conjecture; or if they amount to a ſolid and ſubſtantial circumſtantiate or argumentative Evidence.

My Lords, I mentioned firſt the Cloaths: And permit me, my Lords, once more in general to obſerve upon this Circumſtance, as well as the others that follow, That I do, with great Submiſſion, apprehend they derive their whole Weight from a Belief of the Pannel's Guilt, which it is indeed very natural to entertain from ſuch Circumſtances as he now appears in. The Indictment ſets out with laying down this Crime in the moſt ugly Colours, as indeed it juſtly does deſerve; and then ſubſumes, that the Pannel is guilty of it; and I venture to ſay, that, take away the Influence which too eaſy a Credit to this firſt Poſition gives to what comes after, all the Circumſtances brought to ſupport the Charge will in a great Meaſure loſe their Force; ſo that the Aſſertion of the Charge is the very Thing which ſupports the Circumſtances adduced to prove it, than which nothing can be a more falſe Circle of Probation. Prejudice, my Lords, is like a jaundiced Eye, or a magnifying Glaſs: To the firſt, every Thing it looks at appears yellow; and the laſt, to Appearance, increaſes the Bulk of every Object to which it is applied. Juſt ſo Prejudice diſcolours every Circumſtance, turns the moſt trivial into ſomething of Importance, and makes what is in itſelf indifferent, a Proof of Guilt. Can the Truth of this appear more verified in any, than it is in the preſent Caſe?

My Lords, I will not repeat the true Fact, as your Lordſhips have already heard it opened, with reſpect to the Cloaths: Had it been that *Breck* had really received them from the Pannel, ſure that of itſelf would not have proved the Pannel's Acceſſion to a Murder committed by *Breck* at the Diſtance of ſo many Days. But has it any Weight at all, this Circumſtance, as it has been told your Lordſhips, and as it will be proved to have in Fact happened? A Man comes to my Houſe, and, without my Knowledge, puts on, and goes away with my Cloaths; and when wearing theſe, a Murder is committed: Muſt I be acceſſary to this Murder? or, muſt I be preſumed acceſſary to it? *Breck*, your Lordſhips hear, was in uſe of changing his Dreſs: He had been ſix Weeks at one Time in *Rannoch* with theſe very Cloaths; and becauſe he has them upon him again at the unlucky Period, muſt the Pannel for that be guilty with him? My Lords, we have heard of Villains borrowing, ſtealing Cloaths, aſſuming Characters, feigning Voices, and ſuch like Things, when about to commit Crimes, of purpoſe to deceive, and to throw the Suſpicion of Guilt off from themſelves upon the Innocent. But ſurely theſe are dangerous Circumſtances, and would need to be ſupported by better Proof, before the Life of any Man was taken away upon them; or indeed what Man is ſafe? It will not avail that we keep ourſelves ſafe, ſo long as it is in the Power of others thus to bring us into Danger. Every Man muſt ſo be at the Mercy of others, and thoſe of the vileſt of Mankind. The Libel indeed ſays, the Pannel *furniſhed Breck* with his Cloaths; but how is that to be proved? Did the Pannel give him them? No, my Lords, we ſhall prove he took them, and went with them from the Pannel's Houſe, when he was not there, when he knew nothing of it. But tho' he had known, as he did on former Occaſions, or though he had with his own Hands given them to *Breck*, would it have been Proof againſt the Pannel? I cannot imagine it. I might admit, that had *Breck* never before changed his Dreſs at the Pannel's Houſe, had this been the firſt Time, it might have been a Circumſtance, and but a weak one too, from which to preſume Guilt againſt the Pannel: But when he had been in uſe of doing it, does there from thence ariſe ſo much as a diſtant Suſpicion againſt the Pannel? Whatever Effect it may have againſt *Breck* to preſume that wicked Deſign, which I ſhall at preſent take for granted he ſoon thereafter executed, (to preſume it, I ſay, againſt him) that he changed, at ſo critical a Conjuncture, his Dreſs; yet ſure it can have no Influence againſt the Pannel, who, till 'tis better proved, cannot be ſuppoſed privy to ſo horrid an Undertaking in *Breck*. And this, my Lords, puts me in mind to make a Diſtinction, which I ſhould have made ſooner, that is, betwixt *Breck* and the Pannel. And I muſt call upon the Jury carefully to ſeparate the Parts of this Indictment, which refer to the one and to the other; for, when they are confounded together, one, in reading or hearing it, is extremely apt equally to apply the Effect of all the Circumſtances to both. The Indictment has ſo checquered them thro' other, that it coſts ſome Pains to diſtinguiſh them, and lay to the Door of *Breck*, and of the Pannel, what ſeparately applies to each, and ſeems to ſupport the different Charges againſt them. To ſhew the Neceſſity of this, I will but mention one Paragraph of the Libel, where this Confuſion manifeſtly prevails. It is there firſt ſaid, that *Breck having come to the Pannel's Houſe on the* Monday *Evening*, James Stewart *the Pannel was informed by him*, (Breck) or by his Son *Charles Stewart*, or by *Faſnacloich*'s Daughter, of *Glenure*'s Motions and Reſolutions. And then it immediately follows, "And there, after *receiving ſuch* Advice, in the Evening "of the ſame Day, the ſaid *Allan Breck Stewart* laid aſide his own Cloaths, "*&c.*" So your Lordſhips ſee, that firſt *Breck* is ſaid to *inform* the Pannel, and then *Breck's receiving ſuch Advice or Information from the Pannel*, (juſt inverting the Thing) is laid down as the Spring of *Breck*'s Actions, with a Deſign, as is plain, to extract Guilt againſt the Pannel, from his giving Information to *Breck*, which produced his Action, when it was truly *Breck* himſelf that informed the Pannel, as the Indictment firſt aſſerts. This, my Lords, may be an Inaccuracy in wording the Indictment; but it is not for that I obſerve it: I mention it, that the Jury may ſee how carefully they muſt conſider and weigh every Branch of this complex Charge, as being heedleſs to one Branch or Circumſtance may have bad Effect. And ſurely it is evident in this Particular, that the Weight of the Circumſtance, as laid againſt the Pannel, wholly flies off by a juſt Attention to the erroneous Connexion of the Fact as narrated.

There is another Circumſtance of the Indictment, which, though it does not fall ſo directly within my preſent View, I cannot omit taking Notice of it, as it comes a-croſs my Thought; it is as to the Pannel's Behaviour when the Murder of *Glenure* was firſt notified to him by *Glenure*'s Servant. It is ſaid the Pannel appeared noways ſurpriſed or concerned. Alas, my Lords, what ſuch Proof of Guilt is this? We have ſeen doubtful Actions by the Help of Innuendoes conſtrued criminally; but to give that in Evidence which was neither ſaid nor done, to conſtrue Silence into Guilt, is entirely new; and the Author of this Invention will deſerve the Glory of the Diſcovery: This is, indeed, to

conjure one into a Crime. My Lords, I could venture to invert the Propoſition, if the Gentlemen pleaſe, and maintain, that a contrary Behaviour, to any remarkable Degree, would have been more ſuſpicious, *Tremor eſt ſignum cædis*, or in the Words of the Proverb of our own Country, *The greateſt Thief cries firſt, fy*. But, my Lords, the Fact is different from what is in the Libel. It will be proved to your Lordſhips and the Jury, that the Pannel, upon receiving this Piece of, I muſt call it melancholy News, expreſſed to the Meſſenger a decent Concern and Regret, tho' little did he think at that Time, that his Behaviour then would now be brought into Judgment againſt him.

Of the ſame Kind with this, my Lords, is another Circumſtance, which I remember in the Indictment (for I cannot go thro' them all); and that is, a Letter of the Pannel's to one *Charles Stewart*, relating to the Price of Milk-Cows.——I confeſs, my Lords, it is to me myſterious yet, what Import this Letter is of as a Proof againſt the Pannel. If it is, that the Subject of it is ſuſpected to be fictitious, that we ſhall be able to prove real. But what Connexion has it with the Charge? I own I cannot find it out. It would appear to me that this Letter muſt ſuffer Torture, and not a little of it, before any thing can be ſqueezed out of it againſt the Pannel. It puts me in mind of a Saying of a great but very wicked Politician, Cardinal *Mazarine*, who is ſaid to have boaſted, that, if he had but two Lines of a Man's Writing, with a few Circumſtances atteſted by Witneſſes, he would cut off any Man's Head when he pleaſed. Thank God, we breathe in a Climate different from the one that Pontiff ruled in: And I hope we do not delight in Blood ſo much as to adopt his cruel Scheme.

Theſe Things, my Lords, I have thrown out by the Way; but as to what I was upon, the Circumſtance of the Cloaths, I ſhall only add, that as it is in Truth, it appears of no Weight at all; and had it been as in the Indictment, I ſhould have thought it a Circumſtance greatly too thin and ſlender to build any thing upon.

There only then remains the other Circumſtance of the Money, which is poſterior to the Murder: For, as I have already had occaſion to obſerve, I do not diſcover a concomitant Circumſtance alledged, unleſs the Arms be pointed at for this Purpoſe; as I obſerve, there are two Guns mentioned in the Liſt of Evidence, as found concealed near the Pannel's Houſe, and which poſſibly the Proſecutors will attempt to prove to have been thoſe which the Indictment ſays *Breck* had brought, or cauſed to be brought to the Place of the Murder. Were any thing of this to be proved, I ſhall fairly admit it would be a ſtrong Circumſtance, as it is one of theſe very Things which the Law points out; *Opem fert qui, cum crimini patrato non interfuerit, ferramenta tamen, tela, venena commodaverit, ſciens cujus rei cauſa commodaret*. But I cannot ſee where the Proof of any thing like this can ariſe. It does not appear, that any Guns were found at the Place of Murder. I think 'tis preſumable the Murderer would carry his Arms with him, after uſing them to his wicked Purpoſe. And as for theſe found concealed near the Pannel's Houſe, we are inſtructed to ſay, they were in the Pannel's Houſe at the Time of the Murder, and were hid after it for fear of an apprehended Search for Arms, by the Military that was expected to come into the Country.

This therefore I leave upon the Proof, and ſhall now, in a Word or two, take notice of the Money ſent by the Pannel to *Breck* after the Murder. And here, my Lords, I muſt be allowed to obſerve, in the firſt Place, what Sir *George Mackenzie*'s Doctrine upon this Point is. His Words are, ſect. 7. (Tit. *Art and Part*) "Aſſiſtance given after the "Crime is committed, ſcarce deſerves the Name of Aſſiſtance." And cites an Authority for this Opinion. I will admit, my Lords, that, if this Pannel did, knowing *Breck* to be the Murderer of *Glenure*, adminiſter Help to his Eſcape, by furniſhing him with Money, he did a very wrong Thing; perhaps was guilty of an Offence, which the Law would puniſh.——But it is an Offence quite different from that of Acceſſion to the Murder. It is a Species of Crime by itſelf; and, as my Lord Advocate has not laid his Proſecution for that, we have nothing to do with it. At the ſame Time, my Lords, however wrong ſuch a Conduct might have been, yet it could admit of an Excuſe. Your Lordſhips have heard this *Breck* was the Pannel's Relation. He had been his Pupil, brought up in his Family till he went into the King's Service as a Soldier; and we all know, my Lords, the Strength of Compaſſion on ſuch Occaſions, eſpecially to our Friends, it would perhaps be hard to puniſh for it. The worthleſſneſs of our Relations does not at once diſſolve the Ties of Nature; none of us can be ſure, but we may have a wicked Son or a Brother; and, in a Caſe of this Sort, it would be natural to wiſh to help him out of the Way; perhaps it would be wrong, but ſuch is the known Force of natural Ties, and it, at leaſt, leſſens the Crime. However, here, my Lords, the Caſe does not apply; for we abſolutely deny, that the Pannel knew any thing of *Breck*'s Guilt; and ſuch Knowledge can never be preſumed; he knew the Situation he was in as a Deſerter, and the Hazard of it, when the Military were coming into the Country to make a Search: and to be ſure, had he been catched by the Military, they would have ſaved your Lordſhips the Trouble of trying him, ſuppoſing him to be guilty: A Court-Martial would have made ſhort Work with him, unleſs it had been (as likely it might) thought more for the End of public Juſtice, to make him ſuffer for ſo flagrant an Offence as this, than to hang him as a Deſerter. It was for this Reaſon, my Lords, and not from any Knowledge of his Guilt, that the Pannel, upon *Breck*'s Meſſage to that Purpoſe, as your Lordſhips have heard, ſent him the Money to enable him to get off the Country, and go where his Buſineſs called him; his Buſineſs, I ſay, my Lords; but at the ſame Time I call it his illegal, his unnatural Buſineſs, as an Enemy to his Country, and a Traitor to his King. And as to the Circumſtance which I formerly noticed, as tending to point out the Pannel's previous Knowledge of *Breck*'s Motions, by his knowing where to ſend the Money, though he had no Acceſs to ſee *Breck* after the Murder; as to this, I ſay, my Lords, your Lordſhips ſee no Streſs can be laid upon it, when you have heard that it was by a Meſſage from *Breck* that the Pannel learned his Motions: So that ſtill ſomething is deſiderate here, whereon to fix that Circumſtance, upon which alone depends the Pannel's Acceſſion, to wit, his Foreknowledge of the Murder.

My Lords, I have finiſhed what occurred to me on the Circumſtances of the Indictment; and I am unwilling to weary your Lordſhips.

I forbear entering upon the Bouman's Converſation with *Breck*; that is but one Man's Story of what another ſaid. It is but hearing a Hear-ſay, or rather leſs; and I know no Law, no Rule, it rather ſeems contrary to all Rule of Evidence, that one ſhould ſuffer for what another ſaid of him; and that the very guilty Perſon, as is here ſuppoſed. If he did ſay ſo, it might be to throw the Suſpicion off himſelf with the better Grace: But, be it as it will, it can be no Evidence againſt the Pannel.

There is but one other Thing in the Indictment, which we have to finiſh this doubtful Evidence, if it can be called ſo much, and that is, the Threatenings; but, as they are libelled in general, I cannot argue upon them; nor has the Pannel any Opportunity to diſprove them: They muſt therefore be left, till the Evidence is concluded.

My Lords, I have ſaid what I could, from ſuch Helps as were in my Way, upon the Nature and Import of this Sort of Evidence which is now before us. I ſhall only ſay further on it, that this Sort of Evidence, when imprudently handled, may be reſembled to the monſtrous Machine for making havock of Enemies, which, when invented by a Subject, was wiſely ſmothered in the Birth by the Governor, leſt, however convenient it might be when uſed for him, he might come one Day to regret the Invention, when he found it applied againſt himſelf. And as to this particular Caſe, I take it, that every individual Circumſtance, as laid in the Indictment, ſo far as we know of it, will be unſupported with Evidence; that all put together do not amount to the Charge. I think there are no Grounds for any private Opinion of the Pannel's Guilt, but what ariſe from Prejudice only. I think Prejudice, or even Opinion, has nothing to do with judicial Proceedings. It is the Judgment that muſt acquit or condemn; and that muſt, can only be founded on Evidence, on Proof, not on Suſpicion or Preſumption.

I ſhall now take the Liberty to read to your Lordſhips, and the Jury, the Words of a great Criminal Writer on the Common Law, when treating on the Subject of argumentative Evidence: *Math. de Crim. ad Tit.* 15. *Cap.* 6. He is ſpeaking of Arguments, and ſays, *Argumentum eſt neceſſarium, cujus conſequentia eſt neceſſaria, veluti coiviſſe eam quæ peperit; contingens, cujus conſequentia eſt probabilis, veluti cædem feciſſe qui cruentatus eſt.* Then he adds, *Contingentia argumenta, quamvis ſingula fidem non faciant, plura tamen conjuncta crimen manifeſtare poſſunt. Hæc appellantur præſumptiones; præſumptio enim nihil aliud eſt, quam argumentum veriſimile communi ſenſu perceptum, ex eo quod plerumque fit, aut fieri intelligitur:* And he gives the following Example of an argumentative Evidence which may condemn, which I beg the Jury will attend to, *Occiſus eſt kallendis Mævius; Titius perempti inimicus fuit eidem ſæpius non ſolum interminatus, ſed et inſidiatus eſt: cum deprehenderetur iiſdem kallendis in loco cædis cruentatus cum gladio cruento, ad menſuram vulneris facto, toto vultu expalluit, interrogatus, nil reſpondit, trepide fugit. Hic ſingula* (ſays our Author) *quidem argumenta infirmiora ſunt, univerſa tamen cædis auctorem Titium evidenter deſignant.* And I moſt heartily agree with the Doctrine, and ſhall leave it to the Jury to judge, how far the Proof brought againſt the Pannel comes up to this Standard.

I ſhall conclude with laying before the Jury the Words of a great Judge and Lawyer of our own Country, on an Occaſion ſomewhat ſimilar to this. It is Part of my Lord *Cowper*'s Speech upon the Biſhop of *Rocheſter*'s Trial, where the Evidence depended on Circumſtances, as it does here. His Lordſhip ſays, "The Wiſdom and Goodneſs of our "Law appears in nothing more remarkably, than in the Perſpicuity, "Certainty, and Clearneſs of the Evidence it requires to fix a Crime "upon any Man, whereby his Life, his Liberty, or his Property, can "be concerned: Herein we glory and pride ourſelves, and are juſtly "the Envy of all our neighbour Nations. Our Law, in ſuch Caſes, "requires Evidence ſo clear and convincing, that every By-ſtander, the "Inſtant he hears it, muſt be fully ſatisfied of the Truth (and Certainty) "of it. It admits of no Surmiſes, Innuendoes, forced Conſequences, "or harſh Conſtructions *, nor any thing elſe to be offered as Evidence, "but what is real and ſubſtantial, according to the Rules of natural "Juſtice and Equity."

Theſe are my Lord *Cowper*'s Words as we have them given us *(It is very true, the Judgment of the Houſe of Lords went againſt his Lordſhip's Opinion in that Queſtion; but I muſt preſume that the Judgment of that auguſt Aſſembly, tho' againſt his Opinion, proceeded upon the Principles eſtabliſhed by himſelf; and tho' it had been otherwiſe, the Argument would ſtill be good, as Reaſoning is not always bad, when it fails in Succeſs)*. I think I may with great Propriety adopt what that ſame Noble Lord farther ſaid on that Occaſion, as follows; "In the Caſe before you, the whole Charge is "built upon Circumſtances, and theſe are ſaid to be ſupported by other "Circumſtances; but all of them are ſo remote, ſo general, and I may "ſay ſo inoffenſive, that they might ſuit any Lord here." I think the Circumſtances charged againſt the Pannel might ſuit any one here.

My Lords, I beg Pardon for ſaying ſo much; I hope your Lordſhips will excuſe it, for the Reaſons I gave in the Entry. I ſhall only further add, that the Pannel is now on Trial for his Life; he aſſerts his own Innocence; he pleads Not Guilty to the Charge. I hope it is the Anſwer of every one preſent, God give him a good Deliverance! And if he falls, let it be as a Sacrifice to Juſtice, to expiate Guilt, and purge the Land of Blood, not as a Victim to the blind Fury of his Enemies, or the Rage of the Deceaſed's Friends, to appeaſe popular Prejudices, or ill-founded Clamour and Outcry.

Mr. FRASER, againſt the Pannel.

My Lord Juſtice-General,

I Appear as Counſel for Mrs. *Campbell* of *Glenure*, and her infant Children, againſt *James Stewart*, now in the Pannel, accuſed as guilty, Actor, Art and Part of the Murder of *Colin Campbell* of *Glenure*; a Murder aggravated by its being committed from a malicious Hatred and Reſent-

* Lord *Bacon* ſays, "Judges muſt beware of hard Conſtructions and ſtrained Inferences; for there is no worſe Torture than the Torture of Laws." Fo. Edit. Vol. I. p. 440, 441.

ment conceived againſt Mr. *Campbell*, on account of the faithful Diſcharge of his Duty in an Office intruſted to him by his Majeſty.

This Crime, my Lord, is in itſelf ſo horrid, and in the preſent Inſtance is attended with aggravating Circumſtances of ſuch an extraordinary Nature, as muſt rouze the Indignation of every worthy Member of Society, and call loudly for the moſt ſevere and exemplary Puniſhment. Murder has always been looked upon as one of the moſt heinous Crimes; but in all civilized Countries, at all Times, that baſe, that treacherous Species of Murder, Aſſaſſination, has been held in ſtill greater, as more deſerved Abhorrence:——What then muſt be the Degree of that Man's Guilt, who deliberately, unprovoked, in cold Blood, during Times of full Peace, and in the moſt contemptuous Deſpite of Government, commits this moſt treacherous and moſt abhorred of all Murders! Heavy as that Load of Guilt is, I am ſorry to ſay, my Lord, it lies with its utmoſt Weight upon the Priſoner now before you; which renders this Trial of great Importance to every Individual, but of ſtill greater to this Country in general. If Aſſaſſins, capable, my Lord, of lying in wait with premeditated Malice, with Malice concealed in their Hearts, for Hours, for Days; if ſuch are ſuffered to go unpuniſhed, who of us all is ſafe, what Individual, however innocent, however brave, however particularly intitled to the public Protection! But what, I hope, my Lord, we all hold of greater Importance than the Safety of Individuals, the Intereſt, the Honour of this Country is very nearly concerned, not to ſuffer the moſt daring and bare-faced Inſult to be offered to his Majeſty's Authority and Government; and offered at a Time when we, in common with his Majeſty's other Subjects, are reaping the Fruits of his moſt benign Reign: I ſay, my Lord, our Intereſt, our Honour is concerned, not to ſuffer this without endeavouring to wipe off the Stain from the Country, to ſhew the King, and to ſhew the World, that this is the bloody Deed of one or two wicked and deſperate Men; a Deed which the Country abhors, and which it will not ſuffer to go unpuniſhed.

The Gentleman who opened the Defence, my Lord, has been as good as his Word, and has given indeed a plauſible Account of this Affair; which makes me think it neceſſary to lay before the Court, as diſtinctly and as conciſely as I can, that State of the Facts which there is the greateſt Reaſon to believe the Proof will eſtabliſh. And, in doing ſo, I hope to give your Lordſhips a more juſt View of this extraordinary Caſe; and, at the ſame Time, to be of ſome Uſe in leading the Gentlemen of the Jury to thoſe Parts of the Proof which deſerve moſt their Attention.

The Pannel, *James Stewart*, my Lord, is natural brother to Mr. *Stewart* of *Ardſhiel*, who commanded the Men of that Name that were engaged in the late Rebellion, and, by means of that, he acquired their Affections and Attachment. When *Ardſhiel* was obliged to leave the Country, his Brother (the Pannel) ſet himſelf at the Head of the Family Intereſt; and it not appearing in that Part of the World a forced Tranſition, he was allowed to take this Authority upon him. In a ſhort time, therefore, he came to be a leading Man, and to have the chief Influence over the common People. Such, my Lord, was the State of that Corner of the Country in the Year 1749, when Mr. *Campbell* of *Glenure* was appointed Factor for his Majeſty upon the Eſtate of *Ardſhiel*, and ſome other forfeited Eſtates in that Neighbourhood. *James Stewart* ſoon foreſaw how much this Factory muſt interfere with the Plan which he had laid, and with the Intereſt which he wanted to eſtabliſh; *Glenure*, therefore, very early became the Object of his Ill-will. But it did not long reſt there; for in the Year 1751, *Glenure* having, in Conſequence of Orders from the Barons of Exchequer, cauſed Mr. *Stewart* to be removed from the Farm which he poſſeſſed upon the *Ardſhiel* Eſtate, what was before but Ill-will, was now turned into Hatred and Reſentment. This led him to oppoſe all *Glenure*'s Meaſures, and particularly to play the Volunteer in the Service of ſome other Tenants upon the ſame Eſtate, whom *Glenure* was about to remove at the enſuing Term: For this Purpoſe, he repaired in Perſon to *Edinburgh*, and, in Name of thoſe Tenants, tho' without the ſmalleſt Commiſſion or Authority from them, made be preſented to the Lords of Seſſion, a Bill of Suſpenſion of the intended Removal, and obtained a Siſt of Execution; this Siſt he prevailed upon the Tenants to intimate to *Glenure*, who was put to the Trouble and Expence of a Journey to *Edinburgh*, before he could have the groundleſs Bill of Suſpenſion anſwered; which was indeed all that was neceſſary in order to make it be refuſed.

Mr. *Stewart*, my Lord, little ſatisfied with this unſucceſsful Attempt, which confirmed *Glenure*'s Influence at the Expence of his own, and finding himſelf forced to quit the Country, and to abandon his favourite Plan of Popularity, formed a moſt deſperate Scheme of Revenge, no leſs than a Plot to take away the Life of *Glenure* in the baſeſt Manner. In purſuance of this Scheme, he was at Pains, over all the Country, to repreſent *Glenure*'s Conduct in the moſt diſadvantageous Light; and, when he thought there was a general Odium raiſed, he had recourſe, in a more particular Manner, to thoſe in whom he could moſt certainly confide, to thoſe who were moſt eaſy to be ſtirred up, and moſt inclined to any deſperate Deed. Different Setts of ſuch Men, my Lord, he aſſembled at different Times, and, after expatiating againſt *Glenure*'s ill Conduct, he uſed all his Art to convince them, that it was their Duty to free the Country of what he was pleaſed to call *Glenure*'s Oppreſſion; telling them, that he had once ſeen *Commoners* in *Appin*, who would, long ere then, have ſtopped his Career; and that he could aſſure any of them, who was hardy enough to undertake it, a certain Eſcape to *France*, and a handſome Penſion afterwards! By thoſe Methods, my Lord, Mr. *Stewart* uſed his utmoſt Endeavours to ſtir up ſome hot-headed Ruffian to the Execution of his Plot; but his Endeavours were long uſed in vain, till at length *Allan Breck Stewart* was thrown in his Way, a Man marked out for ſuch a Purpoſe; a Deſerter from our Service to that of the *French*; one who, in both Countries, was a Man of deſperate Fortune, but who, in this, had not only loſt all Title to the Protection of the Law, but was become obnoxious to its ſevereſt Penalties. This Man *James Stewart* immediately laid hold of and cheriſhed. It was eaſy to ſtir him up to Reſentment. To him therefore he communicated the whole of his Deſign, and with him he concerted the Execution of it. *Allan* had nothing to loſe; therefore it was determined he ſhould be the Actor, whilſt *James* ſhould lie by to protect him, and to turn the Miſchief as much as poſſible to his own Advantage. Happily, my Lord, Keenneſs and Reſentment, as uſual in Crimes, got here the better of Caution, not only with *Allan*, but even with the more ſagacious *James*; for, in the midſt of their moſt cunning Contrivances, they could not refrain from uttering ſuch ſtrong and particular Threats againſt *Glenure*, as immediately pointed them out for the Objects of general Suſpicion. Both of them have many Times threatened him with Death, and both of them have even gone beyond general Terms; for *Allan* declared *he would, on the firſt Occaſion, ſhoot him as he would a black Cock*; an Expreſſion very applicable to the baſe Manner which he afterwards made uſe of: And *James*, ſtill more inveterate, ſwore, in the Fullneſs of his Heart, *That he would ſhoot* Glenure, *even if he himſelf was ſo diſabled, as to be obliged to go upon his Knees to a Window in order to do it.* Theſe are Inſtances of the Threats which they made uſe of; which firſt pointed them out, and which muſt ſtill go a great way in convincing every thinking Man that they, and they only, were his Murderers.

In conſequence of their laſt Reſolution, that *Allan* ſhould act whilſt *James* ſtood at the Helm, *Allan* laid himſelf out to get particular Information of *Glenure*'s Motions; and, for that Purpoſe, he contrived to make a Viſit at *Faſnacloich*, the very next Houſe to *Glenure*, and within a Mile of it; there he remained upon the Look-out till *Monday* the 11th, when *Glenure* ſet out from his own Houſe for *Fort-William*. Upon which *Allan* immediately repaired to his Aſſociate *James*, to communicate the Intelligence he had got, *viz:* That *Glenure* was gone to *Lochaber*; that he was reſolved to perſiſt in removing the Tenants of *Ardſhiel*, and was certainly to return for that Purpoſe before the Term-Day, the 15th. Having upon this Information conſulted together, and ſettled the Plan of Operations, the Pannel furniſhed his Friend with a Dreſs more proper for what he was going about, giving him a Suit of his own Cloaths, a black ſhort Coat, Trowſers, and a blue Bonnet; and, thus equipped, he ſet out the next Morning, *Tueſday* the 12th; but, knowing that *Glenure* might poſſibly not return for a Day or two, in order to avoid Suſpicion, he made a Tour among his Relations, going firſt to *Ballachelliſh*, from thence to *Glenco*, from thence to *Callart*, where he ſtaid *Tueſday* Night, and on *Wedneſday* the 13th he went back, by the ſame Route, to *Ballachelliſh*; in all which Circuit, he was at hand to lay wait for *Glenure*, at whatever Time he ſhould return from *Lochaber*. On *Thurſday* the 14th, when there was a moral Certainty that *Glenure* would return, (he having appointed a Meeting with ſeveral Gentlemen in the Country of *Appin* that Evening) *Allan* left *Ballachelliſh*'s Houſe under Pretence of fiſhing, and, very ſoon after, appeared at the Ferry of *Ballachelliſh*, by which *Glenure* muſt neceſſarily paſs, in his Way from *Lochaber* to *Appin*: There he met the Ferry-man, and, haſtily calling him aſide, inquired, with more than ordinary Earneſtneſs and Anxiety, if *Glenure* had paſſed there that Day; and, being anſwered that he had not, *Allan* immediately ran up the Hill, towards the high Grounds above the Houſe; from whence he had a View of the Country around, on both Sides of the Loch, and a ſhort Paſſage into the Wood of *Lettermore*. In this Wood, my Lord, it was, that he marked out a moſt proper Station for the Execution of his deſperate Deſign; a little Thicket, on a riſing Ground, within a few Paces of the High-way, along which every Traveller muſt neceſſarily paſs; from whence, himſelf unſeen, he could diſtinctly ſee the Road leading to the Ferry of *Ballachelliſh* on the *Lochaber* Side, and the Road on the *Appin* Side, leading from thence to the Wood of *Lettermore*. Here, my Lord, he poſted himſelf with one or two loaded Guns provided for the Purpoſe; and here he lay in wait till Mr. *Campbell* of *Glenure* had paſſed the Ferry, and was riding along the Road through the Wood. It was then, my Lord, that *Allan Breck* ſeized this long wiſh'd-for Opportunity, and when *Glenure* was come within convenient Diſtance, this abandoned Aſſaſſin ſhot him dead with two Balls from behind: A Deed as cowardly, as it was barbarous and inhuman! a Deed of which there is hardly an Example in this Part of the Kingdom, whoſe Inhabitants, however raſh they may be to brave Dangers in an open Manner, have never, till this atrocious Crime of their unworthy Countrymen, been branded with the Ignominy of baſe and cowardly Aſſaſſination!

Allan having thus executed his deadly Purpoſe, immediately diſappeared, in order to betake himſelf to the Concealment provided for him, calling in his Way, after a hidden Manner, and at Midnight, at *Glenco*'s Houſe, where he informed the Lady and her Son that *Glenure* was murdered, and, without any more Converſation of either Side, added, as a Conſequence of what he ſuppoſed known, that he himſelf was immediately to leave the Country. Soon after this, he arrived at his allotted Retreat, the Shealing of *Koaliſnaccan*, the Habitation of the truſty Bouman; and, in a Converſation which he and the Bouman had there, he talked of the Murder in a more remarkable Manner than he had even done to Lady *Glenco*; for, after faintly enough denying his own Concern in it, he told his Friend that he was ſure the Family of *Ardſhiel* would be ſuſpected, particularly *James Stewart* and his Son *Allan*; uſing this remarkable Expreſſion, That there would be no Fear of them if their own Tongues did not betray them, eſpecially *Allan*'s, who, he feared, was more open-mouthed than his Father.

All this while, my Lord, the Pannel remained at Home undiſturbed; and when the Accounts came of *Glenure*'s Murder, and every body elſe in the Neighbourhood was haſtening to go to look after the Corpſe, he never offered to ſtir, nay, he would not ſuffer any one of his Family to go near it. He, my Lord, had other Things to mind; not the unhappy Murdered, but the barbarous Murderer was the Object of his Attention; his own Preſervation was ſo cloſely linked with *Allan Breck*'s, that there was a Neceſſity for *Allan*'s being kept out of the Way at any Rate; *James* therefore immediately diſpatched *Alexander Stewart* Packman, his Relation, and a Perſon in whom he had entire Confidence, to *Fort-William*, with a moſt preſſing Demand, as he himſelf acknowledges, for Money to ſupply his Friend *Allan*, and to enable him to make his Eſcape from Juſtice; and when the Packman returned with a leſs Sum than was expected, *James*, in the moſt critical Juncture of his own Affairs, added Two-thirds of the Money which he had for his own Support to the Sum brought from *Fort-William*, and ſent away the faithful Packman, with this

Money, and his *French* Cloaths, to *Allan Breck*, giving particular Directions with regard to the Place of his Concealment; a Circumſtance no one can well be ſuppoſed to have known who was not in the Secret, who was not originally privy to the Crime for which he was obliged to have Recourſe to that Concealment.

Theſe, my Lord, are the Facts which, I have Reaſon to believe, will ſoon be proved to your Lordſhip. The Gentleman has been pleaſed to expreſs his Surprize, that, after ſo ſtrict an Enquiry, this ſhould be all that is made appear; and to ſay that theſe Facts are trivial, and not relevant to infer the Crime: But I cannot think any impartial Man who has read the Indictment now in my Hand, will join in the Gentleman's Surprize; on the contrary, I believe every ſuch Perſon muſt join with me, in thinking no ſmall Praiſe due to the very proper Encouragement and Aſſiſtance of the Crown, and to the very uncommon Diligence and Activity of the private Proſecutors which together have been able to throw ſo much Light upon ſo dark a Scene. Your Lordſhip has been told, that the Facts mentioned are not ſufficient to infer the Crime libelled. I need hardly obſerve, my Lord, that ſuch Crimes are particularly villainous and deſtructive, from the hidden and concealed Manner in which they are committed, which allows of no Defence, and too often ſcreens from Puniſhment: Their very Nature does not admit of ſuch a Proof as may be expected in other Caſes; a Proof by Circumſtances is all that can be looked for; indeed, when that is concluſive, it is of all others the moſt convincing. Witneſſes may be partial, they may be perjured; but a cloſely connected Chain of Circumſtances is liable to none of thoſe Objections. Now, my Lord, I humbly apprehend, no Chain of Circumſtances can be ſtronger, nor more cloſely connected, than that which I have juſt laid before your Lordſhip. You ſee a Diſcontent rationally, nay probably accounted for; the ſtrongeſt and moſt particular Threats following that Diſcontent, and the Commiſſion of the Crime as immediately following theſe Threats; the cleareſt Inſtance of the *malum minatum, & damnum ſecutum.* But it does not reſt here; you ſee, my Lord, the Murderer traced from Day to Day, from Hour to Hour, from Place to Place, to the very Day, the very Hour, almoſt to the very Spot in which the Murder was committed; and you ſee his Aſſociate in the ſtricteſt Connexion and Intimacy with him, caballing in private, and furniſhing him with a proper Dreſs, before the Murder, and, after it, furniſhing him with Cloaths and Money, to enable him to fly from Juſtice; and what deſerves particular Attention, you ſee his Aſſociate minutely acquainted with the Place of his Concealment, the Place previouſly pointed out for his Retreat, and the Murderer, in that Retreat where he thought himſelf in Safety, expreſſing his Concern for his Friend in very remarkable Terms, in Terms which carry a ſtrong Conviction of their guilty Conſpiracy, but, at the ſame Time, ſhew the Cunning with which they were conſcious of having contrived it. I cannot doubt, but your Lordſhip will think this a Chain of Circumſtances, more than ſufficient to infer the Crime libelled: At the ſame Time, I muſt beg leave to obſerve, that, in ſuch an Indictment as this, there was no Neceſſity of mentioning any one Circumſtance; it would have been ſufficient in Law, and the Gentlemen acknowledge it, to have libelled Art and Part in general Terms; that is, that Time and Place libelled, the Crime was committed, and that the Pannel was guilty Art or Part of that Crime. Now, if my Lord Advocate, from the Humanity of his Diſpoſition, from a Deſire that every Offender, however heinous his Offence, ſhould have the faireſt Trial, and every Opportunity of making his Defence; if, from theſe Motives, he has given a very long and particular Indictment, when only a very ſhort and general one was neceſſary, 'tis ſomewhat invidious in the Gentlemen of the other Side, to turn this into an Objection to the Relevancy. But let them, my Lord; the Point is fixed, as well by Law, as by uniform Practice; and therefore, whilſt we contend that the Circumſtances, as particularized in the Indictment, are fully relevant, we at the ſame Time humbly hope, from your Lordſhip, an Interlocutor upon the general Point of Art and Part, independent of theſe Circumſtances.

It has been objected to this Indictment, that an Acceſſary is here brought to Trial before the Principal is convicted, which is attended with theſe bad Conſequences; that Proof muſt be led againſt the Principal in Abſence; that his greateſt Enemies may be produced as Witneſſes, and the proper exculpatory Defences may be omitted. And further your Lordſhip has been told, that this is contrary to the Laws of neighbouring Nations, particularly that of *England*, and contrary to the Law of *Scotland*, as handed down to us in the Books of *Reg. Maj. Quon. Attach. ſtat. Dav.* II. and *Sir Geo. Mackenzie.* There might, my Lord, have been ſome Room for ſuch an Objection, if no former Notice had been taken of the Principal; but I can hardly think any Objection will be admitted in the preſent Caſe; when the Principal is indicted, when every legal Step is taken by the Proſecutors for bringing him to Juſtice, and when the only Conviction which our Law admits of in ſuch Caſes, is gone againſt him. The Inconveniencies which it was ſaid might follow from the preſent Practice, are trifling, compared to thoſe which muſt be the neceſſary Conſequence, if the Laws allowed not an Acceſſary to be tried, whilſt the Principal, conſcious of his own Guilt, dared not to appear. 'Tis but finding out ſome deſperate Fellow for the Execution who can afterwards be eaſily kept out of the Way; and the moſt inhuman Acts muſt go unpuniſhed, the moſt abandoned Villains may laugh at Juſtice. The Authorities produced in Point of Law are, no doubt, great; but Times and Circumſtances derogate from the greateſt Authorities. If what *Sir George Mackenzie* has given us as his Opinion was once Law, it is beyond all Doubt, by later Practice, no longer held as ſuch; and it ſignifies as little what is the Law of neighbouring Nations, as what was once our own Law, if Cuſtom, the juſteſt of all Legiſlators, directed by common Senſe and Equity, has now enacted the contrary.

The Hardſhips, my Lord, which it is pretended the Pannel underwent, can never be admitted as Objections to this Indictment. That they may not, however, leave any Impreſſion upon the Gentlemen of the Jury, or even upon this Audience, I ſhall give your Lordſhips the true Account of what are called Hardſhips; and they will no longer appear to be ſuch. That upon which moſt Streſs ſeems to be laid is, that the Pannel's Wife and his Children, who, by Law, cannot be called as Witneſſes againſt him, have been precognoſced, or judicially examined, and that their Declarations are propoſed to be produced in this Trial. The Fact is true; and nothing is more eaſily accounted for. When this Murder was committed, all was Confuſion and Ignorance; and every Method that could be imagined was found neceſſary, in order to get to the Bottom of the deep-laid Plot. It was at that Time that *James Stewart*'s Family, in common with all in that Neighbourhood, were called before a Judge, and examined upon what they knew of *Glenure*'s Murder: It was more than probable, that ſome one of that Country committed the Murder, and that many in that Country were in the Secret of it: But when theſe People were examined, neither of theſe Acts of Guilt was charged upon any particular Perſon: *Allan Breck* was not then accuſed of the actual Murder, nor *James Stewart* of being acceſſary to it. So that his Wife and Children were really not examined with any View to him; they were examined, to diſcover the Truth in general, before it was known upon what particular Perſon the Accuſation would fall. Whether their Declarations will be produced in this Trial, may be a Queſtion afterwards; but, in the mean while, it appears not contrary to Law or Equity, that they ſhould be produced: It is confounding Things to ſay that this is making the Pannel's Wife and Children Witneſſes againſt him: The Declarations will not be produced to prove the Truth of any Thing contained in them, of which they would not be legal Evidence; they are only to prove, that the Perſons who emitted the Declarations, averred theſe Things; and if any Words of theirs could give Cauſe of Suſpicion againſt the Pannel, it would be ſurely competent to prove ſuch Words by the Teſtimony of Third Parties. Does it not then come altogether to the ſame Purpoſe, to prove them by Production of the Words themſelves judicially committed to Writing? The cloſe Confinement of the Pannel, as well as that of ſome others, who were then taken up upon Suſpicion of Guilt, but are now to be produced as Witneſſes, was owing to the Rules of the Place where they were confined. His Majeſty's Garriſons have been uſed as Priſons, more for the Cuſtody of State Priſoners than of common Criminals: It is not to be wondered at, then, if military Officers, unacquainted with the Diſtinctions of Law, applied to the latter the Orders which they were in uſe to receive for the former: As ſoon as the Law was explained, it was obeyed; nor is it pretended, that the Pannel, or any other, was cloſely confined one Hour after the commanding Officer was informed that the Law forbade it. 'Tis true, a new commanding Officer came, to whom the Law was not immediately explained, which occaſioned the ſecond cloſe Confinement complained of; but he, as well as his Predeceſſor, paid Obedience to the Law, as ſoon as it was made known to him. That it was not therefore made known to both, as ſoon as might have been, the Pannel's Counſel muſt account for. That it was altogether their Buſineſs; and the Conſequence, whatever it be, which may ariſe from the Neglect of it, ought not to fall upon the Proſecutors, far leſs upon the Gentlemen of the Army, who the Pannel himſelf acknowledges, have all, in any Charge they had of him, done their Duty with the utmoſt Humanity, always like Soldiers, and like Men. It is ſurpriſing, the Gentlemen ſhould mention, as a Hardſhip, their being refuſed Acceſs to the Pannel, after they came to *Inverary*; they muſt be conſcious that this was a Hardſhip of not an Hour's Duration. They required Admittance from the chief Magiſtrate, who not caring, as the Duke of *Argyll* was upon the Spot, to take any Step without his Grace's Approbation, ſent directly to acquaint him of the Demand; and his Grace gave immediate Orders for their Admittance. The Gentleman who ſpoke firſt, mentioned one Thing, which, I dare to ſay, he alone will think a Hardſhip upon the Pannel; I mean, my Lord, its having fallen to that Gentleman's Share to open his Defence; and I cannot help thinking the Complaint of the Pannel's Want of able Aſſiſtance, coming from that Side to this, looks like Banter: For, ſetting aſide my Lord Advocate, whoſe Office obliges him to aſſiſt the Proſecutors; I need only beg your Lordſhip will caſt your Eye firſt to the one Side of this Table, and then to the other, in order to judge where the Advantage lies in Age and Experience.

Upon the whole, my Lord, I cannot doubt but your Lordſhip will find this Libel relevant to infer the moſt ſevere Pains of Law, as the Crime libelled is of the moſt heinous Nature; and that you will remit the Pannel to the Knowledge of an Aſſize, who, I find, from the Liſt in my Hand, muſt be Men above the Imputation of any other Prejudice, but what every good Man muſt feel againſt ſo horrid a Crime; a Prejudice, which, I am ſure, they will carefully diſtinguiſh, as I hope we all do, from any perſonal Prejudice againſt the Pannel, who has an undoubted Right to demand their moſt impartial Attention to the Proof, by which alone his Innocence muſt ſtand confeſſed, or his Guilt meet with its deſerved Puniſhment.

Mr. Erskine againſt the Pannel.

My Lords,

I HAVE likewiſe the Honour to be of Counſel for the Proſecutors on this Trial, and, as ſuch, it is my Duty to ſupport the Charge exhibited in the Libel; which has been juſt now very fully and diſtinctly opened.

The Importance of the Trial, the Reſpect I have for the Honourable Court, and this Audience, were alone ſufficient to have laid me under great Uneaſineſs: But that Uneaſineſs is greatly increaſed, when I find myſelf engaged in a Taſk, which I am at preſent but ill prepared to execute.

Tho' I early and willingly engaged to take a Part in this Trial, an unexpected Diſtreſs, which has, for ſome Days, diſſipated my Attention to Buſineſs, made me hope the Proſecutors would have relieved me of an Engagement which I was unfit to perform, and diſpenſed with my Attendance, which, I apprehended, could not be material to them; but in this I have been diſappointed by the Indiſpoſition of a Gentleman of great Abilities and Experience, which has unhappily deprived them of his abler Aſſiſtance.

For this Reaſon I will beg leave to confine myſelf entirely to make the proper Anſwers to the Arguments which have been urged by the learned Gentlemen in Defence of the Priſoner.

I ſhall forbear to enlarge upon the many aggravating Circumſtances that appear in the horrid Scene juſt now opened to your Lordſhips.

I will not attempt to inflame the Jury, by giving looſe Reins to an Imagination, warmed by a real Regard for the Gentleman deceaſed, Compaſſion

Compaſſion for the Widow and the Fatherleſs, under peculiar Circumſtances of Diſtreſs, a high Concern for the Intereſt of this Country, and the Preſervation of our preſent happy Conſtitution; all which appear to have been ſtruck at by the Hand that gave this Wound.

Theſe Conſiderations cannot fail to kindle Indignation in every Breaſt; and I am confident they have already had the Effect to rouze the Attention of the Court, and balance a miſplaced Compaſſion, not unnatural to humane Minds, which ſometimes blunts even the Sword of Juſtice: But the Proſecutors do not expect to obtain a Judgment againſt the Priſoner in this Court, upon any other Foundation than a real Conviction of his Guilt, ariſing from Evidence clear, unexceptionable, and agreeable to the Laws of this Country.

The Laws of this Country are favourable, particularly favourable to Perſons under Trial for their Life; and the Proſecutors are willing to allow the Priſoner the full Benefit of every Advantage that theſe Laws, or the Practice of the Court, can give him a Title to.

This being the Caſe, I cannot omit obſerving how improperly the Priſoner has reſted the greateſt Weight of his Defence upon clamorous Aſſertions of unfair Advantages, and unlawful Oppreſſion upon the Part of the Proſecutors.

For, 1*mo*, Tho' they were founded on Truth, they would not amount to a Defence againſt the Libel: One Crime cannot compenſate another, nor an Injury received from the Proſecutor wipe away the Guilt of the Priſoner.

But, 2*do*, Theſe are Meaſures ſo inconſiſtent with that glorious Spirit of Liberty that reigns even among the Rulers in this Age and Nation, ſo inconſiſtent with the known Mildneſs and Clemency of his Majeſty's Government, and the unfortunate Circumſtances of the private Proſecutors in this Trial, that I can hardly perſuade myſelf it would be neceſſary to make a more particular Anſwer to theſe Complaints.

Nevertheleſs, as I am ſenſible that nothing is more inſeparable from noble and generous Minds, than a Deſire to throw every Atom into the Balance on the Side of the Diſtreſſed, while there remains a Poſſibility of their Innocence; and that a ſimple Suſpicion that the Priſoner had ſuffered any unneceſſary Hardſhip, or been deprived of any Means of defending himſelf, might avail him more in the Event of this Trial, than the beſt Defence in the Mouth of the ableſt Advocate; for that Reaſon, I will beg Leave, in a few Words, to ſhew the Court what Foundation there is for ſuch Complaints.

The firſt was, that the Proſecutors had deprived him of the Benefit of Counſel, by retaining moſt of the ableſt Lawyers at the Bar.

To this I can make no ſtronger Anſwer, than what the Court has juſt now heard from the very Gentlemen who make the Complaint, and will be confirmed by theſe who are to ſupport them. I am confident they will convince the Court, and all who hear them, of the Abſurdity of ſuch a Complaint, when urged by four Gentlemen of ſuch Abilities.

In the ſecond Place, it has been ſaid, that the Priſoner had been deprived of his Liberty, and kept in cloſe Confinemnt contrary to Law, debarred the Converſation of his Family and Friends, and denied Acceſs to ſpeak either to his Agents or Witneſſes.

To all which it may be anſwered in the general, that the Laws of every well-governed Realm certainly allow the Confinement of Perſons charged with capital Offences, in ſuch Manner as they may be ſecured, till they can be brought to Trial. That no Limitation of this Rule has been introduced, either by Law or Practice, in *Scotland*, other than what is contained in that valuable and ſalutary Statute of Parl. 1. Seſſ. 9. of King *William*, for preventing *wrongous Impriſonment*. No Part of which has been infringed in the preſent Caſe.——That the Priſoner has been, ſince he came to this Place, ſtrictly confined, cannot appear unreaſonable or oppreſſive to thoſe who know that of late, in ſpite of the Vigilance of the Magiſtrates, ſeveral Criminals have eſcaped from their Gaol, whoſe Caſes were leſs deſperate than his, and who had no formidable Tribe of Friends or Accomplices to aſſiſt their Eſcape.

It will not appear ſurpriſing or unjuſt, that the Magiſtrates were cautious to give Acceſs to any Perſons, under the Colour of their being Agents or Witneſſes, without a proper Warrant, when it appears from the Proof to be brought in the Trial, that, during the Priſoner's Confinement in the Garriſon at *Fort-William*, he found Means to tamper with the principal Evidences, (though alſo in Cuſtody, in order to prevent ſuch undue Influence) by Emiſſaries, who carried repeated Meſſages in his Name.

This, I think, might likewiſe appear to be a good Reaſon for the Officer commanding at *Fort-William*, to be particularly careful to interrupt and prevent theſe Practices, by denying Acceſs to the Perſons by whoſe means they were known to be carried on.

But as the Priſoner's Complaint has been loud upon this Head, I muſt beg Leave to recal the Attention of your Lordſhips and the Jury to one of the Facts libelled, from which the Acceſſion to the Murder is inferred; it is the ſupplying the Murderer with Money to enable him to fly from Juſtice; let it be remembered in what Manner it was executed; the Priſoner was indulged by the Officer commanding the Party that apprehended him, to ſpeak with his Wife apart, before he was carried off: The Uſe he made of that Indulgence, was to give her the greateſt Part of the Money in his Pocket, with Inſtructions to ſend it, and the Murderer's Cloaths, to the Place where it had been concerted he ſhould wait for them.

The Indulgence upon the Part of the Officer was natural and humane; from the Circumſtances that were then known, there was no Reaſon to ſuſpect, that ſuch Uſe would have been made of it; and by God's good Providence it is become a material Circumſtance in the Inveſtigation of the Source of the horrid Scene of Iniquity before the Court.

Now, as this Fact is admitted to be true, I muſt ſubmit what Foundation there is to complain of Severity: Whether the commanding Officer had reaſon to repeat ſuch Indulgences, or to give unlimited Acceſs to his Family and Relations? Nevertheleſs, I am well authoriſed to ſay, that, at *Fort-William*, the Priſoner had many and great Indulgences of this Kind; that he was allowed to take the Air in the Garriſon, and to converſe with his Friends and Relations, in ſuch Manner as was conſiſtent with the ſafe Cuſtody of his Perſon, and the Inquiries which were then carrying on by the proper Officers: And both before and ſince he was brought to this Place, his Agent and Lawyers have had Acceſs to be with him as often as applied for in a proper Way. He was not indeed allowed Acceſs to ſome of his Servants and Dependants, from whom material Evidence was expected, with whom he had been tampering, and who had declared, they were over-awed by his Authority: But for that I apprehend no Apology is neceſſary.

In the laſt Place, your Lordſhips have heard much from the Counſel for the Priſoner, of unfair Means that have been uſed to traduce his Character in the Country, and to prepoſſeſs the World with an Opinion of his Guilt, by which he is ſaid to be, in ſome Meaſure, condemned before he is brought to Trial.

I muſt beg your Lordſhips and the Jury to conſider the Circumſtances of the Proſecutors who are charged with theſe Practices. Has the diſconſolate Widow, who has no Relation, and ſcarce an Acquaintance in this Corner of the Iſland, been ſo ſucceſsful in prepoſſeſſing the Country with an Opinion of the Priſoner's Guilt? or, are her Children, as yet uncapable of Speech, fit to aſſiſt her in traducing his Character?

If the Relations of the Deceaſed had attempted it without Foundation, they would have gained no Credit with the impartial World; or would have been counterbalanced by the numerous Relations of the Priſoner, at leaſt in this Country. Nevertheleſs, my Lords, I will admit that he labours under great Diſadvantages upon this Head; a general Opinion of his Guilt has prevailed; and I am ſorry to ſay, that he has many and ſtrong Adverſaries, who have been buſy to eſtabliſh it. *Magna eſt veritas, et prævalebit.* The Horror of the Crime with which he is charged, has raiſed the Attention of every impartial Perſon, and made them induſtrious to diſcover the Authors of it.

The Blood of the Innocent has called aloud to Heaven for Juſtice; and, by a remarkable Concurrence of many Circumſtances, brought to Light by the Declarations of a Cloud of Witneſſes, the Priſoner is clearly pointed out, not indeed as the Executioner, but the Contriver of the Murder, and the Aider and Abettor of the Murderer.

I will not ſay, that his Character in private Life concurs againſt him; I have no Authority from my Employers to aſſert it; nor will I aſſert what is not ſupported by Evidence. But I muſt ſay, that his Family and Connexions, his Character and Conduct in publick Life, are ſo many Circumſtances forming a Preſumption almoſt equal to a Proof, in Support of the Charge brought againſt him. Theſe are the moſt powerful Adverſaries he has to ſtruggle with, and from them that general Opinion of his Guilt has taken its Riſe, which is unjuſtly aſcribed to the Proſecutors.

What has been ſaid, my Lords, would naturally lead me, in the next Place, to lay open, to the Conſideration of the Court, the particular Circumſtances ſet forth in the Libel, from which the Priſoner's Guilt is inferred; and to take Notice of what has been ſaid in his Defence upon that Head: But in this I have been well prevented by the Gentleman who ſpoke laſt; and therefore I ſhall only beg Leave to add a few Obſervations to what has been ſaid by him.

The Court has been informed that Mr. *Campbell* of *Glenure* was appointed Factor on the forfeited Eſtate of *Ardſhiel*; that the Priſoner is natural Brother to the forfeiting Perſon, in whoſe Abſence he fell to have the Leading of his Dependents, and the Protection of his Family: Under that Character, as he had an Intereſt, ſo he had Opportunities of oppoſing the Factor in the Execution of his Office: That this Oppoſition grew by Degrees to the Height of premeditated Malice, which ſoon after broke out in repeated Threatening, and at laſt ended in Aſſaſſination and Murder.

On the other Hand, the Counſel for the Priſoner have aſſerted, that there was no Enmity or Malice between *Glenure* and him; but contrarywiſe, a Confidence and Friendſhip, which they offer to ſupport by Letters written by *Glenure* to him. Now, as this muſt appear to be inconſiſtent with the Charge in the Libel, I muſt beg Leave, in a few Words, to reconcile them.

When *Glenure* was appointed Factor on the Eſtate of *Ardſhiel*, he was ſo far from ſhewing any Diſpoſition to be ſevere upon the Tenants, or to put Hardſhips on the Family and Friends of the forfeiting Perſon, that he treated them with the utmoſt Humanity: And the Priſoner in particular had the Addreſs to inſinuate himſelf ſo far into his Confidence, as to be employed in collecting the Rents, and adviſed with in the letting of the Farms; and, during this Period, the Letters referred to were written. But as the Priſoner undoubtedly took Advantage of this Confidence, to bring Tenants into the Eſtate that were entirely under his Influence, and to make ſeparate Agreements with them in Favour of the forfeited Perſon and his Family, in Defraud of his Majeſty and the *Publick*; the Barons of Exchequer juſtly took Exception againſt this Part of *Glenure*'s Conduct; and, to prevent ſuch Abuſes for the future, gave him particular Inſtructions in Writing, to remove the Priſoner from a beneficial Farm which he poſſeſſed, and alſo any other of the Tenants who were connected with, or under the Influence of, the forfeiting Perſon and his Family.

Theſe Inſtructions were executed in Part at *Whitſunday* 1751, by the Removal of the Priſoner from his Farm; but as he eaſily procured another in the Neighbourhood, and retained his Influence over the Eſtate by the Means of the Tenants he had placed there, he diſcovered no Reſentment at that Time.

But ſo ſoon as the Factor, in the further Execution of his Inſtructions, began to take the proper Meaſures for removing, at *Whitſunday* 1752, ſome of theſe Tenants, he then took the Alarm: That was to pluck up his Intereſt by the Root, and entirely to put an End to his Influence. He therefore made the Cauſe of the Tenants his own, and every Method of Oppoſition was tried to prevent their Removal.

He no longer affected any Intimacy or Friendſhip with *Glenure*, but took every Occaſion to raiſe Diſcontent and Jealouſies againſt him, and repreſent him as an Oppreſſor in the Country. At laſt, without any Authority from the Tenants who were to be removed, he took a Journey to *Edinburgh*, on his own Expence, and applied, by a Bill of Suſpenſion, to the Court of Seſſion in their Names; in which the Factor's Conduct was ſet forth in ſuch falſe and odious Colours, as procured a Siſt or Stop of Execution of the Decree of removing, pronounced by the Sheriff, at the

Factor's Suit; and, by the ſame falſe Suggeſtions, he ſo far impoſed upon ſuch of the Barons, as were then in Town, as to make them liſten to his Complaints againſt *Glenure*.

When *Glenure* was informed of all this, he went directly to *Edinburgh* by great Journies; and, as ſoon as he had an Opportunity of being heard, he obtained a Removal of the Siſt from the Court of Seſſion; and ſatisfied the Barons, that he had conducted himſelf entirely by their Inſtructions. And, having been only two Days in Town, he returned with Expedition to the Country, *Whitſunday* being then near at Hand.

This Scheme being fruſtrated by the Diligence and Activity of the Factor, Meaſures of a different Nature became neceſſary.

The Priſoner had no Hopes of being able to keep up his Influence and Intereſt in the Eſtate, while *Glenure* continued to have the Management of it; and if he ſhould be able to get the better of him, he had Reaſon to think no other would be ſo hardy as to undertake it. It was therefore reſolved to take him off, and that before he ſhould remove the Tenants.

For the Execution of this Scheme, a very proper Aſſiſtant was at Hand; *Allan Breck Stewart*, a Perſon in deſperate Circumſtances, who had already forfeited his Life to the Laws, and inliſted himſelf an Enemy to the Liberties of his Country; a Dependant of the Family of *Ardſhiel*; brought up from his Infancy under the Care and Authority of the Priſoner.

With this Aſſiſtance, no Method was left unattempted to ſtir up the Populace, or ſome of the hardieſt among them, to cut off *Glenure* by Violence. Their Attachment to their Chief was made Uſe of for that Purpoſe. The Preſervation of his Family, the Welfare of their Country, and even the very Being of the Clan, were repreſented as inconſiſtent with allowing *Glenure* to live. Reproaches were uſed to ſome, Rewards offered to others, and ſtrong Inſinuations made by the Priſoner to his own domeſtic Servants: But all this had not the deſired Effect.

Wherefore, on *Monday* the 11th of *May*, *Allan Breck*, who had no other Occupation but wandering from Houſe to Houſe amongſt his Friends, and was thereby well able to trace all *Glenure*'s Motions, came to the Priſoner's Houſe, when the Reſolution appears to have been taken, that *Allan* himſelf ſhould ſet out early next Morning to way-lay *Glenure*, and take the firſt Opportunity to perpetrate the Murder.

This was no difficult Taſk to one who knew the Country. There were but three Days to run to the Term for the Removing. In that Period, it was known that *Glenure* was to go from his own Houſe, to the Sheriff's Court at *Fort-William*, and return to the Lands from whence the Tenants were to be removed. The Nature of the Country, and the ſeveral Ferries which he could not avoid, made it certain what Road he muſt take; and a Wood near the Lands afforded a proper Place for the bloody Deed. But *Allan*'s Dreſs, being the *French* Uniform, was too remarkable for an Executioner of the Works of Darkneſs: He was therefore ſupplied with another, of the uſual Colour and Faſhion of the Country, by the Priſoner. The Court has heard how he then took his Station at a Place within Sight of *Glenure*'s Houſe, till he ſaw him ſet out for *Fort-William*, and then how he retired towards a Ferry, where it was known *Glenure* muſt paſs in his Return.

In the mean Time, Meſſenger after Meſſenger is ſent to *Fort-William* by the Priſoner, to get more particular Intelligence of *Glenure*'s Motions. On the Night of the 13th, *Allan* came to a Place adjacent to the Ferry, and retired in the Morning into the Wood, from which he only came out to inquire if *Glenure* was paſt. About this very Time a Gun, belonging to the Priſoner, was a-miſſing; and, in the Evening, *Glenure* was ſhot in the Wood.

When the Horror of the Murder threw all the Neighbourhood into Confuſion and Conſternation, no Surprize appeared upon the Priſoner, or in his Family. Their Attention was entirely fixed upon the Execution of the Meaſures that had been concerted for facilitating the Murderer's Eſcape: For that Purpoſe, a Meſſenger was diſpatched to procure Money: Upon the Return of that Meſſenger (tho' the Priſoner was then in Cuſtody) the Money he brought, with what more the Priſoner could afford and alſo the *French* Cloaths, were, by the Priſoner's Direction, carried to a remote Place in the Mountains, where *Allan Breck* had for ſome Time waited in Expectation of them. At the ſame Time the Priſoner's Arms, which had been concealed near his Houſe, were diſcovered; and the very Gun, which had been miſſing on the Day of the Murder, was found amongſt them, with ſuch Marks as ſhewed that it had been lately diſcharged.

Thus, my Lords, as I had Occaſion to mention ſome of the Facts to be proved, I could not reſiſt ſhortly running over the whole, in order to lay them in one View before your Lordſhips and the Jury.

And, from this View, I apprehend it will now appear, 1*mo*, That the Friendſhip mentioned by the Counſel for the Priſoner, does not derogate from the Probability of his Guilt. It is a natural, and even a neceſſary Link of the Chain upon which the whole depends.

2*do*, It muſt occur to every one who hears theſe Facts, that tho' it is poſſible, barely poſſible, that ſeveral of them might have happened, tho' the Priſoner had been innocent of the Crime that is charged upon him; yet it is impoſſible to conceive, that ſuch a long Series of Circumſtances, connected and correſponding with one another, all concurring to anſwer the ſame End, ſhould be the mere Effect of Chance, and not the Conſequence of Intention and Deſign.

To take an Inſtance, it is very eaſy to believe, that *Allan Breck* might have changed his Cloaths, tho' he had not intended to murder *Glenure*; and that he might have lodged for ſome Nights near *Glenure*'s Houſe, tho' he had not intended to lie in wait for his Life: But when we find the ſame *Allan Breck* himſelf threatening to murder *Glenure*, and inſtigating others to do it; afterwards changing his Cloaths, lying in wait at different Times and in ſecret Places, appearing and *anxiouſly inquiring* for *Glenure* near the Time and Place of the Murder, and, as ſoon as it was committed, flying with Terror and Precipitation, who can doubt that he was the Murderer?

In the ſame Manner it may be well ſuppoſed, that the Priſoner might have lent *Allan Breck* a Suit of Cloaths, or given him Entertainment in his Houſe, tho' he had not inſtigated him to commit the Murder. But if it is conſidered, that *Allan Breck* had no Quarrel with *Glenure*, other than what he was engaged in by the Influence and Authority of the Priſoner; that he carried the Reſentment, on the Priſoner's Account, to ſuch a Height, as to threaten to ſhoot *Glenure*, and joined the Priſoner in prompting others to do it; that when *Glenure* returned unexpectedly from *Edinburgh*, *Allan Breck* went immediately with the Intelligence to the Priſoner; that when he ſet out to lie in wait for *Glenure*, it was after a Conſultation with, and being accoutred, for that Purpoſe, by the Priſoner; that the Gun with which he ſhot *Glenure*, appears to have been the Property of the Priſoner; that, after the Murder was committed, the Murderer relied for Money and Cloaths for his Eſcape, and actually did receive them from the Priſoner; I ſay, let all theſe concurring Circumſtances be laid together, and who will doubt that he was inſtigated, aided and abetted by the Priſoner?

It is therefore in vain to urge, that one or more of theſe Facts, when taken ſeparately, are not relevant to infer the Concluſion of his Guilt. It is from the Connexion and Concurrence of the whole, that the Conviction of his Guilt does ariſe: And it is only from a Proof of the whole, that the Proſecutors expect a Judgment againſt him.

In the *laſt* Place, the Counſel for the Priſoner have urged a Point of Law in his Defence, *viz.* That ſuppoſing the Facts which have been ſet forth, to be relevant to infer his Guilt; as he is only charged as an Acceſſary, he cannot be brought to Trial for the Crime, until the Principal be firſt convicted. In ſupporting of this, Texts have been quoted from the old Law-Books, *Quoniam Attachiamenta* and *Regiam Majeſtatem*. It has been ſaid that this is the Law of *England* at this Day, and that Sir *George Mackenzie*, in his Treatiſe of Crimes, has laid it down to be the Law of this Country.

As the Word *Acceſſary* is a Relative, which cannot be without a Principal to which it relates; it muſt be admitted, that no Evidence will be ſufficient to convict an Acceſſary, which does not prove that the Crime was committed by the Principal, who is thereby convicted, to the Effect that Juſtice may be executed againſt the Acceſſary.

In this Senſe the Maxim is juſt; but in the Senſe in which it is pleaded for the Priſoner, I will take upon me to ſay, it is not ſupported by the Law of this Country: It is inconſiſtent with the Principles of public Policy, and ſubverſive of all civil Society.

It is indeed a Maxim, and a good one, in the Law of *Scotland*, That no Perſon can be condemned, ſo as to ſuffer the Puniſhment appointed by Law for any Crime, unleſs he be preſent in Court, and have Opportunity to object to the Evidence by which it is to be proved againſt him. But, in the preſent Caſe, it is not alledged, that *Allan Breck* could be condemned, and brought to Juſtice, upon the Evidence that is to be brought in his Abſence againſt the Priſoner. If he ſhall afterwards appear, and ſtand his Trial, the Proof, in ſo far as it relates to him, muſt again be repeated in his Preſence, and it will be competent to him to object to every Part of it. But at preſent, as the Evidence is brought only to the Effect that the Priſoner may be puniſhed, it is he only that can plead the Benefit of this Maxim; and it is competent to him to object, as well to that Part of the Evidence which fixes the Crime upon the Principal, as to that which proves his Acceſſion.

As to the Law of *England*, I will not take upon me to argue from it; I do not pretend to be verſant in it; nor do I apprehend it will be deciſive in this Caſe. Nevertheleſs I have Reaſon to believe, That it is the Practice in that Part of the Kingdom to proceed to the Trial of the Acceſſary, after the Outlawry of the Principal; from which I would infer, that, in our Practice, either the Fugitation has the Effect of the Outlawry, or there is no Argument to be drawn from the one Law to the other.

With regard to the old Law-Books mentioned, it is well known to your Lordſhips, that they are generally believed to have been tranſcribed from the Laws of *England*, at a Time, indeed, when many ſalutary Alterations are thought to have been introduced into our Practice from thence; but that it is by no Means admitted, that they were ever ingroſſed into the Body of our Laws, or that every Part of them has been confirmed by our Practice; many Inſtances of the contrary might be mentioned. But I forbear to conſume the Time of the Court upon this Queſtion, becauſe the only Ground I can find to ſuſpect, that it ever was held to be a Doubt in our Practice, is the 153 Act, 12 Parl. *Ja.* VI. which appears to have been made with a View to take away all Doubt for the future. The Words of this Statute are, *That in all Time cumming, all criminal Libells ſall conteine, that Perſones compleined on are Airt and Pairt of the Crimes libelled; quhilk ſall be relevant to accuſe them thereof; ſwa that na Exception or Objection take awaie that Part of the Libell in Time cumming.* Which, in more modern Language, imports, that, for the future, no Objection ſhall be ſuſtained againſt a Libel, which charges the Perſon accuſed of being Contriver, Adviſer, Aiding, Abetting or Aſſiſting, in a Crime that is otherwiſe relevant

And Sir *Geo. Mackenzie*, in that very Paſſage of his Treatiſe on Crimes, which has been quoted in behalf of the Priſoner, tho' he lays down the Arguments which have been ſuggeſted on both Sides by the Authors who have treated this Queſtion, he concludes with obſerving, that, in *Robertſon*'s Caſe, the Court found upon this Act, that an Accomplice might be tried, tho' the Principal had not been convicted nor fugitated.

Upon theſe Principles, the Practice has been uniform for many Years; and the preſent Circumſtances of the Caſe do not ſeem to afford any Reaſon to deviate from it. For your Lordſhips and the Jury muſt be convinced, from the Facts which have been opened, that as the Murder was committed with the Advice, and at the Inſtigation of the Priſoner; ſo, but for his Aiding, Abetting and Aſſiſting, the Murderer had been now alſo Priſoner at your Bar.

Lord Advocate.

My Lord Juſtice General,

I Stand up at this Time, to ſupport the Reply that hath been made by the learned and ingenious Gentlemen on the ſame Side with me, to the Defences that have been offered for this Pannel; but as it hath not been frequently practiſed by my Predeceſſors in Office to attend in Perſon at Circuit Courts of Juſticiary, I beg leave, firſt of all, to ſay a few Words for myſelf, to give the Reaſon of my being now here: And I am perſuaded that every one who now hears me, will believe me, when I declare, that, negatively, that hath not proceeded

from any particular Animosity against this unhappy Man in the Pannel, whom I never saw until this Day when he appeared there; neither is it singly because it is a horrid and atrocious Murder that is to be now tried; or that the Trial is to proceed upon indirect and circumstantial Evidence, because such Cases have often occurred: But the Truth is, that upon my first hearing of this Murder, in the Month of *May* last, of a Gentleman of this Country, the King's Factor upon certain of the forfeited Estates that had been but a few Weeks before annexed to the Crown unalienably, and the Produce of them appropriated by Law to the most salutary and beneficial Purposes, for the future Tranquillity of the united Kingdom in general, and for the immediate Advantage and Improvement of these Highland Parts of *Scotland* in particular; I was greatly shocked, and considered the Murderers, whoever they were, as having been guilty not only of a most horrid Crime against the Laws of God and Humanity, but, together with this, of a most audacious Insult against the most gracious and beneficent Acts of the King's Government, and of the whole Legislature; and, as far as in them lay, had endeavoured to make the World or the Publick believe, that the civilizing of the Highlands of *Scotland* was a vain and impracticable Attempt; and under this Impression, I then resolved, whenever a Discovery should be made of any Persons concerned in this Wickedness, to attend at the Trial where-ever it should be, and to do all that in me lay, consistently with Law and Justice, to convince the disaffected Part of the Highlands of *Scotland*, that they must *submit* to this Government, which they have several Times in vain endeavoured to *subvert*.

And now, as to this Trial itself, your Lordships have heard the Libel read, and some Parts of the Evidence which we expect to bring in Support of it, more particularly opened by the Gentlemen who spoke of the same Side with me; and none of these Things shall I now repeat; but only make a few Observations upon what hath been offered by the Counsel for the Pannel by Way of Defence.

And, first of all, in order to lay out of the Case what is foreign to the Merits of the Trial, the Pannel's Counsel have been pleased to take Notice of certain Hardships, or Grievances, that he has laid under, during his Confinement in the Garrison of *Fort-William*; and that, by the Precaution of the private Prosecutor, all the old experienced Counsel have been retained from giving him their Assistance. As to the former of which supposed Grievances, I am truly ignorant of the particular Facts upon which the Complaint is founded; but if it be true, that the Pannel was longer kept in close Confinement than he should have been, or until the commanding Officer was informed how the Law stood, the Pannel can be under no real Disadvantage on that Account in his present Trial; because he was first taken into Custody on *Saturday* the 16th of *May*, that is, about four Months ago: And supposing it true, that for some few Days of so long a Period, People had not Access to him whom he had a mind to see, he has had full Time, when all these are deducted, to make the necessary Provision for his Defence.

As for the other alledged Grievance, I myself know certainly the Foundation of that; and so far is true, that after I had expected, for some Time, to receive from the Sheriff-depute of this County the Result of his Inquiries concerning the Murder of *Glenure*, and the Examinations he had taken on that Subject; these were, at length, brought to me at *Edinburgh* by certain of the Family of the Deceased, who had taken upon them, as it was very just and natural, to be Managers and Conductors of the Inquiry, and to cause to be brought before the Sheriff to be examined, all Persons, who, according to their Information, could give any Light in the Affair; and, with the Examinations so taken, they brought along with them to me three learned Counsel, which was also very reasonable and usual, and, as in all other Cases, was to myself most acceptable, that we might jointly consult and deliberate, whether from these Examinations, and the Discoveries thereby made, there was Matter sufficient for bringing this Pannel to Trial, upon which Question we all agreed in the Affirmative: But these three Gentlemen, though very able in their Profession, were not all the experienced Counsel. And as it is my constant Wish to see every Pannel as ably defended as his Cause will bear, it is with Pleasure that I now see this Pannel attended by four of my Brethren, who I am sure will omit nothing material for his Service.

Upon the Cause itself, there is, in reality, no Place for a Debate on the Relevancy of the Libel; *nor does* there appear to me to be any Difference betwixt us concerning the Interlocutor that we desire or expect to receive from your Lordships; for the Gentlemen of Counsel for the Pannel have admitted the Atrocity of the Crime charged upon him as strongly as I am able to express it: And they farther admitted, as they must have done, that the charging the Pannel as being guilty, or Art and Part of that Crime, is relevant to infer the Conclusion, and necessarily requires his being remitted to the Knowledge of an Assize, whether he is so guilty or not.

And, on the other Hand, I readily admit to them, that the laudable and just Practice of this Court, of later Years, hath been, not to find or determine a particular Relevancy upon certain Facts or Circumstances set forth in the Subsumption, or minor Proposition of the Libel, which is indeed, in some Measure, to pre-occupy the Province of the Jury, who are the Judges of the Fact, and is also dangerous to the Course of Justice; because, when a Number of Facts and Circumstances were found jointly relevant to infer the Pannel's Guilt, if the least material of these should not be proved, although a more pregnant Circumstance, that was not specially libelled or expressed in the Interlocutor, should come out upon the Evidence, if the Jury followed the Directions of that Interlocutor, and adapted their Verdict to it, the Pannel behoved to be acquitted, tho' in Reality, and in their Opinion, he was guilty.

It was not, therefore, with Intent that your Lordships should give your Opinion upon the Relevancy and Sufficiency of the Facts and Circumstances set forth in this Libel, that these were so particularly there inserted; but this was done agreeably to some of the best Precedents in the Records of this Court, for the Furtherance of Justice, both in respect of the Prosecutors and of the Pannel: For the former, that as the Evidence to be brought is circumstantial, the Jury may be the better enabled to ponder the several Circumstances, and connect them together, and attend to the Evidence that shall be brought for Proof of them; and for the Sake of the Pannel, that he, knowing the principal Facts that were to be proved in Support of the Charge against him, might prepare the Evidence for his Vindication, and for explaining those Appearances of Guilt with which he was loaded, in the best Manner he should be able.

Another Thing concerning the Interlocutor to be pronounced by your Lordships, in which I most readily agree with the Pannel's Counsel, is, that he should be allowed to prove the several Facts alledged for his Defence, and every pertinent Fact or Circumstance, that he or his Counsel think, may be available for proving his Innocence.

And thus far we seem to be agreed on the Terms of the Interlocutor, if the Trial is at all to proceed; against which one previous Objection hath been made, namely, That this Pannel, who is only said to be charged as Accessary, cannot be tried before the Principal, *Allan Breck*, be first discussed: In Support of which Objection, they have alledged certain Passages in the old Books of the Law, and Sir *Geo. Mackenzie* in his Criminals, Title *Art and Part*, Parag. 9.

But to this I answer, first of all, that Sir *George Mackenzie* himself, in the Passage referred to, furnishes an Answer to the Objection; for, after stating the Question, whether Accessaries can be sued till the chief Actors be first discussed, and quoting the Passages in the *Regiam Majestatem*, and other old Books that favour the negative, he adds a Decision of that Question in this Court in these Words: "Notwithstanding all which, *Charles* "*Robertson* being pursued as Accessary to the casting down of a House, which "was libelled to have been cast down by his Sons and Servants at his "Command, the Justices found, that he might be put to the Knowledge "of an Inquest, although the Children and Servants were not first "discussed; because the Act appointing a Libel to be relevant, "bearing Art and Part, did abrogate the foresaid; 4th Verse, 26th "Chap. L. 4. R. M. since such as are pursued, as Art and Part, are "all Principals." This was the Decision of the Court and the Reason of it, founded on the Act 1592, Chap. 153, which enacts, "That, in "Time coming, all criminal Libels shall contain, that Persons com-"plained on are *Art and Part* of the Crimes libelled; which shall be re-"levant to accuse them thereof; so that *no* Exception or Objection take "away that Part of the Libel in Time coming."

The Author proceeds in the same Passage to recite some Part of the Argument previous to this Decision; and says, "That the Advocate al-"ledged, it were absurd, that the King should be prejudged by the Ab-"sence of the principal Party; to which it was answered, That the King "was not prejudged, seeing, if the principal Party were discussed and "denounced fugitive, the Accessary might be proceeded against."

Now this is what hath been done in the present Case: *Allan Breck Stewart* hath been called upon to stand Trial for his Part in the same Offence; and hath been denounced *fugitive* for not appearing to abide his Trial; which is discussing him as far as the Laws of this Land admit of, when his Person is not in Custody.

But further, it is to be observed, that *Allan Breck* is not charged in this Libel with being the Principal, and this Pannel as only Accessary to the Murder of the deceased *Glenure*; they are both charged in the same Words with being guilty, Actors, or Art and Part of the said heinous Crime; that is, in the Terms of the Statute of K. *Ja.* VI. just mentioned: And though it be true, that, in the Subsumption or Recital of the Facts, it is said, that the actual Murder, or Firing upon the Deceased, was committed by *Allan Breck*, it is also said, that this was done in Revenge of the Quarrel which this Pannel took up against the Deceased, and in pursuance of a Concert or Conspiracy betwixt the Pannel and *Allan Breck*, to take away the Life of *Glenure*; and such being the Case, they are in Reality both Principals. By the Law itself (L. 15. *ad legem Corneliam de sicariis*) *mandator cædis pro homicida habetur:* And the learned *Matheus*, *de criminibus*, in his *prolegomena*, c. 1. § 12. *qui mandant scelus, quique mandatum exequuntur, utrique rei sunt, & ordinariæ quidem pœnæ subjugandi*; and for Proof of this, brings many Arguments and Authorities; and, *inter alia*, *cum quis alicui mandat scelus, mandantem quidem caput esse; mandatarium vero manum, & instrumentum mandantis. Hinc sacro quoque oraculo cædes Uriæ Davidi impingitur*, 2 *Sam.* xii. 9. in which Text the Words of *Nathan* the Prophet to *David* are, *Thou hast killed Uriah the Hittite with the Sword.*

And indeed it seems not to be agreeable to Reason or natural Justice, to hold, that, if this *Allan Breck*, for Instance, the actual Manslayer in the present Case, instead of making his Escape beyond Sea, as probably he hath, had died a natural Death, and so become out of the Reach of all human Laws, before this Trial could be brought on; and supposing the most direct and positive Evidence could be brought, that *Breck* committed the Murder libelled, by the Counsel, Command, or Direction of this Pannel, or, as our old Laws express it, *out-bounded* by him, that yet this Pannel could not be brought to Justice, because truly, though the Author, he was not the very *actor cædis.*

But that such is not the Law of *Scotland* at this Day, besides the Case mentioned by Sir *George Mackenie*, I need only remind your Lordships of the very last Trial in the Court of Justiciary at *Edinburgh*, of *James Drummond Macgregor*, for being guilty, or Art and Part of the Crimes of Hamesucken, forcible Marriage, and Rape: For all which the Trial proceeded against him; and though, in the Crime of Hamesucken, he and his Accomplices might be all equally Principals; yet, in the forcible Marriage and Rape, *Robert* his younger Brother, to provide whom with a Wife and a Fortune that Wickedness was committed, was no Doubt the principal Party and Actor; and yet *Robert* had been no otherwise discussed than *Allan Breck* has been in the present Case, that is, called upon to abide his Trial for these Offences, and pronounced a Fugitive for not so doing.

As for the Argument which the Counsel for the Pannel have chiefly insisted upon, and which they have professedly, and I think not improperly, calculated for the Jurors who now hear us, namely, to impugn the Relevancy or Sufficiency of the several Facts and Circumstances libelled to infer the Pannel's being guilty, or Art and Part of the Murder in Question; I do not chuse at present to enter particularly into that Argument, but to reserve that till we come to sum up the Evidence to the Jury, such as it shall come out in their Presence; which may possibly in some Articles be weaker, and in others stronger, than what is set forth in the Libel from the Materials that we then had before us; but, in order to shorten our Work at the End of a long Trial, and to engage the Attention of the

Jury to the Evidence that ſhall be brought before them, in Support of this Libel, I beg Leave now to make a general Obſervation or two for their Sake.

It hath been admitted by the Counſel for the Pannel, that even in the Trial of Crimes, circumſtantial Evidence, when clear, is not only competent, but perhaps the moſt ſatisfying and convincing Proof of any; and it was well ſaid, 'that Circumſtances are inflexible Proofs; that Witneſſes may be miſtaken or corrupted; but Things can be neither:' To which I will add, that the Competency of ſuch Evidence, for inferring the ordinary capital Puniſhment for Murder, was ſolemnly decided in the Court of Juſticiary at *Edinburgh*, in *February* 1718, in the Trial of *Stewart Abercrombie*, for the Murder of *Alexander Hay*, Son to Mr. *Robert Hay* of *Naughton*; in which the Argument was treated with great Learning, and full Informations on the Debate written by the now Lord Preſident of the Court of Seſſion, who was the Proſecutor, and by the now Lord Juſtice-Clerk, who was of Counſel for the Pannel. And I mention that Caſe, which I have lately peruſed in the Record, to give your Lordſhips and the Jury a Specimen of a circumſtantial Evidence of Murder, that, in its general Nature or Complexion, was very ſimilar to the preſent: The Caſe there, in ſhort, was, that ſome Days before the Murder, Mr. *Hay* the Deceaſed, and *Stewart Abercrombie* the Pannel, had been in Company, when *Hay* complained of an Affront given him by *Abercrombie*; upon which nothing then enſued: But, juſt before the Murder, which happened about Nine at Night of the 6th of *December* 1717, *Abercrombie* was drinking in a Tavern near the Head of *Black-Friars* Wynd, when Mr. *Hay* came into the Houſe, and made one of the Servants call him out into another Room; *Abercrombie* went to *Hay*, leaving his Hat in the Room where his Company were; they went out together near to a Lamp at the Head of the Wynd, where a Scuffle enſued betwixt them, without either of them drawing, tho' they had both Swords; and, during this Scuffle, *Abercrombie* drew his Sword, and run *Hay* through the Body, who was heard cry, He was murdered, and had got foul Play, his Sword not having been drawn; and ſoon after dropt down dead: *Abercrombie* was ſtill without his Hat, and was ſeen by no Perſon who knew him during the Scuffle; they only ſaw the Man without the Hat ſtab the other who had one; and, after he had given the Wound, inſtead of returning to his Company where he had left his Hat, called at another Tavern, where he borrowed a Hat, and went directly to his own Houſe, and to Bed, where he was, that ſame Night, apprehended.

In the Libel againſt him, all the Circumſtances are particularly ſet forth; and, in the Information for the Proſecutor, there is the following Paſſage, which I have extracted, and beg Leave here to read: "The "Pannel truſted to the Darkneſs of the Night, and Secrecy in which "he had committed this Crime, as ſufficient to cover him from the Eye "of Juſtice, and prevent his Puniſhment; but that ſame wiſe Provi"dence, which ſometimes leaves Men to execute their wicked Deſigns "in ſuch a Manner, and under ſuch Circumſtances, as emboldens them "to go on with Hopes of Impunity, frequently brings thoſe very "Crimes to Light, by a wonderful Diſcovery of unforeſeen Incidents "and Circumſtances, concurring to fix the Guilt upon the Criminal, "with more Force of Conviction and Strength of Evidence, than two "concurring Witneſſes could give, on purpoſe to convince the World "how little Darkneſs or Secrecy are to be relied on, either as Covers or "Encouragements to Wickedneſs.

"Such is the Caſe of this Pannel: Had it not been by the ſmall "Chance of his leaving his *Hat* in the Room with the Company where "he was, when he came forth to perpetrate this Crime, he might "have gone off undiſcovered.—But that ſmall Accident, firſt indeed "taken Notice of by a Child, who obſerved the Hat in the Cellar, and "knew it to be Mr. *Abercrombie*'s, led thoſe concerned to a full Diſ"covery of ſuch other concurring Circumſtances, as ſuppoſing no poſi"tive Proof of the Fact ſhould appear, are more than ſufficient to con"demn the Pannel in the Eyes of every Judge and Jury, and of every "Perſon elſe who will lay himſelf open to receive Impreſſions from "Truth."

The Jury in his Caſe were of that Diſpoſition; he was convicted of the Murder, and ſuffered for it.

Another remarkable Inſtance of this Nature, was the Caſe of *Alexander Maccowan*, who was tried by two of your Lordſhips here preſent, at the Circuit held at *Perth* in *May* 1750, for the moſt horrid Murder of *Margaret Maclean*, and of *Margaret* his own Child by her, an Infant of about three or four Years of Age, committed in *Auguſt* 1749, not far from *Crief*, in the Shire of *Perth*, in a Thicket of Wood, where he left their Bodies, after having carried away the Money and Cloaths which the ſaid *Margaret* had along with her in a Bundle. Before the Bodies were diſcovered, they were ſo mangled, that they could not be known, otherwiſe than by the Cloaths which were on the Body of the Woman, which her Relations could ſwear to: The Evidence againſt the Pannel was wholly circumſtantial, and conſiſted chiefly of there being found in his Poſſeſſion, after the Murder, a Pair of Stockings, a linnen Shirt, and a muſlin Stock, that were proved to have been in Poſſeſſion of the Deceaſed when ſhe ſet out for *Edinburgh*, where ſhe had told her Relations, ſhe had been invited by the Pannel to go along with him, in order to their being married together; and, upon this Evidence, he was convicted of this double Murder and Robbery; and, upon your Lordſhips Sentence, ſuffered the Puniſhment that he ſo well deſerved.

My Lords, it appears to me, that the preſent Caſe affords a freſh Inſtance, ſimilar to theſe I have mentioned, of a providential Diſcovery of Circumſtances, ſerving to fix the Guilt of Acceſſion to this Murder upon the now Pannel, notwithſtanding all the Precautions by him uſed to conceal it: His Enmity againſt *Glenure*, for removing him from his own Poſſeſſion in *May* 1751, and diſcontinuing to employ him in the Management of the *Ardſhiel* Eſtate, was well known; as likewiſe the various Efforts he made to prevent the Removing of certain Tenants of *Ardſhiel* in the Month of *May* laſt; and alſo his Intimacy and cloſe Connexion with *Allan Breck Stewart*, who diſappeared abruptly immediately after the Murder, and to whom the Voice of the whole Country imputed the actual Murder itſelf: But as, when that happened, this Pannel was at his own Houſe, at the Diſtance of one Mile from the Place of the Murder, the more direct and immediate Evidence of his Acceſſion to it was long concealed: His Wife and his Daughter being examined upon Oath before the Sheriff-depute of this County, on the 22d and 25th of *May* laſt, touching what they knew concerning the Murder, depoſed, That *Breck Stewart* left the Pannel's Houſe on the Morning of *Tueſday* the 13th of *May*, dreſſed in his *French* Cloaths, and that the Pannel had no ſuch black or dark-coloured ſhort Coat, as *Breck* had truly left his Houſe dreſſed in, for three Quarters of a Year before that Time; but at length, above a Month after this Examination, namely, on the 30th of *June* laſt, *Alexander Stewart* the Packman, being examined before the Sheriff-ſubſtitute at *Fort-William*, and after being confronted with a Friend of his own, to whom he had been muttering ſome Part of the Truth, ſpoke out the whole Truth, as it is ſet forth in the Libel; and particularly, that from this very Wife of the Pannel he received, on the Evening of *Saturday* the 16th, at the Pannel's Houſe, *Allan Breck's French* Cloaths, to be carried to him at the Place of his Retreat, together with the five Guineas, which the Pannel had been at great Pains to ſcrape together, after ſending the Packman Expreſs, for that Purpoſe, to his Friend *William Stewart* at *Fort-William*, and which he ſent to *Breck* at the Place of his Retreat, with a declared Intent to put him in Condition to make his Eſcape, for that he muſt be ſuſpected of the Murder: This Diſcovery was the firſt Thread which the Kindred of the Deceaſed got hold of to lead them to a more full Detection; and was afterwards confirmed by the Examination of the Bouman, who told the Particulars in the Libel recited, and about whoſe Houſe the very Cloaths were found, the Property of the Pannel, which *Breck* had brought from the Pannel's, and left with the Bouman.

And as for the Importance of theſe particular Diſcoveries, which the Pannel's Counſel have endeavoured to diminiſh in the Manner that circumſtantial Evidence is always impugned, by obſerving that each Article taken by itſelf is inconcluſive; I may readily admit this; and yet, from the Reſult of the whole Circumſtances, there may be convincing and irreſiſtible Evidence. And to mention, at preſent, only theſe two material ones, of the Cloaths furniſhed, and the Money ſent to *Breck Stewart*, before and after the Murder reſpectively; I do not ſay, that if a Man lends his Neighbour a Coat, in which the Borrower being dreſſed, two or three Days after commits a Murder of a Perſon who was his own Enemy in Time paſt, that this will afford any Evidence of Privity, or Acceſſion to that Murder in the Lender of the Coat; neither do I ſay, that if a Man's Friend or Relation has unfortunately committed a Murder, and one ſhall aid him, by Money, or otherwiſe, to make his Eſcape, that this will render ſuch Friend acceſſary to, or chargeable with the Crime of Murder, tho' he is doubtleſs guilty of an Offence or Miſdemeanor in its own Kind; but the Force of theſe united Circumſtances in the preſent Caſe, with the others charged in the Libel againſt this Pannel, conſiſts in the Connexion of the whole together. It was the Pannel's proper Quarrel that rendered the Deceaſed obnoxious to *Breck Stewart*; the Pannel had diſcovered and expreſſed his Enmity againſt the Deceaſed, and had uttered Threatenings againſt his Life; *Breck Stewart*, his intimate Friend, was a fit Inſtrument for ſuch wicked Purpoſe; he had eſpouſed all the Pannel's Opinions and Diſpoſitions towards *Glenure*; he was, himſelf, not in Condition to remain in this Country, and was already provided with the Means of Subſiſtence in foreign Service; and to this Man it was, in the very Heat of a Conteſt with the Deceaſed about removing certain Tenants which this Pannel had put in, that he furniſhed the Dreſs, and, as we likewiſe believe, the Arms wherewith he perpetrated this foul Murder; immediately after which he retires to a deſert Place, not far off, there to wait for a Supply of Money that was to be ſent him; and it is eſpecially to be remarked by your Lordſhips, and the Jury, that, as the Libel bears, at this Place, *Breck* told the Bouman, that he muſt go to *Fort-William* with a Letter to *William Stewart*, Merchant there, who he ſaid would give him Money upon Receipt of the Letter; and this *William Stewart* was another intimate Friend of the Pannel's, and the very Perſon to whom, the Day after the Murder, the Pannel ſent the Packman Expreſs to get five Guineas for the Uſe of *Breck*, who was about to leave the Country. This Circumſtance affords a Demonſtration of a Concert betwixt the Pannel and *Breck* before they laſt parted at the Pannel's Houſe on the *Monday* Night, or *Tueſday* Morning preceding; after which the Pannel allows he never ſaw *Breck*; for how otherwiſe could *Breck* have known, that, for ſuch a ſmall Sum as he wanted, the Pannel was to have Recourſe to this *William Stewart*, who lived twenty Miles diſtant from him? And *this Circumſtance* ſerves to *connect* the *Facts* which immediately *preceded* the Murder, with thoſe which *immediately enſued* it.

But I am going too far at preſent, on the Conſiderations that will be proper for the Jury after the Proof ſhall have been brought before them; and ſhall now conclude, hoping it will appear to your Lordſhips, that no ſufficient Objection hath been offered on the Part of the Pannel, why his Trial ſhould not proceed; and that you will make ſuch Interlocutors, upon that Suppoſition, the Counſel on both Sides appear to be agreed in.

Mr. MILLAR for the Pannel.

My Lord Juſtice-General,

I Appear as Counſel for the Priſoner at the Bar: And, as I am ſenſible this Trial muſt draw out to a very great Length, and occaſion a great deal of neceſſary Trouble to your Lordſhips, and the Jury, I ſhall endeavour, in what I am to offer, to avoid Repetition; and I ſhall confine myſelf to ſuch Obſervations as moſt affected my own Mind upon reading the Indictment, which is the only Rule by which I can judge of their Importance. And, 2*dly*, I ſhall offer a few Conſiderations by Way of Reply to what has been ſaid by my Lord Advocate and his Aſſiſtants, in Support of the Indictment.

The Priſoner is charged before your Lordſhips as Acceſſary, Art and Part of the Murder of the late Mr. *Campbell* of *Glenure*; a Crime of ſo foul and black a Nature, and attended with ſuch particular Circumſtances, as has not only juſtly excited the Attention of the Public, but alſo a more than ordinary Keenneſs and Ardour in the numerous Friends and Relations of the Deceaſed, in carrying on this Proſecution.

I would not chuſe to make any Reflections upon their Conduct. I ſincerely ſympathize with them for their Loſs, and feel the full Force of their juſt

Revenge

Revenge againſt the guilty Perſon, whoever he is. But, my Lord, in ſuch a Caſe, the Paſſion which we at firſt cheriſh as juſt and honourable, may get the better of us; and if the Reſtraints of Reaſon and ſtrict Honour are not applied, will inſenſibly riſe into Rage, and precipitate us into Meaſures inconſiſtent with Law, and the Dictates of cool Humanity.

My Lord, it is in ſuch Circumſtances as theſe, that even the Innocent may ſometimes be brought into Danger. And in ſuch Circumſtances it becomes the Duty, and an honourable Part of the Duty of one of my Profeſſion, to appear for the Accuſed, to aſſiſt him in his juſt Defence, and to obviate, by all the Remedies which the Law has provided for the Security of Innocence, any Diſadvantage he may be brought under, by public Prejudice, or by the Number, Power, or ſuperior Addreſs of his private Proſecutors.

This Conſideration determined me to appear in this Trial, and to give my poor Aſſiſtance in the Defence of the Priſoner; to which I was further prompted by my Lord Advocate himſelf, who had the Generoſity ſo far to intereſt himſelf for the Pannel, as to recommend it to me, amongſt others, to appear in his Defence.

And firſt, I obſerve, that it is admitted by the Proſecutors in their Indictment, that the barbarous Murder therein charged was perpetrated by one Perſon, to wit, by *Allan Breck Stewart:* And taking him to be the guilty Perſon, his Life is, no doubt, juſtly forfeited to public Juſtice, tho' in the mean Time he may have eſcaped from the Execution of the Law. The firſt Queſtion therefore that muſt naturally occur, is, what are the Circumſtances in this Caſe, which ſhould lead your Lordſhips or the Jury to believe, that any other Perſon than *Allan Breck*, and particularly the Priſoner at the Bar, was alſo guilty of this foul and deteſtable Murder?

It is a Rule in Philoſophy, in all our Inquiries into natural Cauſes and Effects, to reſt ſatisfied ſo ſoon as one Cauſe or Principle is diſcovered, ſufficient for anſwering and ſolving all Appearances in the Effect. This Rule, I am ſure, with great Propriety may, and ought to be applied to any moral or judicial Inquiry, ſuch as the preſent. If a Crime is committed, there muſt, no doubt, be a Criminal; and if the Crime itſelf, or the Circumſtances which attended the Commiſſion of it, are of ſuch a Nature, as muſt neceſſarily infer the Aid and Aſſiſtance of others towards the Commiſſion of it; as the Appearances in ſuch Caſe will not be anſwered by the Diſcovery of one guilty Perſon, the Mind will remain unſatisfied till further Diſcovery is made of the ſuppoſed Partners of the Crime.

But, my Lord, where the Guilt of one will account for the whole Appearances, for every Circumſtance connected with the Crime, I apprehend it is a Rule in Morals, it is a Rule in Law, and in ſound Reaſon, to preſume, that no other but that one Perſon was concerned in the Commiſſion of the Crime.

This Preſumption is founded in the Reſpect which we owe to human Nature. For, my Lord, wicked and corrupted as Mankind are, thank God, a Murderer, a wilful deliberate Murderer is ſtill a Monſter in the Species; and it is undutiful in us, and againſt all the Rules of right Reaſon, to carry our Suſpicions, far more our Prejudices, further than the *corpus delicti*, and the Circumſtances attending it, do neceſſarily point out.

From this Conſideration, I hope, the Priſoner comes to your Lordſhips Bar, attended and aided not only by the general, legal Preſumption of Innocence, but with this other more ſpecial Preſumption, that no other Perſon was concerned in this horrid Murder but that one Perſon, whoever he was, who gave the fatal Shot by which *Glenure* died. And this Preſumption, I flatter myſelf, will be preſent with your Lordſhips, and in the Mind of every Juryman, till contrary Proof and Evidence ſhall beat it out: Which we flatter ourſelves will be ſo far from happening, that, on the contrary, in the Courſe of the Evidence, it will gather Strength, and at laſt terminate in that Iſſue, which, from the holy Providence of God, the Innocent may with Confidence expect.

My Lord, it is not my Intention to anticipate, or to argue upon Evidence which has not yet been brought: But, as my Lord Advocate has ſet forth, in his printed Indictment, a Variety of Circumſtances, from which he would infer the Priſoner's Acceſſion to this Murder; I muſt beg leave to take Notice of ſome of them, in order, if poſſible, to diſpel that popular and illegal Prejudice, which I obſerve in moſt Caſes, eſpecially in the more atrocious Crimes, does attend the unhappy Perſon who is brought to your Lordſhips Bar.

When the Mind is enraged to a high Degree, it naturally ſeeks after, and is impatient to find, an Object for its Reſentment. The Priſoner firſt occurs, and *there* we are too apt to fix our Opinion of Guilt, and alongſt with it our Reſentment; eſpecially when our Confidence in the public Proſecutor is ſo great, as it juſtly is at preſent in the honourable Gentleman who fills that Office.

This, if I miſtake not, is the Source of popular Prejudice againſt the unhappy Priſoner. All of us are ſubject to it, becauſe it ariſes from, or at leaſt is incident to human Nature; but however innocent it may be in the Crowd that ſurrounds us, it is dangerous, it is criminal, if received and entertained in the Mind of a Juryman. For their Sakes, therefore, I will beg leave to make a few Obſervations upon the Facts charged in the Indictment, that ſo the Jury, who for ſome Time have had the printed Indictment in their Hands, may, before they proceed to Trial, be alſo poſſeſſed of ſuch Facts and Obſervations for the Pannel, as will, if attended to, entirely take off the Force of the Circumſtances which are charged againſt him.

And firſt, it will be obſerved, that the Murder is not ſaid to have been committed from ſudden Paſſion, or *chaud melle*, as the Law expreſſes it, but to have been premeditated and reſolved upon for ſome Days before it was committed. Now, to render Malice of ſo high a Nature probable, ſome very ſtrong Ground or Cauſe ought to have been aſſigned for it; and what Cauſe is here mentioned? Why, *1ſt*, becauſe *Glenure* had accepted of a Factory from the Crown upon the forfeited Eſtate of *Ardſhiel*. *2dly*, Becauſe *Glenure* had removed the Pannel from the Farm of *Glenduror* at *Whitſunday* 1751. And *laſtly*, Becauſe he was proceeding to remove certain other of the Tenants of *Ardſhiel*, at the *Whitſunday* 1752.

The firſt of theſe could not be the Ground of the Reſentment which gave Occaſion to the Murder; becauſe *Glenure* had been in that Office for more than three Years before the Murder; during the greateſt Part of which Time, the Pannel and he lived in Friendſhip and Intimacy together; as will be clearly proved by a long Courſe of Letters which paſſed betwixt them. The Pannel's own Removal from *Glenduror* could as little be the Cauſe of ſuch prepenſe Malice; for the Removal was voluntary, and the Poſſeſſion yielded to the ſucceeding Tenant, in conſequence of a previous Concert between the Pannel and *Glenure*. And far leſs could the intended Removal of the other Tenants at *Whitſunday* laſt, give Occaſion to the Conſpiracy and Murder charged againſt the Pannel. Such deep Reſentment could not have ariſen from ſo trifling a Cauſe in the Mind even of a wicked Man, much leſs one of the Pannel's Diſpoſition and Character.

2dly, The Circumſtance of *Allan Breck*'s having changed his Cloaths at the Pannel's Houſe before the Murder, tho' it has been chiefly inſiſted on for inferring the Pannel's Acceſſion to the Murder, is equally inconcluſive. *Allan Breck*'s Situation, as a Deſerter from his Majeſty's Service to the Rebels, and afterwards to the Service of *France*, made it neceſſary, ſo often as he came into this Country, to ſculk amongſt his Friends, of which the Pannel unfortunately happened to be one. It will be proven, that for this Purpoſe, he uſed to lay aſide his *French* Dreſs, and borrow the Dreſs of the Country, ſuch as is deſcribed in the Indictment, from any of his Friends, where he happened to viſit or reſide; and that he had gone about from Houſe to Houſe, changing his Dreſs in this Manner, ſince the Beginning of *March* laſt, and particularly had been furniſhed with ſuch Change of Dreſs at the Pannel's Houſe, about the Beginning of *April*, where he happened to be for a Night or two, in the Courſe of his Viſits through the Country.

My Lord, if theſe Facts are proven, it is impoſſible any Weight can be laid upon the Circumſtance of his having alſo changed his Dreſs at the Pannel's Houſe, upon the *Monday* and *Tueſday* before the Murder happened. If a Diſguiſe had been intended, would the Pannel, who is admitted to be a Man of more than ordinary Diſcernment, have furniſhed his own Cloaths, which were known to the whole Neighbourhood, and by which, if the Murderer was apprehended, he himſelf behoved infallibly to be diſcovered? Would he have dreſſed up the Aſſaſſin before his numerous Family and Servants, in the very Dreſs which was to ſerve for his Diſguiſe, two different Days before the Plot was to be executed? Or would he have allowed him to traverſe the Country for ſome Miles round, from *Tueſday*, when he left the Pannel's, till *Thurſday* when the Murder was committed, in the very Dreſs which was intended to diſguiſe and conceal him? Such a Conduct is unaccountable, and cannot be aſcribed to the Pannel, whom the Proſecutors themſelves repreſent as a Man of the deepeſt Deſign and Artifice.

My Lord, the next material Circumſtance in the Indictment, which I would beg leave to take Notice of for the ſake of the Jury, is the Correſpondence which paſſed betwixt the Pannel and *Allan Breck* the ſuppoſed Murderer, after his Retreat to *Koaliſnacoan*.

This Circumſtance, I own, at firſt Sight, ſeems to carry great Weight againſt the Pannel, becauſe it imports not only Aid and Aſſiſtance given by the Pannel to the ſuppoſed Murderer in order to enable him to make his Eſcape, but alſo a previous Knowledge of the Place to which he retired immediately after committing the Murder. But your Lordſhips and the Jury have heard how the Force of this Circumſtance is taken off. The Pannel knew nothing of the Place of *Allan Breck*'s Retreat till the Day after the Murder, when he received a Meſſage from him by *Donald Stewart*, giving him Notice of the Place to which he had retired, and beſeeching the Pannel to ſend him a ſmall Supply of Money, in order to carry him off the Country. This Meſſage the Pannel has undertaken, and hopes to prove by a Train of unqueſtionable Evidence; and if he ſhall be able to bring a ſatisfying Proof of the Fact, it will at once ſtrip the Indictment of the only Circumſtance in it, which points at a previous Conſpiracy betwixt the Pannel and *Allan Breck* the ſuppoſed Murderer.

And indeed, my Lord, independent of the Proof which is propoſed to be brought by the Pannel, it cannot but appear unaccountable to your Lordſhips and the Jury, that a Perſon of the Pannel's Sagacity, if he had been in Concert with *Allan Breck* for ſeveral Days before the Commiſſion of the Murder, ſhould not have provided the neceſſary Means of *Breck*'s Eſcape till after the Crime was committed, when he could no longer correſpond with him, without the Interpoſition of others, and conſequently without the Hazard of a Diſcovery. The Pannel could have had no Difficulty to have furniſhed *Allan Breck* with a little Money before the Commiſſion of the Murder, in order to make his Eſcape immediately. He knew *Breck*'s Circumſtances, and that he had nothing to carry him off the Country, and *Breck* would not have engaged in ſuch a Service without receiving from his Employer the neceſſary Supplies for his own Safety; and ſuppoſing the Pannel had not been in Caſh upon the *Monday*, when they laſt parted, yet he would have taken care before the *Friday* to have been ſufficiently provided for anſwering *Breck*'s Demands. And yet, upon the *Friday* after the Murder, when the Meſſage came from *Breck*, we find from the Indictment, that the Pannel was obliged to ſend in to *Fort William*, at a conſiderable Diſtance from his own Houſe, in order to borrow the Trifle of Money which was wanted, and ſent the Day following to *Allan Breck*.

How far the Pannel was to blame in ſending Money to *Allan Breck*, who was his Relation, and had been his Ward, in order to enable him to make his Eſcape, depends upon the Opinion he then had of his being guilty or innocent of the Murder. If he believed him guilty, it was no doubt a very great Crime in the Eye of Law; but ſuch Aſſiſtance furniſhed for the Eſcape of a Murderer, tho' knowingly, will not, in Law, or in the Nature of the Thing, infer Acceſſion to the Murder, unleſs it had been previouſly promiſed as an Encouragement to the Commiſſion of the Murder, which, from what has been ſaid, appears could not have been the Caſe.

With regard to the Threatenings, which is the only remaining Branch of the Indictment of any Weight againſt the Pannel, I could have wiſhed my Lord Advocate had been ſo good, as to have condeſcended upon the particular Expreſſions, and upon the Times and Places when and where theſe were uttered. As that is not done, it is impoſſible the Pannel can make any other Anſwer but a general Denial of this Part of the Charge:

charge: And as he is conſcious he never entertained the barbarous Reſolution, he hopes, and is perſuaded, no Proof will be brought of any Expreſſion uttered by him, which could import a deliberate Threatening to take away the Life of an innocent Gentleman.

My Lord, having touched upon a few of the moſt material Circumſtances in the Indictment, which I thought material for the Jury to have in their View, in order to direct their Attention, during the Courſe of the Evidence, to the Plan of the Pannel's Defence, I ſhall next proceed to what at preſent falls more immediately under your Lordſhips Conſideration, and that is, the Objection which has been moved to the Competency of this Proſecution.

It has been objected, that the Indictment does not charge the Pannel as a Principal in the Murder of *Glenure*, but only as a remote Acceſſary, by previous Counſel, and ſubſequent Aid and Aſſiſtance given to the Murderer in his Eſcape; and that tho' ſuch Acceſſary is equally criminal and puniſhable with the Principal, yet that he cannot be brought to Trial, till the Principal be firſt tried and convicted.

This Objection was ſtated to your Lordſhips upon the Authority of the old Books of our Law, Sir *George Mackenzie*, our only Author upon Crimes, and of ſeveral of the foreign Doctors who treat of this Subject; and, with your Lordſhips Permiſſion, I will read ſome of the Paſſages upon which the Objection is founded, as I have taken them down from the Books.

Reg. Maj. lib. 4. *cap.* 26. *de ordine cognitionis in criminibus.*

Si duo homines fuerint implacitati, unus de principali furto, et alter de præcepto, primò debet ille qui defamatur de facto, quam ille qui factum illud committi præcepit, implacitari.

To which the learned Sir *John Skeene* ſubjoins the following Annotation: *Complices criminis non poſſunt accuſari ante principalem malefactorem, nam ſicut remoto principali removetur acceſſorium, ita abſoluto malefactore abſolvuntur complices et conſentientes.*

Quoniam attachiamenta, cap. 83. *de receptatione latrocinii.*

Nullus defamatus tanquam receptator latrocinii debet puniri, antequam malefactor fuerit convictus vel attayntus de latrocinio illo; et hinc fiet ut dicitur conſentientes et agentes pari pœna puniuntur.

Statuta Davidis IIdi, cap. 19. *Complices non debent puniri ante principalem malefactorem.*

Ordinatum fuit coram rege in pleno parliamento apud Sconam per regem et communitatem regni, quod ſuperſedendum eſt de receptatore alicujus malefactoris judicandi ſive appellandi, quouſque receptatus judicetur. Et ſi receptatus quietus fuerit, receptator quietus ſit ſine aliqua alia aſſiſa. Si autem receptatus damnatus fuerit, receptator habet aſſiſam.

And, agreeable to the Doctrine laid down in theſe old Statutes, Sir *George Mackenzie*, in his Criminals, Tit. *Art and Part*, § 9. gives it as his Opinion, "That the chief Actor muſt be firſt diſcuſſed, and either "found guilty or aſſoilzied, before ſuch as are acceſſary can be purſued." Which he ſupports not only by the Authority of the old Books of our Law, already quoted, but alſo of many of the foreign Doctors.

'Tis true, he adds, that notwithſtanding what is there laid down, *Charles Robertſon* was tried before the Juſtices, as Acceſſary to the caſting down a Houſe, tho' his Sons and Servants who caſt down the ſame, eſcaped, and were not tried. But Sir *George* is far from approving of that Deciſion, and urges many ſtrong Reaſons againſt it, and in Support of the Doctrine he had formerly laid down.

The foreign Doctors alſo have generally gone into this Diſtinction, with reſpect to the Order of trying the Principal and Acceſſary. I ſhall only quote the Words of *Julius Clarus, quæſt.* 90. *n.* 6. who lays it down as a Rule, *Quando proceditur contra aliquem tanquam quod præſtiterit auxilium delicto, debet primo in proceſſu conſtare principalem deliquiſſe.*

To all theſe allow me to add the Authority of the Law of *England*, which, upon a Point of this Nature, ſuppoſing it not fixed by any Statute or Cuſtom of our own, will, no doubt, have greater Weight with your Lordſhips than the Opinions of any private Lawyers.

Thus Sir *Matthew Hale*, in his Pleas of the Crown, ch. 57. concerning the Order of Proceeding againſt Acceſſaries, lays down the following Propoſitions, as fixed Rules in the Law of *England*: "The Acceſſary "may be indicted in the ſame Indictment with the Principal, and that "is the beſt and moſt uſual Way.

"The Acceſſary ſhall not be conſtrained to anſwer to his Indictment, "till the Principal be tried, unleſs he wave that Benefit; in which Caſe, "his Acquittal or Conviction upon ſuch Trial is good. But it ſeems "neceſſary in ſuch Caſe to reſpite Judgment, till the Principal be con"victed and attainted: For if the Principal be afterwards acquitted, "that Conviction of the Acceſſary is annulled.

"If *A* be indicted as Principal, and *B* as Acceſſary, they may be "both arraigned together, and plead together, and tried by the ſame "Jury; and the Jury ſhall be charged, firſt to inquire of the Principal; "and if they find him not guilty, then to acquit the Acceſſary; and if "they find him guilty, then to inquire of the Acceſſary."

The Reaſon of this Diſtinction in the Order of trying Principals and Acceſſaries, is very well laid down by Sir *George Mackenzie*, in the Place above quoted, and will no doubt occur to your Lordſhips: For Guilt in the Acceſſary neceſſarily preſuppoſes, that the Crime was committed by the Principal, which can only be made appear by the Trial and Conviction of the Principal. Neither is it ſufficient to ſay, that, in the Trial of the Acceſſary, ſuch Evidence may be brought of the Guiltineſs of the Principal, as would be ſufficient to convict him, if he were preſent. For, as no Man can, by the Law of *Scotland*, be convicted of any Felony in Abſence, it is impoſſible to ſay or determine from Evidence, adduced in Abſence of the ſuppoſed Criminal, what would have been ſufficient to have convicted him, if he had been preſent. He might have had Defences againſt the Indictment, Objections againſt the Witneſſes adduced for the Proſecutor, and Witneſſes to adduce for his own Exculpation, which the Acceſſary doth not know, or cannot prove.

The Anſwers made by my Lord Advocate to this preliminary Objection to the Order of the Trial, have been three. Firſt, That it is againſt the Intereſt of Society, that Crimes ſhould paſs unpuniſhed; which often muſt be the Caſe, if the Eſcape or Death of the principal Actor ſhall be underſtood to be a perpetual Bar to the Trial and Puniſhment of thoſe who are acceſſary, and no leſs guilty in the Commiſſion of the Crime. 2dly, That *Allan Breck Stewart* hath been called upon to ſtand Trial for this Crime, and hath been denounced a Fugitive and Outlaw for not appearing to abide his Trial, which is diſcuſſing him, as far as the Laws of the Land admit. And, 3dly, That both *Allan Breck* and the Pannel are charged by the Indictment in the ſame Words, as being guilty, Actors, or Art and Part of the ſame heinous Crimes; which being in the preciſe Terms of the Act 153, Parl. 12th of *James* VI. nothing can be objected to the Relevancy of that Part of the Libel.

To theſe I will offer but a Word or two in Reply. As to the firſt, founded upon the public Expediency, and the dangerous Conſequences which may reſult from this Diſtinction in the Order of Trial of Principals and Acceſſaries, it is ſufficient for me to ſay, *Incommodum non ſolvit argumentum.* The Law has been more anxious in providing for the Defence and Safety of the Lives of the Subjects, in the Trial of Crimes, than for the Conviction and Puniſhment of the Guilty. And hence it has become an Axiom in the Law, Better that ten guilty Perſons ſhould eſcape, than that one innocent Perſon ſhould ſuffer.

To the ſecond, with regard to the Fugitation of *Allan Breck*, I anſwer, That ſuch Fugitation does not imply a Conviction of the Crime, which, by the Law of *Scotland*, can only proceed upon Evidence brought againſt the Criminal preſent in Court upon his Trial. An Act of Fugitation is no more than a Judgment of the Court, awarding the Eſcheat of Moveables againſt the Defender, for his Contempt in not appearing to ſtand Trial upon his Indictment; and neither proceeds upon, nor implies the abſent Perſon's Guiltineſs of the Crimes charged againſt him. If he were preſent, his voluntary Confeſſion would be no Probation of his having committed the Crime, ſo far as concerned the Acceſſary; and far leſs can his Abſence imply or amount to ſuch Conviction. And this is agreeable to the Opinion of Sir *George Mackenzie* and *Julius Clarus*, in the Places above quoted.

As to the third Anſwer to the Objection, founded upon the Statute of *James* VI. it will occur to your Lordſhips, as it did to Sir *John Skeene* and Sir *George Mackenzie*, who both wrote after the Date of that Act, That it could not be the Intention of that Law to aboliſh the Diſtinction betwixt Principals and Acceſſaries, and the Order of Proceeding in their Trials: All that was meant by that Statute was, to allow a Defender, whether Principal or Acceſſary in a Crime, to be charged under the general Words of *Art and Part*, without obliging the Proſecutor to condeſcend upon the whole particular Acts from which the Crime was to be inferred. But if a Proſecutor, as in the preſent Caſe, has brought a ſpecial Indictment, charging a Pannel, not as *actor cædis*, but as a remote Acceſſary thereto, the general Words of *Art and Part*, ſubjoined to the minor Propoſition of the Libel, can never be underſtood to imply a Charge againſt the Pannel, as Principal Actor, in Contradiction to the ſpecial Facts charged in the Indictment, but only as Acceſſary; and conſequently, in the Senſe of Law, *Actor, Art and Part* in the Commiſſion of the Crime.

What is laid down by the learned Sir *Matthew Hale* in his fifty-fifth Chapter of Principals and Acceſſaries in Felony, is applicable to the preſent Subject. "In Treaſon, ſays he, all are Principals; but yet, as "to the Courſe of Proceeding, it hath been, and indeed ought to be the "Courſe, that thoſe who did actually commit the very Fact of Treaſon "ſhould be firſt tried, before thoſe that are Principals in the ſecond "Degree; becauſe otherwiſe, this Inconvenience might follow, that the "Principals in the ſecond Degree might be convicted, and yet the Prin"cipals in the firſt Degree might be acquitted, which would be abſurd." And it is humbly thought, that this Abſurdity would be much greater in the Caſe of a remote Acceſſary.

Nor does the Deciſion in the Caſe of *James Drummond Macgregor* apply to the Point in Hand; for though the Crime was, in that Caſe, committed with a View to procure a Marriage for *Robert* the younger Brother; yet, as *James* was preſent, and aiding and aſſiſting in the Hamefucken and forcible Abduction, conſequently he was a Principal in the firſt Degree, being an immediate Actor in the whole Crimes libelled; and, therefore, could not be intitled to plead the Defence which has been offered for this Pannel.

What we therefore humbly ſubmit to your Lordſhips Conſideration is, that tho' an Acceſſary is equally guilty and puniſhable with the Principal, yet, as the Law hath laid down a certain Order, in Point of Time, as to the Trials of Principals and Acceſſaries in Crimes, and as this Order is not aboliſhed by the Statute of *James* VI. therefore the Trial of this Pannel cannot proceed, until *Allan Breck Stewart*, the ſole Actor in the Commiſſion of the Murder, is firſt tried and convicted.

But, if your Lordſhips ſhall find Reaſon for over-ruling this Objection, the Pannel hopes and expects, from your Lordſhips Juſtice, that he will be allowed, by the Interlocutor, a Proof, at large, of all Facts and Circumſtances that may tend to exculpate him from the Charge exhibited againſt him in this Indictment.

The Lords, upon hearing the Criminal Letters read, and the Debate thereupon, pronounced the following Interlocutor:

"—— The Lord Juſtice-General, and Lords Commiſſioners of Juſti"ciary, having conſidered the criminal Libel, purſued at the Inſtance of "*William Grant* of *Preſtongrange*, Eſq; his Majeſty's Advocate, for his "Majeſty's Intereſt; and alſo at the Inſtance of *Janet Mackay*, daughter "to the Honourable *Hugh Mackay* of *Bighouſe*, Eſq; and Relict of the "deceaſed *Colin Campbell* of *Glenure*, for herſelf, and on Behalf of *Eliza*"*beth* and *Lucy Campbells*, her infant Children, with Concourſe of his "Majeſty's Advocate, for his Majeſty's Intereſt, againſt *James Stewart* "Pannel, with the foregoing Debate thereupon, repel the Objections to "the Libel, and find the Libel relevant to infer the Pains of Law: "That, Time and Place libelled, the deceaſed *Colin Campbell* of *Glenure* "was murdered, and that the Pannel *James Stewart* was guilty, Actor, "or Art and Part thereof; but allow the Pannel to prove all Facts and "Circumſtances that may tend to exculpate him; and remit the Pannel, "with the Libel as found relevant, to the Knowledge of an Aſſize."

ARGYLL, *I. P. D.*

Thereafter the Lords continued the Diet againſt the above *James Stewart* Pannel, till To-morrow Morning at Six o'Clock preciſely, and ordained

ordained the Parties, Witneſſes, Aſſizers, and others concerned, to attend at that Time, and the Pannel to be carried back to Priſon.

Curia itineris Juſticiarii, S. D. N. Regis, tenta apud burgum de Inverarii, viceſimo ſecundo die menſis Septembris, anno Domini milleſimo ſeptingenteſimo quinquageſimo ſecundo, N. S. per nobilem et præpotentem Principem Archibaldum Ducem de Argyll, Dominum Juſticiarium Generalem, et Patricium Grant de Elchies, armigerum, et Dominum Jacobum Ferguſon de Kilkerran, Dominos Commiſſionarios Juſticiarii dicti, S. D. N. Regis.

Curia legitime affirmata.

Intrat. James Stewart Pannel, indicted and accuſed as in the former Sederunt.

Thereafter the Lords proceeded to make Choice of the following Perſons, to paſs upon the Aſſize of the ſaid *James Stewart*, Pannel:

1 *Colin Campbell* of *Carwhin.*
2 *Dougal Macdougal* of *Gallanah.*
3 *Alexander Duncanſon* of *Kiles.*
4 *Duncan Campbell* of *South-Hall.*
5 *Hector Macneil* of *Ardmeaniſh.*
6 *James Campbell*, late Bailie of *Inverary.*
7 *James Campbell* of *Raſhetlly.*
8 *James Campbell* of *Rudale.*
9 *Colin Gilleſpie* of *Balimore.*
10 *Colin Campbell* of *Skipniſh.*
11 *Duncan Campbell* of *Glendaroul.*
12 *Colin Campbell* of *Ederline.*
13 *Niel Campbell* of *Duntroon.*
14 *Archibald Campbell* of *Dale* in *Craigniſh.*
15 *Niel Campbell* of *Dunſtaffniſh* *.

The above Aſſize all lawfully ſworn, and no Objection to the contrary.

Thereafter the Proſecutors, for proving the criminal Libel, called the Witneſſes cited by them; and the Pannel, for proving his Defences, called the Witneſſes cited by him; and the Proſecutors cauſed to be read, in Preſence of the Jury, the Writings produced by Way of Evidence for them; and the Pannel's Counſel cauſed to be read, in Preſence of the Jury, the Writings produced for him; all which Depoſitions and Writings are as follows;

The whole Proof brought both on the Part of the Proſecutors, and on the Part of the Pannel.

JAMES STEWART, Pannel, does admit the Truth of all the Writings contained in the Inventory of Writings ſubjoined to the Criminal Letters, and which Inventory was delivered to him at executing the ſaid Letters againſt him, excepting two of the ſaid Writings which he does not admit, *viz.* the Writing, Number 7. intitled, Principal Holograph Letter by *Allan Stewart*, Son to the ſaid *James Stewart*, addreſſed to *Duncan Stewart* of *Glenbuckie*, dated at *Auchairn*, the 1ſt of *April* 1752; and the Writing, Number 12. intitled, Draught, Letter by the ſaid *James Stewart*, and of an Inſtrument of Proteſt at the Tenants Inſtance, relative to the ſaid Decreet of Removing and Suſpenſion thereof: But the ſaid Draught Letter and Inſtrument being again ſhewn to the Pannel in Court, the Pannel admits the Truth and Authenticity of theſe alſo; and therefore admits the Truth of the whole Writings, except the Writing before-mentioned, Number 7; but does not admit the Writings ſubjoined to the ſaid Inventory, being two principal Declarations by *Allan Stewart*, Son to the ſaid *James Stewart*, five principal Declarations by *Charles Stewart*, alſo Son to the ſaid *James Stewart*, three principal Declarations by *Margaret Stewart*, Spouſe to the ſaid *James Stewart*, and two by *Elizabeth Stewart*, his Daughter.

(Signed) JAMES STEWART. P. GRANT.

Thereafter the Proſecutors, for proving the above criminal Libel, adduced the following Witneſſes:

Mr. *Archibald Campbell* of *Stonefield*, Sheriff-Depute of the Shire of *Argyll*, aged fifty-ſix Years, married, being ſolemnly ſworn, purged of Malice, partial Counſel, examined and interrogate, and being ſhewn the Writings following, *viz.* four principal Declarations by *Charles Stewart*, Son to the Pannel, bearing to have been emitted in the Deponent's Preſence, and dated the 22d, 23d, and 25th Days of *May* laſt, and three Declarations by *Margaret Stewart*, Spouſe to the Pannel, and two Declarations by *Elizabeth Stewart*, his Daughter, all of them bearing to have been emitted in the Deponent's Preſence, as Sheriff of *Argyll-ſhire*, and dated the 22d and 25th Days of *May* laſt; depones, That all theſe Declarations were emitted by the reſpective Perſons therein mentioned, in Preſence of the Deponent, and of the reſpective Dates therein contained, and were all ſubſcribed by the reſpective Declarants in the Deponent's Preſence, excepting only, that the Declarations by the ſaid *Margaret Stewart* and *Elizabeth Stewart* were not ſigned by them, but were ſigned by the Deponent for them, becauſe they declared they could not write. And there being alſo ſhewn to the Deponent two Declarations by *Allan Stewart*, Son to the Pannel, bearing to have been emitted in Preſence of *George Douglas*, Sheriff-Subſtitute of *Inverneſs*, dated the 3d of *June* laſt, and a Declaration bearing to be emitted by the ſaid *Charles Stewart*, Son to the Pannel, in Preſence of the ſaid *George Douglas*, Sheriff-Subſtitute, dated the 4th of *June* laſt, depones, That the Deponent was preſent, and ſaw and heard the ſaid Declarations by the ſaid *Allan* and *Charles Stewarts*, emitted in Preſence of, and taken down in Writing by the Sheriff-Subſtitute; and they were, at the Sheriff-Subſtitute's Deſire, dictated by the Deponent to the Clerk; and the Deponent ſaw the ſaid Declarations ſubſcribed by the ſaid *Allan* and *Charles Stewarts reſpective*, of the ſeveral Dates therein contained, voluntarily and freely, without any Compulſion or Coaction. *Cauſa ſcientiæ patet.* And this is the Truth, as he ſhall anſwer to God.

(Signed) ARCH. CAMPBELL. P. GRANT.

After emitting of the above Depoſition by Mr. *Archibald Campbell* of *Stonefield*, to ſave the Time of the Court, in bringing further Proof of the Declarations therein mentioned, the Pannel judicially declared, that he admitted the Truth of all the ſeveral Declarations contained in the ſaid Oath, that is, that theſe Declarations were emitted by the reſpective Perſons therein mentioned, and in Preſence of the reſpective Judges, and at the reſpective Times therein contained, voluntarily and freely; but does not admit the Truth of the Facts as declared by the ſaid Declarants.

(Signed) JAMES STEWART. P. GRANT.

Mungo Campbell, Writer in *Edinburgh*, aged twenty-four Years, unmarried, ſworn, purged and examined *ut ſupra*, depones, That, in the Beginning of *May* laſt, the deceaſed *Colin Campbell* of *Glenure* applied to the Deponent, to go with him to *Lochaber*, to aſſiſt him in conducting the Ejecting of ſome of the Tenants of the Eſtate of *Stewart* of *Ardſhiel*, and of the Tenants of *Mamore*, Part of the Eſtate of *Lochiel*, over which the ſaid *Colin Campbell* was Factor, and which Tenants, he apprehended, would not voluntarily remove, without being legally ejected: That they ſet out from *Edinburgh* together, upon the 7th of *May* laſt, and arrived at *Glenure* upon *Saturday* the 9th of that Month; That they ſet out together for *Fort-William* upon *Monday* the 11th, about Ten o'Clock Forenoon, and remained at *Fort-William* till *Thurſday* the 14th, when they returned, in order to execute the next Day the Ejection againſt ſome of the Tenants of *Ardſhiel*: That, when they came to the Ferry of *Ballachelish*, the Defunct waited there about an Hour, communing with ſome of the Tenants, and croſſed the Ferry betwixt Four and Five in the Afternoon: That, after croſſing the Ferry, *Alexander Stewart* of *Ballachelish*, elder, met with the Defunct, and they travelled together on Foot about the Space of Half a Mile, till they came to the Skirts of the Wood of *Lettermore*: That, while they were communing together on Foot, the Deponent was at ſome little Diſtance before them on Horſeback, and the Sheriff-Officer, *Donald Kennedy*, was on Foot before the Deponent, and *Glenure*'s Servant, *John Mackenzie*, was on Horſeback a little before *Glenure*; and, the Servant happening to drop a Coat, *Ballachelish* called to him, and the Servant returned, and thereby fell behind *Glenure* and *Ballachelish*: That *Ballachelish* parted from *Glenure* at their entering into the Wood of *Lettermore*, or the Wood of *Ballachelish*, a Part of the Wood being called by that Name; and *Glenure* mounted his Horſe, and came up to the Deponent: That the Deponent aſked *Glenure*, whether *Ballachelish* had ſaid any thing to him touching removing the Tenants? And *Glenure* ſaid, that nothing paſſed betwixt them on that Subject: That coming to a Part of the Road that was rough and narrow, ſo as they could not ride conveniently two Horſes a-Breaſt, the Deponent and *Glenure* ſeparated, and the Deponent went before, and might have been about twice the Length of the Room where the Court now ſits before *Glenure*, when the Deponent heard a Shot behind him, and heard *Glenure* ſeveral Times repeat theſe Words, *Oh! I am dead.* Depones, That the Deponent thereupon returned to *Glenure*, and heard him repeat the ſame Words; and thinks, but is not poſitive, that he added, *Take Care of yourſelf, for he's going to ſhoot you:* That the Deponent immediately lighted, and run up the Hill from the Road, to ſee who had ſhot *Glenure*, and ſaw, at ſome Diſtance from him, a Man, with a ſhort dark-coloured Coat, and a Gun in his Hand, going away from him; and, as the Deponent came nearer him, he mended his Pace, and diſappeared by high Ground interjected betwixt him and the Deponent; and he was at ſo great a Diſtance, that the Deponent thinks he could not have known him, tho' he had ſeen his Face: That the Deponent thereupon returned to *Glenure*; and either at that Time, or before the Deponent run up the Hill as above deponed, (the Deponent cannot be poſitive which) he took *Glenure* from off his Horſe. Depones, That, after taking *Glenure* from his Horſe, he leaned a little upon the Deponent's Shoulder, and endeavoured to have opened his Breaſt, to ſee where the Bullets, wherewith he was ſhot, came out of his Body, but was not able; but ſaw, in his Waiſtcoat, two Holes in his Belly where the Bullets had come out. Depones, That *Glenure* intended to have been that Night at *Kintalline*, where he expected Mr. *Campbell* of *Ballieveolan* was to meet him; wherefore the Deponent ſent *Mackenzie*, the Servant above-mentioned, forward to *Kintalline*, to acquaint *Ballieveolan* what had happened, and to bring him to his Aſſiſtance: That *Glenure* continued in Agonies for about Half an Hour, or a little more, after ſending off *Mackenzie*, and then died; and Night coming on, and no Appearance of *Mackenzie*'s Returning, the Deponent ſent back the Sheriff-Officer above-named to *Ballachelish*, to deſire Mr. *Stewart*'s Aſſiſtance, and ſome of his People: That in a little more than an Hour, *Ballachelish*, and ſome of his People, with the Sheriff-Officer, came to the Deponent's Aſſiſtance, and carried *Glenure*'s Corpſe that Night to *Kintalline*, by Sea; and next Day carried it to *Glenure*, where ſome Surgeons came, and inſpected his Body; and the Deponent ſaw there the two Wounds in his Belly made by the Balls coming out of his Body. Depones, That when the Deponent laid *Glenure* upon the Ground, a great deal of Blood iſſued from his Body, and his Cloaths were all ſtained with Blood, particularly the Small of his Back, having been laid on his Back upon the Ground: That *Mackenzie* the Servant alſo returned, before they carried the Corpſe off the Ground, and ſome People with him, particularly *Ballieveolan*'s Sons; and, being ſhewn a Coat and Waiſtcoat, and a Shirt, depones, That theſe are the Coat and Veſt that *Glenure* had on when he was murdered; and believes alſo, it is the ſame Shirt. Depones, That, at the Place where *Glenure* was ſhot, the Wood is pretty thick on both Sides, and, on the Side from which he was ſhot, very rugged and ſtony, and Buſhes in which the Murderer could have eaſily hid and concealed himſelf: That the Ground there riſes up-hill towards the South, though there are Places in it where the Murderer might be pretty nearly upon a Level with *Glenure*; and there are alſo Places there ſo ſituate, as a Perſon ſtanding there might ſee the moſt Part of the Road from the Ferry to the Wood, and even a Part of the Road betwixt *Fort-William* and the Ferry; and which Place is not a Muſket-ſhot from the Spot where *Glenure* was murdered. Depones, That neither the Defunct, nor the Deponent, nor any of their Company, had any Sort of Arms with them. Depones, That it was betwixt Five and Six o'Clock in the Afternoon, as he thinks, when *Glenure* was murdered as aforeſaid; and remembers, when *Glenure* was dying, the Deponent looked at his own Watch, and found it was then about Six o'Clock. And depones, That, upon Recollection, he cannot be poſitive whether he obſerved both the Wounds in the Defunct's Belly, or only one of them. And being interrogate for

* What is ſomewhat remarkable in this Trial, is, that the Priſoner was tried by a CAMPBELL, had eleven *Campbells* out of Fifteen upon his Jury, and for the Murder of a *Campbell.*

the Pannel, depones, That, ſome Days after the Murder, the Deponent ſent a Serjeant and a Party of Soldiers to the Pannel's Houſe at *Auchairn*, with Orders to ſearch, and particularly to ſearch for Writings: That the Serjeant reported to the Deponent, that he had ſearched, and delivered to the Deponent one Paper which he found there, being a Scroll of a Letter by the Pannel, and of an Inſtrument of Proteſt, being the Number 12. of the Inventory ſubjoined to the Libel, and which is now in the Clerk's Hands; and being ſhewn to the Deponent, depones, That it is the ſame Writing that was delivered to him by the Serjeant. Depones, That the Serjeant gave him no more Papers but that one; and ſaid that he had brought away no more. *Cauſa ſcientiæ patet.* And this is Truth, as he ſhall anſwer to God.

(Signed) MUNGO CAMPBELL. P. GRANT.

John Mackenzie, late Servant to *Glenure*, unmarried, aged nineteen Years, Witneſs cited, ſworn, purged and examined *ut ſupra*, depones, That, upon the 14th of *May* laſt, he came, with his Maſter the deceaſed *Colin Campbell* of *Glenure*, from *Fort-William*, by the Horſe-Road leading to the Ferry of *Ballacheliſh*, which Road coincides, a little Way next to *Fort-William*, with the new Road commonly called the King's Road: That they paſſed the Ferry of *Ballacheliſh*, and came along the high Road, which leads to *Kintalline* thro' the Wood of *Lettermore*: That, coming up with *Alexander Stewart* elder of *Ballacheliſh*, who was on Foot, *Glenure* alighted from his Horſe to walk a little with *Ballacheliſh*, and deſired *Mungo Campbell*, Writer in *Edinburgh*, who was in Company with *Glenure*, as alſo the Deponent, to ſtep on, which accordingly they did; but coming up to a Place where they were ſtopt by the Tide, they were obliged to alight, and lead their Horſes acroſs a Rock; and, upon that Occaſion, and by which Means it happened that the Deponent dropt a great Coat belonging to *Donald Kennedy*, Sheriff-Officer, who was alſo along on Foot, and which he had got from him to carry when they paſſed the Ferry of *Ballacheliſh*; and *Glenure* and *Ballacheliſh* coming up, and finding the great Coat lying on the Road, one or other of them cried out, To whom this Coat belonged? which the Deponent, being within Diſtance to hear, ſaid, it belonged to *Donald Kennedy*, and that he had been carrying it, and had dropt it; whereupon he returned to fetch the Coat, by which means *Glenure*, who had parted with *Ballacheliſh* at the Rock that has been juſt mentioned, got before the Deponent, and, when about a Muſket-ſhot before him in the Wood of *Lettermore*, he heard a Shot which he took to be from a Firelock, which he did not much mind, nor know from what Quarter it had come; but when he came up, he ſaw *Mungo Campbell* wringing his Hands, and his Maſter lying on the Ground with a great deal of Blood about him, juſt breathing, and not able to ſpeak; and *Donald Kennedy*, the Sheriff-Officer, was at that Time ſtanding by him; and, as near as the Deponent could gueſs, this was about Five o'Clock in the Afternoon. Depones, That *Mungo Campbell* directed the Deponent to ride forward with all Speed to *Kintalline*, and to ſee if *John Campbell* of *Ballieveolan*, or his Sons, were there; and, if they were, to acquaint them what had happened, and to come up immediately. Accordingly he went, but found neither *Ballieveolan* nor his Sons there: But being told by one of the Tenants of *Achindarroch*, that probably *James Stewart* in *Auchairn*, who is now the Pannel, might give him ſome Account of *Ballieveolan*; that accordingly he went to *James Stewart*'s Houſe in *Duror*; and *James* ſeeing him weeping, aſked what the Matter was? The Deponent told him, his Maſter was killed; whereupon *James Stewart* aſked him, by whom and how it was done? To which he, the Deponent, anſwered, That he did not know by whom, and believed it to be by a Shot from a Gun or Piſtol: That the Deponent then aſked him, what was the neareſt Road to *Glenduror*, where he expected to find *Ballieveolan?* Which accordingly *James Stewart* having pointed out to him, he followed; and meeting with one *Allan Dow*, whom he had ſeen ſeveral Times before, he prevailed with him to go to *Glenduror*, and acquaint *Ballieveolan* of what had happened, and to deſire him to come up where his Maſter was, and which the ſaid *Allan Dow* could do more expeditiouſly on Foot, than the Deponent could do in that Croſs-way on Horſeback; and the Deponent immediately returned where his Maſter lay, and brought no Perſon along with him: That his Maſter was then dead, and that the People of *Ballacheliſh* were at this Time come up, and were ſtanding about him. Depones, That he was then ſent off a ſecond Time with a Horſe by the Road *Ballieveolan* was expected to come, in order to haſten him; and having accordingly met *Ballieveolan*, he, at *Ballieveolan*'s Deſire, went and acquainted Captain *Campbell*, younger, of *Barcaldine*, of what had happened. Depones, That when his Maſter and he came, as has been ſaid, from *Fort-William*, on the 14th of *May* laſt, they met the foreſaid *John Maccoll* going to *Fort-William* at the Foot of the Three-mile Water, which is about three Miles from *Fort-William*; and that the ſaid *Maccoll* came to the Ferry of *Ballacheliſh* much about the ſame Time with the Deponent, but before *Glenure*, who had ſtayed ſome time talking with the Tenants of *Ballacheliſh*; and further adds, that his Maſter had ſtayed at *Corrychorrachan*, which is about five Miles from *Fort-William*, about an Hour and a Half, or two Hours. Depones, That when *Maccoll* deſired the Ferryman to carry him over, the Ferryman begged to be excuſed till *Glenure*'s Horſes ſhould go over; and that he was then employed in gathering Wreck: But *Maccoll* would not delay; and accordingly was ferryed over, as he thinks, about Half an Hour before *Glenure*, whoſe Horſes were firſt ferryed over, and along with them the Sheriff-Officer, and afterwards *Glenure* and *Mungo Campbell*. And depones, That neither *Glenure*, nor any in his Company, had Arms of any Sort along with them. And a Coat, Waiſtcoat, and bloody Shirt, referred to in the Liſt of Evidence, being ſhewn to the Deponent, depones, That they were the very Cloaths and Shirt *Glenure* had on when he was killed as aforeſaid. And further depones, That, when he ſaw the Pannel at his Houſe in *Auchairn* as aforeſaid, the Pannel wrung his Hands, expreſſed great Concern at what had happened, as what might bring innocent People to Trouble; and prayed that innocent People might not be brought to Trouble. And being interrogate for the Pannel, depones, That beſide that Road by which he and his Maſter came from *Fort-William* to *Ballacheliſh*, there is another Road by which People travel, both by Horſeback and on Foot, which is computed to be the ſhorteſt by a Mile, and by which he ſuppoſes *Maccoll* came. *Cauſa ſcientiæ patet.* And this is Truth, as he ſhall anſwer to God.

(Signed) JOHN MACKENZIE. JA. FERGUSON.

Donald Kennedy, Sheriff-Officer in *Inverary*, married, aged forty-eight Years, Witneſs cited, ſworn, purged, and examined *ut ſupra*, depones, That, upon the 11th Day of *May* laſt, he was employed by *James Campbell*, Writer in *Inverary*, to carry a Pacquet to *Glenure*, then at *Fort-William*; and when he delivered the Pacquet to him, told him, that it contained a Warrant for ejecting certain Poſſeſſors of the Lands of *Ardſhiel*: That, upon the 13th Day of *May*, he came to *Maryburgh* or *Fort-William*, where he found the deceaſed *Glenure*, and delivered the Pacquet to him, who told him, as *James Campbell* had before done, what the Pacquet contained; and that he, the Deponent, was to be employed in executing the Ejection: That, upon the 14th Day of *May*, *Glenure*, as alſo the Deponent, left *Fort-William*, and, at *Glenure*'s Deſire, the Deponent went before, being on Foot, and waited at the Ferry of *Ballacheliſh* till *Glenure* came up to him: That *Glenure* croſſed the Ferry from the North to the South of *Appin* Side, and along with him a young Gentleman *Mungo Campbell*, ſaid to be a Writer in *Edinburgh*, and his own Servant *John Mackenzie*: That *Mackenzie* and the Horſes went firſt over: That the Boat again returned, and brought over *Glenure*, *Mungo Campbell*, and the Deponent: That the Deponent being on Foot, as has been ſaid, went on the high Road leading to *Kintalline*, where he underſtood *Glenure* intended to quarter that Night; but was paſt on the Road by *Glenure*, *Mungo Campbell*, and *Glenure*'s Servant, whom the Deponent could not keep up with; but as *Glenure* happened to find, upon the Road, *Alexander Stewart* elder of *Ballacheliſh* on Foot, he lighted from his Horſe, and walked a little on the Way with *Ballacheliſh*, whereby the Deponent got the Start of *Glenure*, and the two Riders that were in Company with him; and the Deponent walking on thro' the Wood of *Lettermore*, and after he was about half a Mile or ſo within the Wood, he heard a Shot, and at the ſame Time heard the aforeſaid *Mungo Campbell* make a great Noiſe as of one weeping, the Deponent being at that Time but about two-penny Stone-caſt before the ſaid *Mungo*, who was riding foremoſt, as he afterwards told the Deponent. The Deponent immediately upon hearing the Noiſe returned, for he had gone a little without minding the Shot, till once he heard the Noiſe, and when he came back to *Mungo Campbell*, *Mungo* ſaid to him, The Villain has killed my dear Uncle, adding, that he had only ſeen one Man; and that he, the Deponent, aſked no Queſtions, being in Confuſion, and dreading for the ſame Fate himſelf. Depones, That he ſaw *Glenure* lying upon the Ground, with great Plenty of Blood about him, and, as the Breaſt of his Waiſtcoat had been opened before the Deponent came up, he ſaw a Hole in his Shirt, thro' which he ſuppoſed a Bullet had come; and that the Deponent ſtayed at the Place till *Glenure* expired. Depones, That *John Mackenzie*, *Glenure*'s Servant, was diſpatched by *Mungo Campbell* to the Houſe of *Kintalline*, where *Glenure* was to lodge that Night, and *Ballieveolan* along with him, with Orders to bring *Ballieveolan*, and ſome other Gentlemen that were expected to be there; *Mungo Campbell* alſo deſired the Deponent to go for other People, which the Deponent at firſt declined, giving this Reaſon for it, that he would ſtay and run the ſame Riſque with *Mungo Campbell*; but at laſt was prevailed upon to go by *Mungo Campbell*, whom he left alone with the Corpſe, and the Deponent brought *Alexander Stewart* elder of *Ballacheliſh*, and ſeveral other People of the Town of *Ballacheliſh*. Depones, That while *Glenure* and his Company were at the Ferry of *Ballacheliſh*, as aforeſaid, he ſaw a Man, who ſeemed to be in a Hurry to get over the Ferry, who proved to be *John Maccoll*, Servant to the Pannel; to whom *Glenure* ſaid, in the Deponent's Hearing, *Sir, you travel better than I do.* To which he anſwered, *I am in a Haſte*, and ſo went over the Ferry about an Hour before *Glenure* paſſed it, who had ſome Buſineſs to do with Tenants there. Depones, That, when the People were gathered about the Corpſe, as aforeſaid, the ſaid *John Maccoll* was among them. And *Mungo Campbell* then told the Deponent, that when *Glenure* and he were come three Miles from *Fort-William*, they met the ſaid *John Maccoll* going to *Fort-William*, and that he was back at the Ferry of *Ballacheliſh*, tho' on Foot, as ſoon as they. Depones, That *Glenure* was ſhot about Half an Hour after Five in the Evening, and died, as he thinks, about Six, *Mungo Campbell* having then looked at his Watch. Depones, That this *John Maccoll* was none of the People that this Deponent had called upon: That the Corpſe was carried that Night to *Kintalline* by Water, the Place where they lay being but a ſhort Diſtance down thro' a rugged Part of the Road towards the Loch. And being interrogate for the Pannel, depones, That there are two Roads leading from *Fort-William* to the Ferry of *Ballacheliſh*, one of them being a Horſe-Road, by which *Glenure* came, the other a Foot-Road, which is the ſhorteſt of the two by about a Mile. *Cauſa ſcientiæ patet.* And this is the Truth, as he ſhall anſwer to God. And being further interrogate for the Purſuers, depones, That neither *Glenure*, nor any in his Company, had Arms along with them of any Kind. And being alſo further interrogate for the Pannel, depones, That *John Maccoll* was at the Ferry before *Glenure* came up. And this is Truth, as he ſhall anſwer to God.

(Signed) DONALD KENNEDY. JA. FERGUSON.

John Roy Livingſtone, alias *Macanure*, in *Ballacheliſh*, married, aged forty, who being ſworn by *Archibald Campbell*, Sheriff-Subſtitute of *Argyll-ſhire*, ſworn Interpreter, purged of Malice and partial Counſel, depones, That, upon *Thurſday* the 14th Day of *May* laſt, he ſaw *Allan Breck Stewart* in *Ballacheliſh*, in the Forenoon, dreſſed in a dunniſh big Coat; but had no Converſation with him: That, upon the Evening of the ſaid Day, he ſaw *John Beg Maccoll*, Servant to the Pannel, travelling at a good Rate from the Ferry of *Ballacheliſh*, towards his Maſter's Houſe. The Deponent joined him upon the high Road, and aſked him where he had been? To which *John Maccoll* replied, That he had been at *Maryburgh* for *Charles Stewart*, Notary Public, but did not find him at home: That, during this Converſation, the Deponent travelled the Road along with the ſaid *John Maccoll*, and only ſtopped for a very ſhort Time; and that the ſaid *John Maccoll* told the Deponent, that *Glenure* that Night was to be at *Kintalline*. Depones, That, about an Hour and a Half, or two Hours

Hours thereafter, the Deponent went to the Wood of *Ballachelish*, adjoining to *Lettermore*, to cut some Sticks he wanted: That, while he was in the Wood, he saw *Donald Kennedy*, Sheriff-Officer at *Inverary*, passing along the high Road below him, and a little after him *Mungo Campbell*, and *John Mackenzie*, *Glenure*'s Servant, and a little after them *Glenure* on Horseback, and *Alexander Stewart* elder of *Ballachelish* along with him; and, as the Deponent observed *Glenure* and *Ballachelish*, they found a big Coat upon the high Road, and called to the said *John Mackenzie* the Servant, and the Servant came back for the big Coat, and *Glenure* and *Ballachelish* parted: That the Deponent came down to the Road, and entered into Conversation with the said *John Mackenzie*, and, after a few Questions, the said *John Mackenzie* went on after his Master; and immediately thereafter the Deponent heard a Noise, which he imagined to be a Shot, but was not sure. Depones, That, some Time thereafter, he went along with *Ballachelish* to the Wood of *Lettermore*, where he found *Glenure* dead, and was one of the People that assisted to carry the Corpse to *Kintalline*. *Causa scientiæ patet*. And this is the Truth, as he shall answer to God. And depones he cannot write.

(Signed) Arch. Campbell. P. Grant.

Alexander Campbell, Surgeon in *Lorn*, aged fifty Years, unmarried, sworn, purged and examined *ut supra*, depones, That he was called to the House of *Glenure*, upon the 15th Day of *May* last, to inspect the Body of the then deceased *Colin Campbell* of *Glenure*, who, the Deponent was informed, had been shot the Day before; and, having accordingly inspected the Body, he found, that he had been shot by two Bullets entering at his Back, one on each Side of the Back-bone; one of which had come out about Half an Inch below the Navel, and the other about two Inches from it, towards the right Side. And depones, That they were mortal Wounds, of which the Deponent believes *Glenure* died. *Causa scientiæ patet*. And this is Truth, as he shall answer to God.

(Signed) Alex. Campbell. Ja. Ferguson.

Angus Macdonald, Walk-miller in *Auchosragan*, married, aged sixty-three, Witness cited, sworn, purged and examined *ut supra*, depones, That, in *April* last, *Allan Breck Stewart*, and *John Stewart* in *Auchnacoan*, came into the Deponent's House, and sat down; and, at the same Time, *Duncan Campbell* (the succeeding Witness) came in, and sat down also; and which *Allan* asked *John Stewart*, who that was? And *John* answered, That he was an honest Man in the Neighbourhood, *Duncan Campbell* naming him; to which *Allan* answered, That he did not like any of the Sort or Name: For that *Glenure* had wrote to Colonel *Crawfurd*, that he had come from *France*, and to take him up as a Deserter; but that he was not in his Reverence; for he had General *Churchill*'s Pass: That *John Stewart* said, that he did not so much blame *Glenure* for turning out the Possessors of *Ardshiel*; for that he was but doing the King's Service; and that, if he had not the Factory, another would, who would do the same Thing; to which *Allan* answered, That he rather the meikle Devil had it than *Glenure*. And, being interrogate for the Pannel, depones, That *Allan* was then dressed in a blue side Coat, a red Vest, and feathered Hat. Depones, That the Deponent saw him again about the 8th of *May* in the same Dress: That, at that Time, the Deponent, and the foresaid *Duncan Campbell* and *Malcolm Maccoll*, were travelling together, and met *Allan* on the Road: That *Allan* gave *Duncan* the common Salutation; and said, that the last Time he had been in *Duncan*'s House, he was bad Company, tho' it was not he that was so much the bad Company, as the Drink. *Causa scientiæ patet*. And this is the Truth, as he shall answer to God.

(Signed) Angus Macdonald. P. Grant.

Duncan Campbell, Change-keeper at *Annat*, aged thirty-five Years, married, Witness cited, sworn, purged and examined *ut supra*, depones, That, in the Month of *April* last, the Deponent met with *Allan Breck Stewart*, with whom he was not before acquainted, and *John Stewart* in *Auchnacoan*, at the House of the Walk-miller of *Auchosragan*, and went on with them to the House: That *Allan Breck Stewart* said, that he hated all the Name of *Campbell*; and the Deponent said, he had no Reason for doing so; but *Allan* said, he had very good Reason for it: That thereafter they left that House; and, after drinking a Dram at another House, came to the Deponent's House, where they went in, and drunk some Drams, and *Allan Breck* renewed the former Conversation; and the Deponent making the same Answer, *Allan* said, that, if the Deponent had any Respect for his Friends, he would tell them, that if they offered to turn out the Possessors of *Ardshiel*'s Estate, he would make black Cocks of them before they entered into Possession; by which the Deponent understood shooting them, it being a common Phrase in the Country: That *John Stewart* said, he did not blame *Glenure* so much as *Ballieveelan* for taking these Possessions, whereas *Glenure* was doing the King's Service; and *Allan Breck* replied, That besides that, he had another Ground of Quarrel against *Glenure*, for his writing to Colonel *Crawfurd*, that he, *Allan*, was come home from *France*; but that he was too cunning for him; for that, when at *Edinburgh*, he had made up his Peace with General *Churchill*, and had got his Pass, which he had in his Pocket-book: That the Deponent asked a Sight of it: That he searched his Pocket-book, but could not find it; upon which he tore a Leaf out of the Book, and said, there it was. And depones, That he said twenty Times over he would be fit-sides with *Glenure*, where-ever he met him; and wanted nothing more than to meet him at a convenient Place. Depones, That, at this Time, *Allan Breck* was not drunk, for he could walk and talk as well as any Man; but it could easily be observed, he had been drinking. *Causa scientiæ patet*. And this is the Truth, as he shall answer to God.

(Signed) Duncan Campbell. P. Grant.

Anne Maclaren, Servitrix to *Duncan Campbell*, Change-keeper at *Annat*, unmarried, aged twenty-one, Witness cited, sworn, purged and examined by the sworn Interpreter above-named, depones, That, some Time after the 17th Day of *March* last, before the first of *May*, she saw *Allan Breck Stewart* in Company with *John Breck Stewart* in *Auchnacoan*, and *Robert Stewart*, in the Mill of *Duror*, in her Master's House; and that she heard *Allan Breck* then say, that he would not shun *Glenure* wherever he met him; by which she understood that he was to do Hurt or Harm to *Glenure* wherever he saw him. *Causa scientiæ patet*. And this is the Truth, as she shall answer to God; and declares she cannot write.

(Signed) Arch. Campbell. P. Grant.

Robert Stewart, Son to *Robert Stewart*, Miller in *Cuil*, aged about twenty, unmarried, Witness cited, sworn, purged and examined *ut supra*, by the sworn Interpreter, depones, That, some Time in *April* last, the Deponent was in Company with *Allan Breck Stewart*, *John Stewart* in *Auchnacoan*, *Duncan Campbell*, Change-keeper in *Annat*, in the said *Duncan Campbell*'s House: That *Allan Breck* complained of *Colin Roy*, meaning *Glenure*, and Mr. *Campbell* of *Ballieveolan*; and said particularly of *Glenure*, that he had sent Notice to *Fort-William*, that he was in the Country, that he might be apprehended: But said, he was not in his Reverence, as he had the King of *France*'s Commission in his Pocket; and said, he would be even with him; and that he would take his Opportunity to dispatch or murder either *Glenure* or *Ballieveolan*, before he left the Country. Depones, That *Allan Breck* was much in Drink at the Time of uttering the above Expressions; and was then dressed in his long blue Coat. *Causa scientiæ patet*. And this is the Truth, as he shall answer to God; and declares he cannot write.

(Signed) Arch. Campbell. P. Grant.

Malcolm Bane Maccoll, Change-keeper at *Portnacrosh*, aged fifty Years, married, Witness cited, sworn, purged and examined by the Interpreter *ut supra*, depones, That, some Time in *April* last, *Allan Breck Stewart* and *John Stewart* in *Auchnacoan* came to the Deponent's House after Night-fall, and sat up all Night drinking: That, next Morning, *John Maccoll*, then Servant to the Deponent, now in *Shuna*, came into the Company, in a shabby Condition: That *Allan Breck* asked who he was? That the said *John Stewart* answered, That he was an honest poor Man, with a numerous Family of small Children; and that it would be great Charity in any body to assist him: Upon which *Allan Breck* desired the said *John Stewart* to give the said *John Maccoll* a Stone of Meal, and he would pay for it; which the said *John Stewart* promised to do: That the said *Allan* then gave the said *John Maccoll* a Dram, and told him, if he would fetch him the Red Fox's Skin he would give him what was much better; to which the said *John Maccoll* answered, that he was no Sportsman; and that he was much better skilled in Ploughing or Delving. Depones, That the Deponent gave no great Notice to these Expressions at the Time; but, after he heard of *Glenure*'s Murder, believed he meant *Glenure*, as he was commonly called *Colin Roy*, which means *Red Colin*, in the Country. *Causa scientiæ patet*. And this is the Truth, as he shall answer to God; and declares he cannot write.

(Signed) Arch. Campbell. P. Grant.

Anne Maccoll, Spouse to *Malcolm Bane Maccoll*, the preceding Witness, aged about forty, Witness cited, sworn, purged and examined *ut supra*, by the Interpreter, depones, conform to the said *Malcolm Bane Maccoll*, the preceding Witness, *in omnibus*, except that the said *Allan Breck* and *John Stewart* in *Auchnacoan* went to Bed for a short Time; but, whether they slept, or not, the Deponent knows not. *Causa scientiæ patet*. And this is the Truth, as she shall answer to God; and declares she cannot write.

(Signed) Arch. Campbell. P. Grant.

John Stewart elder of *Fasnacloich*, aged sixty-five Years, married, sworn, purged and examined *ut supra*, depones, That, upon the *Monday* before the Murder of *Glenure* was committed, *Allan Breck Stewart* was then at the Deponent's House, having been three Nights there, accompanied by *Charles Stewart*, Son to the Pannel: That he told *Allan Breck*, that *Glenure* was come from *Edinburgh* with a Warrant to remove the Tenants; to which *Allan Breck* said, that, if there was a Warrant, there was no more to be said; but that, if he had no Warrant, he would not be allowed to remove them: That the Deponent told *Allan Breck*, that a Plea with *Glenure*, concerning the Removing of these Tenants, would be costly for *James Stewart* in *Aucharn* to support: That the Reason he named *James Stewart*, was, that he was the Person who acted in Behalf of the Tenants: That the Distance between the Deponent's House and the late *Glenure*'s is about a Mile: That he heard, on *Sunday* the 10th of *May*, that *Glenure* was going to *Fort-William*; and *Allan Breck* left his House about Nine o'Clock *Monday* Morning. *Causa scientiæ patet*. And this is Truth, as he shall answer to God.

(Signed) Jo. Stewart. Argyll.

James Stewart younger of *Fasnacloich*, aged twenty-nine Years, unmarried, sworn, purged and examined *ut supra*, depones, That *Allan Breck Stewart* came to *Fasnacloich* about the 8th of *May*, and stayed three Days: That he went away on *Monday* the 11th, about Nine in the Morning: That he was going to leave the Country soon, but would see them again at *Fasnacloich* before he went away: That he was then dressed in a long blue Coat, red Waistcoat, black Breeches, and a feathered Hat: That he saw *Allan Breck* the next Day, being *Tuesday* the 12th, at *Ballachelish*: That he was then dressed in a black short Coat with round white Buttons, and a dark great Coat over it, with Trowsers on, and a blue Bonnet: That the Deponent took Notice to *Allan Breck* that he had changed his Dress; who answered, That he did it because the Day was warm: That the Deponent was informed at *Ballachelish*, in Company with *Allan Breck*, that *Glenure* was gone to *Fort-William*: That when he parted with *Allan Breck* at *Glenco*'s House, *Allan Breck* told the Deponent that he was going to *Callart*, and would return the next Day, and did not see him since: That on *Sunday* the 10th of *May*, he heard, being in Company with *Allan Breck*, that *Glenure* had got an Order from *Edinburgh* to remove the Tenants, and was gone to *Fort-William*; and that this was at *Fasnacloich*. *Causa scientiæ patet*. And this is the Truth, as he shall answer to God.

(Signed) James Stewart. Argyll.

John Stewart younger of *Ballachelish*, aged twenty-six Years, unmarried, sworn, purged and examined *ut supra*, depones, That, upon *Tuesday* the 12th of *May* last, he saw *Allan Breck Stewart* at his Father's House of *Ballachelish*, and heard him ask Questions about *Glenure*'s travelling to *Lochaber*: That, on *Thursday* the 14th, late at Night, *Donald Macintyre*, a Servant of the Pannel's, told the Deponent of the Murder; and that

that he was going with a Meſſage to *Appin* from *James Stewart* his Maſter, to give him an Account of the Murder: That he arrived at *Appin*'s Houſe before the ſaid Servant came there: That he returned to *Appin*'s Houſe, inſtead of going to the Pannel's Houſe, where he had intended to be: That he told *Appin* of the Murder, at which he expreſſed great Surprize and Concern. Depones, That, in the Time of the Spring Circuit in this Place in *May* laſt, he was ſummoned to be of the Jury; but, at the earneſt Requeſt of the Pannel, that he, the Deponent, ſhould be preſent with a Notary at the removing of the Tenants from the Eſtate of *Ardſhiel*, he was a-going on that Errand to the Pannel's Houſe; but returned to *Appin*, upon hearing of the Murder committed that Day. *Cauſa ſcientiæ patet*. And this is Truth, as he ſhall anſwer to God.

(Signed) JOHN STEWART. ARGYLL.

Katharine Maccoll, Servant to the Pannel, aged ſixteen Years and upwards, who being ſolemnly ſworn, by the forenamed ſworn Interpreter, purged of Malice and partial Counſel, and examined and interrogate, depones, That ſhe ſaw *Allan Breck Stewart* at the Pannel's Houſe, upon *Monday* the 11th Day of *May* laſt, in the Afternoon, dreſſed in a blue ſide Coat, red Waiſtcoat, and black Breeches; and does not remember to have ſeen him in any other Dreſs that Day. Depones, That the Pannel went, in the Afternoon of that Day, to *Keels*, to meet Mr. *Campbell* of *Airds*, and that it was late at Night before he came Home; but that the Family had not ſupped when the Pannel came Home; and that the Pannel ſupped in Company with *Allan Breck Stewart*, *Faſnacloich*'s Daughter, and *Archibald Cameron*, Nephew to *Faſnacloich*, and the Pannel's Family. Depones, That ſhe ſaw the ſaid *Allan Breck Stewart*, on the Morning of *Tueſday* the 12th of *May* laſt, dreſſed in a dunniſh-coloured great Coat, in the Pannel's Houſe; and that ſhe ſaw him go out at the Door dreſſed in the ſaid dunniſh-coloured great Coat. Depones, That, upon the Evening of *Friday* the 15th of *May* laſt, as the Deponent came in at the Door, *Margaret Stewart*, Spouſe to the Pannel, being then in the Cellar, called upon the Deponent, who then ſaw the ſaid *Margaret Stewart* put a ſide blue Coat, a red Waiſtcoat, with ſomething elſe that the Deponent did not obſerve, into a Sack, and delivered them to the Deponent, deſiring her to hide them ſome way without. Depones, That the ſaid *Margaret Stewart* did not tell the Deponent to whom the Cloaths belonged; but that the Deponent thought the ſaid Coat and Waiſtcoat were *Allan Breck*'s. Depones, That ſhe went away with the ſaid Sack, containing the ſaid Cloaths; and, as ſhe was going up the Brae, in order to hide them, was overtaken by *Dugald* and *John Beg Maccolls*, Servants to the Pannel, who had ſome Guns and Swords; and the ſaid *Dugald Maccoll* aſked the Deponent, what ſhe had got in the Sack? The Deponent anſwered, it was *Allan Breck*'s Cloaths; and that ſhe was going to hide them; and that accordingly the ſaid Sack, containing the above Cloaths, was hid in the Moor above the Pannel's Houſe, by the ſaid *Dugald Maccoll*, in Preſence of the Deponent. Depones, That upon *Saturday* the 16th of *May* laſt, in the Evening, the ſaid Mrs. *Stewart*, Spouſe to the Pannel, deſired the Deponent to carry back what ſhe had hid, and leave it at the Back of the Brew-houſe; which the Deponent accordingly did; and has not ſeen them ſince. Depones, That *Alexander Bane Stewart* was ſeen by the Deponent about the Houſe that Evening. Depones, That ſome Time in Summer laſt, after the above Period, *Solomon Bane Maccoll*, Servant to the Pannel, told the Deponent, that the ſaid Mrs. *Stewart*, Spouſe to the Pannel, deſired her to conceal what ſhe knew about the above Cloaths, in Caſe ſhe ſhould be aſked or examined about them. And, being interrogate for the Pannel, depones, That *Allan Breck Stewart* did not lie in the Pannel's Houſe upon *Monday* Night, the 11th Day of *May* laſt, but lay in the Barn, as the Deponent thinks. *Cauſa ſcientiæ patet*. And this is the Truth, as ſhe ſhall anſwer to God; and depones ſhe cannot write.

(Signed) ARCH. CAMPBELL. JA. FERGUSON.

Archibald Cameron, Son to *Allan Dow Cameron*, ſome time Change-keeper in *Maryburgh*, aged twenty-two Years, unmarried, ſworn, purged and examined *ut ſupra*, by Mr. *Archibald Campbell*, Sheriff-Subſtitute of *Argyll-ſhire*, depones, being interrogate for the Pannel, That, upon *Monday* the 11th Day of *May* laſt, the Deponent came from *Faſnacloich*'s Houſe to the Pannel's Houſe after Mid-day: That, ſome little Time after he came there, he ſaw *Allan Breck Stewart* there: That the Pannel was not at Home when the Deponent came firſt there, but came Home before Night-fall: That the Deponent, Pannel, *Allan Breck*, and the Family, ſat in one Room, and ſupped together: That he did not obſerve *Allan Breck* and the Pannel ſpeak in private that Night: That the Deponent and *Allan Stewart*, the Pannel's Son, lay in one Bed, *Allan Breck* and *Charles Stewart*, Son to the Pannel, in another Bed, in the ſame Barn: That, to the beſt of his Remembrance, they all went to Bed much about one Time, and got up together next Morning: That the Deponent did not obſerve the Pannel about the Houſe next Morning when he got up. *Cauſa ſcientiæ patet*. And this is Truth, as he ſhall anſwer to God.

(Signed) ARCHIBALD CAMERON.
ARCH. CAMPBELL.
ARGYLL.

John Breck Maccombich, Change-keeper at *Kintalline*, aged about forty, married, Witneſs cited, ſworn and purged by the forenamed ſworn Interpreter, *ut ſupra*, depones, That, in the Beginning of Summer laſt, before *Whitſunday*, *Duncan Campbell*, Sheriff-Subſtitute of *Killin*, told the Deponent, that if he could, with Truth and Honeſty, make any Diſcovery, tending to diſcover the Murderers of *Glenure*, it was probable he would not be turned out of his Poſſeſſion. Depones, That, upon the 14th Day of *May* laſt, *John Beg Maccoll*, Servant to the Pannel, came to the Deponent's Houſe about Seven o'Clock in the Morning, and told, that the Pannel had deſired the Deponent and *John More Maccoll*, another Servant of the Pannel's, to ferry the ſaid *John Beg Maccoll* from his Houſe to *Lochaber*, that being the ſhorteſt Road from *Aucharn* to *Fort-William*: That the Deponent at the firſt declined it; but upon *John Beg*'s telling, that it was the Pannel's Deſire that he ſhould be ferryed there, they carried him over accordingly. Depones, That, in the Afternoon of the ſame Day, before Sun-ſet, the ſaid *John Beg Maccoll* came back to the Deponent's Houſe, and called for half a Mutchkin of Aquavitæ, but did not ſit down: That, during the Drinking of the Dram, the Deponent aſked the ſaid *John Beg Maccoll*, if he had been at *Fort-William*? and if he had got *Charles Stewart*, Notary? (which he told in the Morning was his Errand to *Fort-William*) *John Beg Maccoll* anſwered, That he had been at *Maryburgh*, but *Charles Stewart* was not at Home. Depones, That, upon *Tueſday* the 12th of *May* laſt, *Glenure* ſent Notice to the Deponent, that he and ſome other Company was to be at his Houſe upon *Thurſday* then next, and deſired that he might be prepared for entertaining them; and that he accordingly made Proviſion for them. Depones, That he told that *Glenure* was to be at his Houſe that Night; and that the whole Neighbourhood knew of it; and, upon the Pannel's Interrogatory, depones, That *Glenure* frequently went to *Lochaber* by *Mamuckie*, being a ſhorter Road to the Ferry of *Ballachelish* than the Strath of *Appin*; and he once coming from *Lochaber*, landed at *Kintalline*; and that a Perſon paſſing from *Glenerearan* to the Ferry of *Ballachelish* by *Mamuckie*, does not go through the Wood of *Lettermore*, nor by *Kintalline*. Depones, That he was warned to remove from his Poſſeſſion, being a Part of *Ardſhiel* Eſtate, at *Whitſunday* laſt, and employed no Perſon to keep him in Poſſeſſion. Depones, That, ſome Time after he had got his Citation of Warning, the Pannel paſs'd by his Houſe on Horſeback, and aſked if he had his Copy of Citation in the Removing? The Deponent anſwered he had; the Pannel called for a Sight of it; and, upon the Deponent's producing it, the Pannel ſaid he would keep it. And being interrogate if the Pannel informed him that he was going to *Edinburgh*, and was to produce his Copy of Citation there? depones, Not; but only that he was going Southward. *Cauſa ſcientiæ patet*. And this is the Truth, as he ſhall anſwer to God; and declares he cannot write.

(Signed) ARCHIBALD CAMPBELL. P. GRANT.

Alexander Stewart of *Ballachelish* elder, aged ſixty-eight Years, Widower, ſworn, purged and examined *ut ſupra*, depones, That *Allan Breck Stewart* called at the Deponent's Houſe upon the 12th of *May* laſt, and that *James Stewart* younger of *Faſnacloich* was then at the Deponent's Houſe: That upon the 13th, about Seven or Eight in the Afternoon, he came again to the Deponent's Houſe, and lodged with him all Night, ſtayed the next Day, being *Thurſday* the 14th, till Eleven or Twelve, when he went out with a Fiſhing-rod in his Hand, and was fiſhing in the Burn near the Deponent's Houſe, but he did not ſee him take any: That he did not take leave of the Deponent; and did not return; and he knows nothing of him ſince: That the ſaid *Allan Breck Stewart* was dreſſed in a great Coat, and under it a ſhort black Coat with white Buttons: That, when the ſaid *Allan Breck Stewart* was fiſhing, he ſaw a great Coat lying upon the Bank, which he took to be *Allan Breck Stewart*'s: That, that Evening on the 14th, he was in Company with *Glenure*, and left him very near the Wood of *Lettermore*: That, the Morning after the Murder was committed, the Deponent really thought, that *Allan Breck Stewart* might be the Actor in this Murder, becauſe he did not return to this Deponent again. *Cauſa ſcientiæ patet*. And this is Truth, as he ſhall anſwer to God. (Signed) ALEX. STEWART. ARGYLL.

Donald Rankine, Herd to *Ballachelish*, unmarried, aged about eighteen, Witneſs cited, ſworn, purged and examined *ut ſupra*, by the ſaid *Archibald Campbell*, ſworn Interpreter, depones, That on the 14th Day of *May* laſt, he ſaw *Allan Breck Stewart* at the Houſe of *Ballachelish*, his Maſter; and that the ſaid *Allan Breck* was dreſſed in a great dun Coat, under which he had on a black ſhort Coat, with ſilver or white Buttons on it: That before Mid-day he went up with a Fiſhing-rod to the Water-ſide, where he ſaw him fiſhing up the Water: That he has not ſeen him ſince. *Cauſa ſcientiæ patet*. And this is Truth, as he ſhall anſwer to God; and declares he cannot write.

(Signed) ARCH. CAMPBELL. P. GRANT.

Archibald Macinnes, Ferryman at *Ballachelish*, Witneſs cited, aged ſixty-five Years, married, ſworn, purged and examined *ut ſupra*, depones, That he met *Allan Breck Stewart* near the Ferry of *Ballachelish*, upon the Evening of *Wedneſday* the 13th of *May* laſt, as the ſaid *Allan* returned from *Glenco*. Depones, That, after Mid-day, upon *Thurſday* the 14th Day of *May* laſt, as the Deponent was ſitting near the Ferry of *Ballachelish*, with the Son of *John Campbell* in *Stronmellachan* in *Glenorchie*, *Allan Breck* came behind them and hoaſted, and, upon the Deponent's looking about, deſired him to come to him; which the Deponent did; and the ſaid *Allan* inquired of him, if *Glenure* had croſs'd the Ferry from *Lochaber* to *Appin*? The Deponent told him, he was ſure he did not: That, upon this, *Allan Breck* went away towards the high Road; had on a dun-coloured big Coat, and had no Fiſhing-rod; and the Deponent has not ſeen him ſince. Depones, That he is Ferryer upon the *Appin* Side, where this Converſation happened. *Cauſa ſcientiæ patet*. And this is the Truth, as he ſhall anſwer to God; and declares he cannot write. And further depones, That he heard Nobody ſuſpected for the Murder of *Glenure*, but the ſaid *Allan Breck*. Depones, That *Glenure* was expected back upon the *Wedneſday*; and the Deponent was ſure he muſt be back the *Thurſday*, as it was currently reported in the Country, he was to have a Meeting with ſome Gentlemen at *Kintalline*, *Thurſday* Night. And this is alſo Truth, as he ſhall anſwer to God.

(Signed) ARCH. CAMPBELL. P. GRANT.

Donald Stewart in *Ballachelish*, aged about thirty, married, ſolemnly ſworn by *Archibald Campbell*, Writer in *Inverary*, ſworn Interpreter, who, being purged of Malice and partial Counſel, examined and interrogate, depones, That upon the 15th Day of *May* laſt, he met the Pannel in *Duror*, upon the Marches of *Auchindarroch*, oppoſite to the Pannel's Houſe. Upon the Deponent's regretting that ſuch an Accident as *Glenure*'s Murder ſhould happen in the Country, the Pannel joined with him, and ſaid, that he was informed that one Serjeant *More*, alias *John Cameron*, had been threatning Harm to *Glenure* in *France*, but did not inform the Deponent who told him ſo. Depones, That, to his Knowledge, Serjeant *More* has not been in *Appin* theſe ten years paſt. Depones, That upon the Evening of *Thurſday* the 14th of *May* laſt, about Night-fall, *Katharine Macinſh*, then in *Ballachelish*, now in *Larich*, came to the Deponent, and told him that one without wanted to ſpeak with him: That this Meſſage came to him in

Ballachelish's

Ballacheliſh's own Houſe: That, when he went out, the ſaid *Katharine Maciniſh* informed him, that it was *Allan Breck* that wanted him; and that he was a little above the Houſe in the Brae: That the Deponent went up the Brae, and met *Allan Breck*, who was then dreſſed in a great Coat, and a dark ſhort Coat under it with white metal Buttons; the Deponent told him of the Murder, and ſaid it could not be but that he, *Allan Breck*, was about it; to which *Allan Breck* anſwered, that he heard of the Murder, but had no Hand in it; to which the Deponent replied, he did not believe him. Depones, That the ſaid *Allan Breck Stewart* told the Deponent, he was going immediately to leave the Kingdom, was very ſcarce of Money, and was going then for *Koaliſnacoan*; and deſired the Deponent to acquaint the Pannel, that he was gone to *Koaliſnacoan*; and deſired him, if poſſible, to ſend him Money there; and the Deponent then promiſed to acquaint *James Stewart* of the above Meſſage. Depones, That the ſaid *Allan Breck* ſaid, he believed he would be ſuſpected of the Murder, and upon that Account, and as he was a Deſerter formerly from the Army, it was neceſſary for him to leave the Kingdom. Depones, That, before he had the above Converſation with *Allan Breck*, he aſſiſted in carrying the Corpſe of *Glenure* to the Boat. Depones, That, after the Converſation with the Pannel about Serjeant *More*, he delivered the above Meſſage from *Allan Breck* to the Pannel; and that the Pannel did not ſay whether he was to ſend the Money or not: That this Converſation happened about Ten o'Clock in the Forenoon of *Friday* the 15th of *May* laſt; and that there was nobody preſent. Depones, That, upon *Sunday* the 17th of *May* laſt, he met *Alexander Bane Stewart*, Packman in *Appin*, near the Houſes of *Larich* in *Glenco*, who told the Deponent, that he had been at *John Breck Maccoll*, Bouman to *Appin* in *Koaliſnacoan*, with either three or five Guineas, the Deponent is not poſitive which, that he had got at *Aucharn*, to be left with the ſaid *John Breck* for the ſaid *Allan Breck*'s Uſe, if he called there; and told the Deponent, that he left the Money with the ſaid *John Breck Macoll*, but did not ſee the ſaid *Allan Breck*. And, upon an Interrogatory put for the Pannel, depones, That, upon the Deponent's delivering the above Meſſage from *Allan Breck* to the Pannel, the Pannel aſked why *Allan Breck* himſelf did not come for Money, if he wanted it? To which the Deponent, to the beſt of his Remembrance, replied, That *Allan* told him he would be ſuſpected for the Murder, and was a Deſerter; to which the Pannel anſwered, that he hoped in God *Allan Breck* was not guilty of the Murder. Depones, That, during the above Converſation with the Pannel, *Alexander Stewart*, *Duncan Maccombich*, and ſeveral other Poſſeſſors of *Auchindarroch*, were in the adjoining Field delving, but at ſuch a Diſtance that the Deponent cannot think they could hear the above Converſation. And, being ſhewn the ſhort black Coat, with clear white Buttons on the Breaſt and Pockets, and the blue ſtriped Trowſers, now lying in the Clerk's Hands, depones, That the ſaid *Allan Breck* wore ſuch a Coat and Trowſers upon *Thurſday* the 14th of *May* laſt; and ſaw him in it the Forenoon of that Day at *Ballacheliſh*. And further depones, That he, the Deponent, is married to a Daughter of *Stewart* of *Ballechaliſh*, and ſtays in the Houſe with him: That her Mother was Daughter to *Stewart* of *Annat*, in *Perthſhire*. *Cauſa ſcientiæ patet.* And this is the Truth, as he ſhall anſwer to God; and depones he cannot write.

(Signed) ARCH. CAMPBELL. P. GRANT.

John Macdonald of *Glenco*, aged twenty-ſix Years, unmarried, ſworn, purged and examined *ut ſupra*, depones, That on the 12th of *May* laſt, *Allan Breck Stewart* came to *Carnock*, the Houſe of the Deponent: That he ſtaid there but a very little Time, *viz.* not above a Quarter of an Hour: That the Deponent had no Converſation with him; and the ſaid *Allan Breck Stewart* went away: That, on *Friday* the 15th of *May* laſt, the ſaid *Allan Breck Stewart* came again to the ſaid Houſe at Three or Four o'Clock in the Morning, and knocked at the Window of the ſaid Houſe, when the Family were all in Bed: That the Deponent went to the Door of his Houſe, and there ſaw *Allan Breck Stewart*, who gave him the firſt Notice he had of *Glenure*'s being murdered the Evening before in the Wood of *Lettermore*; and told him, that he was to leave the Country; and came to take leave of the Deponent and his Step-mother, who is a Siſter of *Ardſhiel*'s: That his Cloaths were then a dun or brown great Jockey-coat: That the Deponent did not aſk *Allan Breck Stewart* any Queſtions about the ſaid Murder: nor did he ſay any Thing upon the Subject to *Allan Breck Stewart*, as far as the Deponent can remember: *Allan Breck Stewart* told him he was to go the Moor-road leading to *Rannoch*: That, upon the *Tueſday* above-mentioned, *James Stewart* of *Faſnacloich* was along with the ſaid *Allan Breck Stewart*; and that he was dreſſed in a black ſhort Coat with white Buttons. *Cauſa ſcientiæ patet.* And this is Truth, as he ſhall anſwer to God.

(Signed) JOHN MACDONALD. ARGYLL.

Iſobel Stewart, Relict of *Alexander Macdonald* of *Glenco*, aged forty-two Years, ſworn, purged and examined *ut ſupra*, depones, That upon *Tueſday* the 12th Day of *May* laſt, *Allan Breck Stewart*, deſcribed in the Libel, came to her Houſe at *Carnock*, in the Afternoon, accompanied by young *Faſnacloich*, dreſſed in a black ſhort Coat with white clear Buttons: That he ſtaid about an Hour: and then went away to the Deponent's Siſter's Houſe at *Callart*: That *Allan Breck Stewart* came again to the Deponent's Houſe on *Wedneſday* the 13th of *May* laſt, in the Afternoon, and ſtaid about a Quarter of an Hour; and then went to *Ballacheliſh*: That, on *Friday* the 15th of *May*, the ſaid *Allan Breck Stewart* came again to the ſaid Houſe, at Four o'Clock in the Morning, and knocked at the Window of the Houſe, and all the Family was in Bed; upon which the Deponent went out with her Step-ſon; and ſhe aſked him, what News up the Country? To which he anſwered, A good deal of News, that *Glenure* was killed the Evening before in the Wood of *Lettermore*; that he was come to take farewell of the Deponent; for he was to leave the Country: That ſhe aſked him no more Queſtions about the Murder: That ſhe aſked him to come into the Houſe; but he anſwered he would not ſtay: That to the beſt of her Remembrance, *Allan Breck Stewart* told her, that *Glenure* was killed or ſhot: That, when he knocked at the Window, one of the Deponent's Children told her, that he heard *Allan Breck Stewart*'s Voice. *Cauſa ſcientiæ patet.* And this is the Truth, as ſhe ſhall anſwer to God.

(Signed) ISOBEL STEWART. ARGYLL.

Mary Macdonald, Spouſe to *Donald Maxinnes* in *Leckintium*, aged about forty, Witneſs cited, ſolemnly ſworn by *Archibald Campbell* of *Knockbuy*, ſworn Interpreter, purged of Malice and partial Counſel, examined and interrogate, depones, That a little before Sun-ſetting, on *Sunday* the 17th of *May* laſt, ſhe ſaw *Allan Breck Stewart* ſitting in the Wood of *Koaliſnacoan*, leſs than a Mile's Diſtance from the Houſes: That, upon her Approach, he ſtarted to his Feet: That ſhe gave and received the common Salutation from him; and then ſhe paſſed away on her own Buſineſs: That he was dreſſed in a long dun Jockey-coat and Bonnet. And depones, ſhe was alarmed at meeting a Man in a Place ſo remote. *Cauſa ſcientiæ patet.* And this is the Truth, as ſhe ſhall anſwer to God; and declares ſhe cannot write.

(Signed) ARCH. CAMPBELL. P. GRANT.

Duncan Stewart, travelling Packman in *Arlarich* in *Rannoch*, aged thirty-two Years, married, ſworn, purged and examined *ut ſupra*, depones, That he met with *Allan Breck Stewart* upon a *Monday* or *Tueſday*, about the 18th or 20th of *May* laſt, at a Place in *Rannoch* called *Leckinſtrenſineir*; and, having aſked *Allan* whence he had come, and whither he was going? he anſwered, he had come from *Ballacheliſh* or *Callart*, he does not remember which; and that he was going to a Shealing, where his Uncle *Allan Cameron* lived; and, as the Deponent had at that Time heard nothing of the Murder of *Glenure*, he ſaid nothing to him about it: That, two or three Days thereafter, the Deponent's Siſter told him, there were two Gentlemen wanting him out-by: And after he had got his Breakfaſt, he went out, and firſt ſaw *Allan Breck*, and afterwards *Allan Breck* and *Allan Cameron* together at a Know; and that, how ſoon the Deponent went up to the two, *Allan Cameron* went back, and the Deponent proceeded with *Allan Breck* down the Country, about ſix Miles, where he had occaſion to be going about his own Buſineſs; and parted with him at a Place called *Inching*; and, after he parted with the ſaid *Allan Breck*, he was apprehended by a Gentleman called *Alexander Campbell*, who ſuppoſed the Deponent to be *Allan Breck Stewart*; and, having aſked the Deponent, if he had ſeen *Allan Breck?* he then denied his having ſeen him. Depones, That *Allan Breck* was, at this Time, dreſſed in a long blue Coat, and blue Bonnet. *Cauſa ſcientiæ patet.* And this is Truth, as he ſhall anſwer to God; and depones he cannot write.

(Signed) JA. FERGUSON.

Allan Oig Cameron, in *Arlarich* in *Rannoch*, aged thirty-eight, Widower, ſworn, purged and examined *ut ſupra*, depones, That on *Monday*, he thinks the 18th of *May* laſt, *Allan Breck Stewart*, the Deponent's Nephew, came to the Deponent's Houſe in *Rannoch*, who having told the Deponent, he had come from *Appin* or *Glenco*, the Deponent, who by that Time had heard a Rumour of *Glenure*'s Murder, ſaid to the ſaid *Allan*, that he doubted not he might be ſuſpected of it, as he was a looſe idle Man in the Country; to which the ſaid *Allan* anſwered, That he made no doubt himſelf that he would be ſuſpected of it: And the Deponent having preſſed him earneſtly to make a clean Breaſt, and tell him all he knew of the Matter, he declared with an Oath, he had never ſeen *Glenure*, dead or alive; and the ſaid *Allan* having ſtaid with the Deponent till the *Wedneſday* thereafter, the Deponent frequently repeated his Inſtances, to tell him what he knew of the Murder; at which *Allan Breck* became angry; and the Deponent deſiſted further Inquiry: That the ſaid *Allan Breck* left the Deponent's Houſe upon the *Wedneſday*, whom the Deponent conveyed little more than two Gun-ſhots from his own Houſe; but *Duncan Stewart*, Chapman, the preceding Witneſs, who had come to the Deponent's Houſe that Morning, went along with them; and he ſaw them take a little bye Road through Corn, which might have led them to the high Road; but what Road they afterwards took, he does not know: And depones, That at this Time, *Allan Breck Stewart* was dreſſed in a big Coat of a browniſh Colour, and had under it a long blue Coat lined with red, red Waiſtcoat, and a Bonnet: That, upon the 24th of *May*, as the Deponent thinks, having occaſion to go to his Maſter Sir *Robert Menzies*, when about fourteen Miles from his own Houſe, and at the Side of a Wood, he heard a Whiſtle from the Wood, and, looking about, ſaw it to be the ſaid *Allan Breck*; and the Converſation he then had with him, was to the following Purpoſe: That *Allan Breck* having told him, his only Fear was to be apprehended by the Military, which might prove very fatal to him, as he had been a Deſerter; which led the Deponent to ſay, that he was very ſure, the Friends of the Deceaſed would procure him his Diſcharge, if he could diſcover the Murderer; to which *Breck* anſwered, that they were at this Time in ſuch Fury and Rage, he was very ſure, were he apprehended, he would be hanged. *Cauſa ſcientiæ patet.* And this is Truth, as he ſhall anſwer to God.

(Signed) ALLAN CAMERON. JA. FERGUSON.

James Man, Change-keeper at *Innerhadden*, aged thirty-two, married, ſworn, purged and examined *ut ſupra*, by the above Mr. *Archibald Campbell* of *Stonefield*, ſworn Interpreter, depones, That *Allan Breck Stewart* came to the Door of the Deponent's Houſe at *Innerhadden*, the lower Part of *Rannoch*, about Twilight, towards the End of *May* laſt, and aſked the Deponent, who was then ſtanding at his own Door, if that was his Houſe? which the Deponent anſwered it was; and then *Allan Breck* told him, that he was directed by *John Stewart* in *Bohallie* to come there for ſome Supply of Proviſions: That the Deponent deſired him to come into his Houſe, and that he would give him Part of ſuch Fare as he had; but that *Allan Breck* declined to come in, being in a Hurry, and ſtood in need of ſome Proviſion; whereupon the Deponent brought him ſome Bread and Cheeſe, and after he gave him the ſame, conveyed him as far as his Barn, where the ſaid *Allan Breck* deſired the Deponent to return; and that he, the ſaid *Allan Breck*, intended to go farther down the Country that Night: That the ſaid *Allan Breck* was dreſſed in a great dun Coat and Bonnet, and ſhort Hoſe; what Cloaths he had under the great Coat, he did not ſee; that he ſaw a Holſter under his left Arm: That he aſked him whence he had come; but he did not tell him. Depones, That before *Allan Breck* came, as aforeſaid, it was reported in that Country, that he was concerned in *Glenure*'s Murder; and that he himſelf ſuſpected him at the Time, as he came unſeaſonably, and was wanting Proviſions. *Cauſa ſcientiæ patet.* And this is Truth, as he ſhall anſwer to God. And further depones, That he has been acquainted with

Allan Breck theſe twelve Years. And his is alſo Truth, as he ſhall anſwer to God.

(Signed) JAMES MAN.
ARCH. CAMPBELL.
JA. FERGUSON.

John Crawfurd, Eſq. Lieutenant-Colonel of General *Pulteney*'s Regiment of Foot, aged thirty Years, unmarried, ſworn, purged and examined *ut ſupra*, depones, That he knows the Paper now put in his Hands, being Number 11. of the Inventory of Writings in the Clerk's Hands: That it was ſent open to him, before it was ſent away. Being aſked, whether the Deponent had any preceding Converſation with the Pannel on the Subject of this Letter? he anſwers he does not remember he had any. And being aſked, whether the deceaſed *Colin Campbell* of *Glenure* ever told the Deponent, that *Allan Breck Stewart* was a Deſerter, and in this Country? the Deponent anſwers *negative*. *Cauſa ſcientiæ patet*. And this is Truth, as he ſhall anſwer to God.

(Signed) JOHN CRAWFURD. ARGYLL.

Alexander Stewart of *Innernahyle*, aged forty-four Years, married, ſworn, purged and examined *ut ſupra*, depones, That the Pannel was a great many Years ago Tenant to his Brother *Ardſhiel* in the Farm of *Glenduror*, and was removed alſo ſeveral Years ago, the Deponent does not remember how many, by his Brother: That he again became Tenant in the ſame Lands in 1749, or perhaps 1748, and was again removed by the deceaſed *Glenure*, the Factor, at *Whitſunday* 1751, and the Lands ſet to Mr. *Campbell* of *Ballieveolan*. Depones, That, as the Pannel is the Deponent's near Neighbour, the Deponent had frequent Opportunities of converſing with him touching his ſaid Removal: That the Pannel did not expect to have been removed, and ſeemed diſſatisfied that he was; and ſaid, he believed *Glenure* would not have removed him, if *Ballieveolan* had not ſought theſe Lands from him. Depones, That the Pannel further ſaid, that the Tenants generally allowed ſome Gratuity to *Ardſhiel*'s Children; and that theſe Lands were the beſt Farms on the Eſtate, and moſt of the Benefits accreſced from them; and though he himſelf could be provided of a Farm elſewhere, yet the Children would be deprived of that Benefit. Depones, That, about the End of *April*, or Beginning of *May* laſt, the Deponent thinks about the Beginning of *May*, he caſually met on the Highway with *Allan Breck Stewart*, and quarrelled with him for not making him, the Deponent, a Viſit; and *Allan Breck Stewart* promiſed to ſee the Deponent before he left the Country; but the Deponent has never ſeen him ſince that Time. Depones, That, upon the *Saturday* and *Sunday* after *Glenure*'s Murder, it was the general Opinion of the People in the Country, that he had been murdered by *Allan Breck Stewart*. Depones, That the Place where *Glenure* was ſaid to be murdered, and where the Deponent obſerved Marks and Symptoms of the Murder, is a very bad Road through a Wood, interſperſed with Rocks and Stones upon a hanging Brae, from which a Perſon may deſcry the Road on the North Side of the Ferry of *Ballachelish*, and where a Perſon may eaſily conceal himſelf, ſo as not to be ſeen from the Road. Depones, That the Deponent is acquainted with the Hand-writing of *Allan Stewart*, Son to the Pannel, and has frequently ſeen him write. And being ſhewn a Letter ſigned *Allan Stewart*, and addreſſed to *Duncan Stewart* of *Glenbuckie*, dated at *Aucharn* the 1ſt of *April* 1751, being the Writing Number 7. in the Inventory of Writings ſubjoined to the Libel, depones, That it is like *Allan Stewart*'s Hand-writing, and the Deponent would take it to be his, but cannot be poſitive that it is his. Depones, That after the Attainder of *Stewart* of *Ardſhiel*, the Factor gave the Pannel the Opportunity of having the greateſt Influence with the Tenants of *Ardſhiel* more than any other Perſon, by allowing the Pannel to ſet the Lands, which he continued down to *Whitſunday* 1751, if not at that Term alſo; but depones, That the Pannel's Connexion with the Family of *Ardſhiel* gave him alſo a natural Influence over the Tenants, even before *Glenure*'s Factory. Depones, That, before that Time, the Tenants, the Deponent believes, paid their Rent to the Lady of *Ardſhiel*, and ſhe again employed the Pannel to deal with them. And being interrogate for the Pannel, whether he, the Pannel, removed voluntarily from *Glenduror* without any Warning? depones, That he did not hear of any Warning, but that he removed voluntarily. Depones, That *Allan Breck Stewart*, as the Deponent has been informed, was a Soldier in the King's Army, and was taken Priſoner by the Rebels at the Battle of *Preſton*; and that he was told ſo by a Man who took him from among the Priſoners. And depones, That he afterwards joined with the Rebels, where the Deponent ſaw him. Depones, That, after the Battle of *Culloden*, he left this Country, and, as he told the Deponent, went over to *France*, and entered into the *French* King's Service. Depones, That the Deponent had no Occaſion of ſeeing *Allan Breck Stewart* laſt Time he was in the Country, but at the Time before deponed upon, and one Time before that; and both theſe Times he was dreſſed in a blue long Coat, a red Veſt, and a feathered Hat, and black Breeches. Depones, That he remembers that *Allan Breck Stewart* came over to this Country a Year or two ago, and ſtaid ſome Weeks among his Friends; but neither at that Time, nor the laſt Time, did he ſeem, ſo far as the Deponent obſerved, to be in any Apprehenſion of being taken; only, as he had been once in the Army, he did not chuſe to meet with any of the King's Troops. Depones, That, at the Time the Pannel removed from *Glenduror*, he told the Deponent, that he had had a Meeting with *Ballieveolan*; and that there was a Compromiſe betwixt them, but does not remember the Particulars. *Cauſa ſcientiæ patet*. And this is Truth, as he ſhall anſwer to God.

(Signed) ALEX. STEWART. P. GRANT.

Donald Campbell of *Airds*, aged forty-ſeven Years, married, ſworn, purged and examined *ut ſupra*, depones, That the Pannel was employed by the deceaſed *Glenure* for ſome Time as his Sub-factor in levying the Rents of *Ardſhiel*, and ſetting the Lands; and the Pannel told the Deponent, that whatever was made of theſe Rents over what was paid into the Exchequer, was accounted for to the Children of *Ardſhiel*: And when he removed from *Glenduror*, he told the Deponent that he had Reaſon to believe, that the ſaid Excreſcence of the Rents of that Farm would ſtill be accounted for to them; and, in that Caſe, he would be eaſy as to his own Removal. And depones, That *Ardſhiel*'s Children, at the Time of the Rebellion, were all young; his eldeſt Son being now, as the Deponent believes, about eighteen. Depones, That, in Spring laſt, the Deponent had a Letter from Colonel *Crawfurd*, telling him that he heard *Allan Breck Stewart* was come to the Country, and inliſting Men for the *French* King's Service, and deſired the Deponent to inquire if it was ſo: That the Deponent did inquire, and wrote the Colonel for Anſwer, that he heard he had been in the Country, but that he was then gone away: That this was in the Month of *April*, to the beſt of the Deponent's Remembrance; and it ſeems about that Time, *Allan Breck Stewart* had gone to *Rannoch*, which gave Occaſion to the Deponent's being informed that he was gone away; and did not hear of his having returned to the Country till after *Glenure*'s Murder; and thinks he wrote alſo to Colonel *Crawfurd*, according to the Information he had got, that *Allan Breck Stewart* was in uſe of coming every Year to the Country, ſince *Ardſhiel* went to *France*. Depones, That, upon the Afternoon of *Monday* the 11th of *May* laſt, the Deponent ſent to the Pannel, deſiring him to come to him to *Keills*, a Farm belonging to the Deponent, at about a Mile's Diſtance from the Pannel's Houſe: That the Pannel accordingly came there to him that Afternoon, as ſoon as he expected him: That the Deponent's Buſineſs with him was for his Aſſiſtance in ſetting that Farm: That the Farm was accordingly ſet; and the Pannel himſelf took Part of it, and conveyed the Deponent a Part of his Way home; and then they parted: That, before parting, he deſired the Pannel to go next Morning to *Appin*'s Houſe: That the Pannel accordingly did ſo; and the Deponent had a Letter from him, from that Place. *Cauſa ſcientiæ patet*. And this is Truth, as he ſhall anſwer to God.

(Signed) DONALD CAMPBELL. P. GRANT.

Charles Stewart, Writer and Notar at *Bannavie*, aged thirty-eight Years, married, ſworn, purged and examined *ut ſupra*, depones, That *James Stewart* the Pannel wrote a Letter to the Deponent, deſiring him to go with the Tenants of the Lands of *Ardſhiel*, to intimate to *Glenure* a Siſt on a Bill of Suſpenſion: That accordingly the Deponent went to *Aucharn* that Night; and the next Morning the Tenants came there; and he then went along with the Tenants to *Glenure*'s Houſe, and there intimated the Siſt; and a Proteſt was alſo taken againſt the ſaid *Glenure*: That this was on the 1ſt of *May*. Depones, That the Pannel told the Tenants at the Pannel's Houſe, that there was a Siſt come of the Removing; that he did not deſire them to go with the Siſt, unleſs they had a mind themſelves; and they choſe to go; but the Pannel himſelf did not go along. Depones, That he received a ſecond Letter from the Pannel of Date the 14th of *May*, deſiring him to attend next Day at the Ejection; but that he declined the ſame, becauſe he did not care to diſoblige *Glenure*. Depones, That he ſaw *Allan Breck Stewart* at *Aucharn* the 1ſt of *May*; and when the Deponent left *Aucharn* next Day, he left him there: That he heard *Allan Breck* ſay, that he thought it hard that *Glenure* ſhould remove the Tenants upon the Eſtate of *Ardſhiel*; when he did not remove thoſe of *Mamore*. Depones, That, in the Beginning of *April* having met *Allan Breck Stewart*, he told the Deponent, That he heard that Colonel *Crawfurd* was endeavouring to take him up as a Deſerter; but that he, *Allan Breck*, had ſurrendered himſelf in 1746 to Sir *Robert Menzies*, as a Juſtice of Peace. Depones, That, in the Beginning of *April*, the Deponent ſaw *Allan Breck Stewart* at *Callart*: That he did not appear to be ſculking: That when he ſaw him firſt, he was dreſſed in a *French* Habit: That on the 1ſt Day of *May*, when he ſaw him at *Aucharn*, he was in a ſhort black Highland Coat with white Buttons and Trowſers, and ſaid he had come from *Rannoch*. *Cauſa ſcientiæ patet*. And this is Truth, as he ſhall anſwer to God.

(Signed) CHARLES STEWART. ARGYLL.

Duncan Maccoll in *Ardſhiel*, aged thirty Years and upwards, married, being ſworn, purged and examined *ut ſupra*, by Mr. *Alexander Campbell*, Miniſter at *Inverary*, ſworn Interpreter, depones, That, on his and others being warned to remove from the Lands of *Ardſhiel*, as at *Whitſunday* laſt, he, for his Part, had no Intention other than to ſubmit to the Warning, till a Paper was procured from *Edinburgh*, which he heard read by *Charles Stewart*, Notar at *Aucharn*, as on a Day he was there, being along with his Neighbours advertiſed to meet there: That, when the Notice was given for this Meeting, he was not at his own Houſe; but, on his Return, his Wife told him ſuch a Meſſage was ſent, and that Advice was come from *Edinburgh* to direct thoſe who were warned to remove, to continue in their Poſſeſſion: That, on his coming to *Aucharn*, he does not remember whether the Paper was read in his Preſence, but is poſitive he and his Neighbours were told by *Charles Stewart*, Notar, and the Pannel, that the Paper contained Advice, as above, on which they ſhould go to aſk the Lands from *Glenure*; and to be cautious in their Conduct, as they were to ſwear about their being faithful and peaceable Tenants. Depones, That he gave no Allowance or Mandate to the Pannel to make any Application at *Edinburgh* againſt the Removing: That, before he heard any thing of this Paper from *Edinburgh*, he had engaged to ſerve as Bouman to the Tenants *Glenure* was to introduce; but that, on hearing of the Paper from *Edinburgh*, he preferred keeping by his Neighbours, as he conſidered the being continued in Poſſeſſion, did the Law ſupport him in it, more beneficial to him. Depones, That the procuring the Paper at *Edinburgh* coſt him no Money. *Cauſa ſcientiæ patet*. And this is Truth, as he ſhall anſwer to God. And, being interrogate for the Pannel, depones, That it was in Company with the reſt of his Neighbours, he went to *Aucharn*, and went along with them likewiſe in Company from *Aucharn* to *Glenure*, along with the Notar; and that he remembers, before they left *Aucharn*, the Pannel, in general, told them, they might follow the Advice given them, or not, as they ſhould ſee Cauſe; and that, upon their Arrival at *Glenure*, all that he remembers was, that they took Proteſts with Money, in the Notar's Hands, againſt *Glenure*. And this is alſo Truth, as he ſhall anſwer to God.

(Signed) ALEX. CAMPBELL. JA. FERGUSON.

John Maccombich in *Ardſhiel*, aged forty-three Years, married, ſworn, purged and examined *ut ſupra*, by the above Mr. *Alexander Campbell*, ſworn Interpreter, depones, That he was warned with the reſt of the Tenants to remove, as at laſt *Whitſunday*, and meant to ſubmit to it, and therefore agreed with the Tenants to be introduced to ſerve them as Bouman; but on his being called to *Aucharn*, by a Meſſage in *Charles Stewart* the Notary's Name, and hearing the Advice from *Edinburgh* explained there, and

and that there were ſome Hopes the Government would allow them to ſit ſtill, if they continued peaceable, he chuſed to keep by this Chance with his Neighbours; upon which he went along with them to *Glenure*, and aſked to be continued; and got for Anſwer, that the Application was too late, the Lands being ſet to others; upon which he joined with his Neighbours in taking a Proteſt in the Hands of the Notary. Depones, That, as to the Agreement betwixt him and the incoming Tenants, when he undertook to be their Bouman, he heard both *Glenure* and theſe Tenants ſay, that it was by *Glenure*'s Advice that this was done. Depones, That, as *Duncan Maccoll* and he agreed at the ſame Time to be Boumen to the incoming Tenants, ſo he heard *Glenure* ſay, that it was his Advice to the Perſon who was to employ *Duncan Maccoll*, to take him as his Bouman. Depones, That, on his being warned, he adviſed with the Pannel how to behave: That he did not pretend to direct: That an Advice in Law ſhould be aſked: That he hoped the King, and thoſe employed by him, would continue the former Poſſeſſors, they behaving dutifully; and that, on his being adviſed by the Pannel to have Patience, he reſolved to wait the Iſſue: That likewiſe the Pannel adviſed him, if better could not be made of it, to endeavour to get a Sub-ſet from the incoming Tenant; and that the Pannel adviſed him, and others concerned, to qualify to the Government. Depones, That he told the Pannel, that if the Law countenanced the continuing them in their Poſſeſſion, he would rather chuſe it. Depones, That, on the Day he and his Neighbours went to *Glenure*, the Pannel left them to the Freedom of their own Choice, whether to follow the Purpoſe of the Advice from *Edinburgh*, or not; only it was his Opinion, that they had a Chance of being continued in their Poſſeſſions, they behaving themſelves in all Reſpects dutifully, and go and aſk the Lands of *Glenure*. Depones, That he does not remember that the Advice from *Edinburgh* coſt him any Money, or that any was aſked of him; but that ſome Accounts were at that Time betwixt him and the Pannel. Depones, That he continued with the reſt of the Tenants about the Pannel, till they were deſired by him to leave him, as he could take care of himſelf, and was to go Home; and that he does not remember to have heard *Glenure*'s Name mentioned all the while; and that this happened on Occaſion of *Glenure* and the Pannel's meeting at *Kintalline*: That he is not poſitive as to the Time; but thinks it was the laſt Night of the old Year. Depones, That he heard *Glenure* went next Day to the Pannel's Houſe, and dined there. *Cauſa ſcientiæ patet.* And this is Truth, as he ſhall anſwer to God.

(Signed) Alex. Campbell. P. Grant.

John Maccorquodale, late in *Lettermore*, now in *Ballachelish*, aged twenty and upwards, married, ſworn, purged and examined *ut ſupra*, by the ſaid Mr. *Alexander Campbell*, ſworn Interpreter, depones, That the laſt Night of *December* laſt, he was preſent at *Kintalline*, as *Glenure* and the Pannel, with ſome other Company, met; when, after drinking a while, from loud Words it was apprehended a Quarrel would enſue; to prevent which, the Deponent, with ſome others, carried out the Pannel, who ſeemed unwilling to part with *Glenure*, as he expected *Glenure* would go that Night to his Houſe: That the Deponent heard that *Glenure*, though he declined to go with the Pannel that Night, yet he propoſed to breakfaſt with him next Morning: That the Deponent was in Company with the Pannel, and followed him at ſome Diſtance from the Houſe of *Kintalline*; and that all the while he was in the Pannel's Company, he heard nothing of *Glenure*; only the Pannel was diſobliged at being ſeparated from him, and ſaid, that if they about him had kept off, *Glenure* and he would be good Friends before they would part. Depones, That, when he was warned, and conſequently like to want Lands, he was talking of his Situation to the Pannel, being poor, and, in his own Apprehenſion, unable to bear the Expence of a Law-ſuit, did not propoſe to follow the Matter in that Way: That being aſked a Sight of the Warning, he gave it to the Pannel, but did not deſire any Advice in Law ſhould be aſked about it, having ſome Dependence on his Innocence, and not being concerned in any of the Troubles in that Country. And being interrogate for the Pannel, whether the Pannel had adviſed him, the Deponent, to engage as Bouman in *Lettermore*, if better could not be provided for him, depones *negative*. *Cauſa ſcientiæ patet.* And this is Truth, as he ſhall anſwer to God.

(Signed) Alex. Campbell. P. Grant.

Ewan Macintyre in *Duchelly*, late Herd in *Glenduror*, aged twenty Years and upwards, unmarried, ſworn, purged and examined *ut ſupra*, by Mr. *Archibald Campbell* of *Stonefield*, ſworn Interpreter, depones, That he engaged to be Herd to Mr. *Campbell* of *Ballieveolan*, in the Farm of *Glenduror*, for the Year 1751; and that the Day after he entered into his Service there, the Pannel challenged him for accepting thereof, and told him, that he would be fit-ſides with him, ſooner or later, for doing it; and that if he did not meet with Reſentment himſelf in his Life-time, others, ſuch as his Friends, might meet with it after his Death. Depones, He never was in the Pannel's Service. *Cauſa ſcientiæ patet.* And this is Truth, as he ſhall anſwer to God; and depones he cannot write.

(Signed) Arch. Campbell. Argyll.

Alexander Campbell in *Tynaluib*, aged fifty Years, married, ſworn, purged and examined *ut ſupra*, depones, That, in the End of *April* laſt, the Pannel called at the Deponent's Houſe in the Morning, to have his Horſe corned; and having called for, and got a Dram, which was afterwards ſet down upon the Table, one *Maclaren*, a Merchant in *Stirling*, who had lodged with the Deponent the Night before, being preſent, aſked the Pannel, if he would not help the Deponent to a Dram? And the Pannel anſwered, he did not know any thing that he would help the Deponent or any of his Name to, if it was not to the Gibbet. The Deponent anſwered, that that was not a comfortable Expreſſion to him, that it ſeems if any of them were at the Gibbet, the Pannel would draw down their Feet; and the Pannel replied, that of ſome of them he would, and ſome of them he would not: That then the Deponent ſaid, that *Glenure*, as he ſuppoſed, was the Man of the Name with whom the Pannel had the greateſt Quarrel, and the Deponent did not know any good Cauſe the Pannel had for it: Upon which the Pannel anſwered, That if *Glenure* had uſed the Deponent as ill as he had uſed him, the Pannel, by turning him out of his Poſſeſſion, he would have no leſs Quarrel with him than he had: And the Deponent replied, That that was no juſt Cauſe of Quarrel; for that if the Pannel had a Tack of his Farm, *Glenure* could not turn him out; and the Deponent's Wife was alſo preſent at this Converſation. And being interrogate for the Pannel, whether the Deponent then thought him ſerious, and in earneſt, or that it was only a Joke? depones, That, at that Time, he thought it proceeded from Malice. And being further interrogate for the Pannel, depones, He was at that Time perfectly ſober. Depones, That all they drank was a Gill of Aquavitæ, of which the Deponent got a Part. *Cauſa ſcientiæ patet.* And this is Truth, as he ſhall anſwer to God.

(Signed) Alex. Campbell. P. Grant.

Ewan Murray, Vintner, at Weſt End of *Lochearn*, aged thirty-four Years, married, ſworn, purged and examined *ut ſupra*, depones, That, in *April* laſt, the Pannel and *Colin Maclaren*, Merchant in *Stirling*, came to the Deponent's Houſe, and the Pannel told the Deponent, that *Glenure* had warned away ſeveral Families in *Ardſhiel*'s Eſtate to remove; and that he was informed, that none of the Factors on the forfeited Eſtates had Power to remove the Tenants; and that he was going to *Edinburgh* to take Advice of Lawyers about it; and, if he had not that Power, that the Pannel would apply for Suſpenſion in his own Name, and in Name of the reſt of the Tenants; and, the Converſation turning upon an Officer of the Army, that was branded with Cowardice, and had been broke on that Account, the Pannel ſaid, that he had Reaſon to ſay that *Glenure* was as great a Coward as that Officer; for that he, the Pannel, had challenged him to fight him, which *Glenure* declined; and deſired the Deponent to tell *Glenure*, that he had told him ſo; but the Deponent anſwered, That he would not carry any ſuch Meſſage from one Gentleman to another; and, from the Converſation, the Deponent underſtood, that the Arms with which the Pannel had challenged *Glenure* to fight, was with Piſtols. And being interrogate for the Pannel, depones, That he thought the Pannel was a little concerned with Drink. *Cauſa ſcientiæ patet.* And this is Truth, as he ſhall anſwer to God.

(Signed) Ewan Murray. P. Grant.

Colin Maclaren, Merchant in *Stirling*, aged twenty-two Years, unmarried, ſworn, purged and examined *ut ſupra*, depones, That, in the Month of *April* laſt, the Deponent happened to lodge in the Houſe of *Alexander Campbell* in *Tynaluib* a Night, and in the Morning about Nine o'Clock the Pannel alighted there; and having breakfaſted and got a Dram, the Deponent underſtanding that the Pannel was going the ſame Road with him towards *Stirling*, deſired the Pannel to give the Landlord a Dram, that they might go on their Journey; that the Pannel anſwered, That he did not think he ſhould help the Landlord, or any of his Name, to a Dram, or any Thing elſe, if it was not to the Gibbet: That he had mentioned to the Landlord, that *Glenure* had warned him to remove from his Poſſeſſion in *Ardſhiel*; therefore the Landlord anſwered, that it ſeemed, if they were on the Gibbet, the Pannel would draw down their Feet; and he ſuppoſed it was on *Glenure*'s Account; to which the Pannel anſwered, he could not ſay but it was; upon which the Pannel and Landlord entered into an Altercation together touching the Juſtice of that Removing; and, as the Deponent had no Concern in the Matter, he took little Notice to what paſſed. Depones, That, upon the Landlord's uſing the above Expreſſion, that, if they were on the Gibbet, the Pannel would draw down their Feet, the Pannel's Anſwer was in theſe Words, That he did not chuſe to be an Executioner, but he could draw down ſome of them. Depones, That from *Tynaluib* the Pannel and Deponent proceeded on their Journey, and about Eleven o'Clock, or Mid-day, came to the Houſe of *Ewan Murray*, the preceding Witneſs: That there the Pannel again complained of *Glenure*'s removing him; told him, it was one *Campbell* that was to ſucceed in his Room: That he did not know any Reaſon for *Glenure*'s uſing him ſo, for that they were Couſins: And, upon the Deponent's ſaying, that poſſibly it was none of *Glenure*'s Fault, and that he could not help it, the Pannel ſaid, he did not know any Buſineſs that either the Exchequer or the Factors had to turn out Tenants, while they paid their Rent; and ſaid, that he was going to *Edinburgh* to get a Suſpenſion of the Decreet of Removing. Depones, That, having left *Ewan Murray*'s Houſe together, and the ſaid *Ewan* in Company with them, the Converſation turned upon an Officer in the Army, who had been broke for Cowardice; and the Deponent ſaid, he was ſurpriſed with it; for that that Officer, as the Deponent heard, had not declined to accept of a Challenge to fight from *Glenure*; that thereupon the Pannel ſaid, that he eſteemed that Officer a better Man than *Glenure*: And *Ewan Murray* having contradicted his being ſo good a Man as *Glenure*, the Pannel ſaid, that he knew the contrary; for that he himſelf had given *Glenure* a Challenge to fight him, which *Glenure* declined; and deſired *Ewan Murray* to tell *Glenure*, that he would fight him when he would; but *Ewan Murray* declined to carry ſuch a Meſſage. Depones, That, after parting with *Ewan Murray*, in the Courſe of their Journey the Deponent found that the Removing was much at the Pannel's Heart; and the Deponent endeavoured all he could to divert the Converſation to another Subject: That the Pannel told him, that, if he failed in his Suſpenſion at *Edinburgh*, he would carry it to the *Britiſh* Parliament; and, if he failed there, told him, after a little Pauſe, and with an Emphaſis, that he behoved to take the only other Remedy that remained. And being interrogate for the Pannel, depones, That, during the Converſation in *Campbell*'s Houſe, above deponed upon, the Deponent at firſt thought that the Pannel had been in Joke; but afterwards it was like to become very ſerious; for the Landlord and he came to pretty high Words together: And being further interrogate for the Pannel, depones, That he did not think the Pannel drunk, either in *Campbell*'s Houſe, or in *Ewan Murray*'s Houſe; but, after leaving *Murray*'s Houſe, they drank two or three Drams at a Dramhouſe; and after that the Deponent thought him much concerned with Liquor; and it was after taking theſe Drams that the Converſation between *Murray* and the Pannel, with reſpect to challenging *Glenure*, happened. And depones, That they had rode ſeveral Miles together, before the Converſation about the *Britiſh* Parliament; and the Deponent thought him even then ſtill concerned with Drink. *Cauſa ſcientiæ patet.* And this is Truth, as he ſhall anſwer to God.

(Signed) Colin Maclaren. P. Grant.

John

John More Maccoll, late Servant to the Pannel, aged thirty-seven, married, Witneſs cited, ſolemnly ſworn, purged and examined by the ſworn Interpreter above-named, depones, That he was preſent at a Converſation that happened betwixt the Pannel, *John Beg* and *Dugald Maccolls*, both Servants to the Pannel, in the Pannel's Brewhouſe at *Aucharn*, before Day-light upon a Morning, about *Yule* laſt, as the Deponent beſt remembers: That the Deponent was then employed in diſtilling the ſecond Draught of a Brewing of Aquavitæ; and the Pannel ordered the Deponent to give him and the People preſent a Dram, which the Deponent did: That the Pannel ſaid, *Glenure* would not take the Rent from the Tenants of *Aucharn*, Part of the *Ardſhiel* Eſtate, becauſe they had given the Pannel ſome Bear, which *Glenure* alledged they ought to have paid him: That the Pannel complained it was hard to refuſe the Rent in Money from the Tenants in a ſcarce Year; and obſerved, that it would be of no great Conſequence to him, the Pannel, though he ſhould pay back the Bear, in Compariſon to what it would be to the Tenants for ſubſequent Years, in caſe they were obliged to pay their Farm Bear and Meal; and ſaid, the Tenants or Commoners were likely to be very ill off; for if *Glenure* went on in the Way he then did, it was likely he would be Laird of *Appin* in a very ſhort Time; and that he knew once a Sett of Commoners in *Appin*, who would not allow *Glenure* to go on at ſuch a Rate: To which the Deponent and the reſt anſwered, that they knew no Commoners in the Country that could ſtrive or contend with *Glenure* in that Manner. Depones, That he had no Converſation with the ſaid *John* or *Dugald Maccolls* that Day, nor any Time thereafter, about the Import of the above Communing. Depones, That in Seed-Time laſt, when they were harrowing the Tath-field in *Aucharn*, being the very Day that *James Stewart* went for *Edinburgh*, *Allan Breck Stewart* came to the Deponent, and the ſaid *Dugald Maccoll*, as they were yoking the Horſes; and the Deponent, having aſked him ſome Queſtions about *France*, ſaid, he did not ſee any of the People that went over there, come back in ſo good a Way as they went over: To which *Allan Breck* replied, That they came back better than they went; and that they, meaning the People of *Appin*, might be much better, if they were worth themſelves: Upon the Deponent's anſwering, that he did not ſee how that could happen, *Allan Breck* anſwered, if they, the Commoners, were worth themſelves, they could keep out *Glenure*, and hinder him from oppreſſing them; in which Caſe, they would not be baniſhed from their natural Poſſeſſions; and, upon the Deponent's anſwering, he did not ſee how any body could pretend to ſtrive or ſtruggle with *Glenure* in that Way, as he had the Laws of the King and Country for him, and nobody to ſupport or take them by the Hand, after their ſo doing; *Allan* ſaid, he had it in his Power to ſave or protect any body that would put *Glenure* from trampling upon the Country in the Manner he then did. And, being interrogate for the Pannel, what Dreſs the ſaid *Allan Breck* uſed to wear, when he ſaw him at *Aucharn?* depones, That he always ſaw him wear a blue ſide Coat, red Waiſtcoat, and black Breeches, with a Hat and Feather, except twice that he ſaw him in a black ſhort Coat, with white metal Buttons. The firſt Time he ſaw him with the ſaid ſhort Coat, was, when the Pannel was at *Edinburgh*; and the ſaid *Allan Breck* told, he was going to *Rannoch*, and actually went away, and ſtaid ſeveral Days; and the other was upon *Monday* the 11th Day of *May* laſt, when he ſaw the ſaid *Allan Breck* come to *Aucharn* dreſſed in his long Cloaths, and came directly where the Pannel, *Allan* his Son, *John Beg Maccoll*, and the Deponent, were covering Potatoes: That, when *Allan* came up, they were reſting themſelves, and ſitting by one another; That *Allan Breck* ſat with them; and all the Converſation that the Deponent noticed was, ſome Queſtions about the Welfare of the People of *Glencrearan:* And that he did not obſerve the Pannel have any private Converſation with the ſaid *Allan Breck*; for that, a very little Time after *Allan Breck*'s Arrival, the Pannel had a Meſſage to meet Mr. *Campbell* of *Airds* at *Keel*; and that this happened after Mid-day: That the Pannel immediately, upon receiving the above Meſſage, went away in order to meet *Airds:* And that nobody went along with the Pannel, *Allan Breck* having ſtaid with them: That a little thereafter, the Deponent, *Allan Stewart* the Pannel's Son, and *John Beg Maccoll*, went to cover Potatoes at a greater Diſtance from the Pannel's Houſe; that *Allan Breck* ſtaid behind; and, ſome Time thereafter, *Allan Breck* came where they were working, dreſſed in a black ſhort Coat with white metal Buttons and black Breeches, and wrought with them in covering Potatoes. Depones, That the Deponent came very early upon *Tueſday* Morning to the Pannel's Son, and found the Servants getting up: That the Deponent went to *Aucharn*, at about a Quarter of a Mile's Diſtance, for a Slaughter-ſpade; and, as he was returning from thence, he met the Pannel going for *Appin*'s Houſe; and, when he came to the Pannel's Houſe, he ſaw *Allan Breck* ſitting in a Room, dreſſed in the black ſhort Coat, combing his Hair. Depones, He never ſaw the ſaid *Allan Breck* at Work any of the Times he ſaw him at *Aucharn*, except covering the Potatoes upon the *Monday* Evening as aforeſaid. *Cauſa ſcientiæ patet.* And this is the Truth, as he ſhall anſwer to God.

(Signed) ARCH. CAMPBELL. JA. FERGUSON.

Dugald Maccoll, Servant to the Pannel, unmarried, aged twenty-four Years, Witneſs cited, ſworn, purged and examined *ut ſupra*, by the forenamed ſworn Interpreter, depones, That, in the latter End of Winter laſt, about Day-break, the Deponent was alongſt with the Pannel, in his Brewhouſe at *Aucharn*, in Company with *John More Maccoll*, and *John Beg Maccoll*, both Servants to the Pannel: That, after taking a Dram of Whiſky, the Converſation fell upon the Tenants of *Aucharn*, a Part of the forfeited Eſtate of *Ardſhiel*; and that it was then mentioned, that they were in uſe to pay ſome Bear and Meal as Part of their Rent: That the Tenants of the ſaid Town of *Aucharn* had paid the Bear to the Pannel they were in uſe to pay, and made Offer of Money for that and the reſt of the Rent to *Glenure*, the Factor; and that *Glenure* refuſed to take the Money, inſiſting to have the Victual paid in Kind as formerly: Upon which the Pannel ſaid, that *Glenure* was like to hurt him, the ſaid *James Stewart*, as much as was in his Power; for, as the Tenants had paid him the Bear in uſe to be paid out of that Farm, and turned it to his own Uſe, he would be obliged to anſwer to *Glenure* for that Article of the Rent; but added, that that was not the worſt of it, and that, if he, *Glenure*, went on in the ſame Way, it was likely he would in five Years be Laird of *Appin*; and, upon the Deponent and the ſaid *John More* and *John Beg Maccoll*'s ſaying, that that was likely to happen, the ſaid *James Stewart*, the Pannel, anſwered, That that was the Fault of the Commoners or Followers; for however he, or People in Circumſtances like him, would ſhift for themſelves, they, the Commoners, would be very badly off: And added, that he knew Commoners once in *Appin*, who would not allow *Glenure* to go on at ſuch a Rate; to which the Deponent and the others preſent anſwered, That they believed that there might be Commoners once in *Appin* who would do ſo. Depones, That he does not remember that he and *John Beg Maccoll* had, at any Time that Day, or thereafter, any Communing about the Senſe or Meaning of this Converſation that happened in the Brew-houſe. Depones, That, upon the laſt Night of *December* laſt, *Glenure* and *John Campbell* of *Ballieveolan* were in Company with the Pannel, *John Stewart* younger of *Ballachelish*, and *James Stewart* in *Ardnamurchan*, Uncle to the Pannel, in the Houſe of *John Breck Maccombie*, Change-keeper at *Kintalline*; and, after Night-fall, by the Deſire of his Miſtreſs, the Deponent went there to attend his Maſter Home: That, after he came there, *Glenure*, the Pannel, and his Company, drank till it was late at Night, and the Deponent heard them ſpeaking together; but as it was in *Engliſh*, he did not underſtand what they ſaid: That at laſt they began to ſpeak very loud, and got up upon their Feet: That the Deponent, and ſeveral other Commoners, who happened to be at the Houſe at the Time, apprehending they were going to quarrel, went into the Room in order to prevent it: That they ſtill ſpoke loud, and in *Engliſh*; and the Deponent, with the Aſſiſtance of *John Maccombie*, alias *John* the Son of *Duncan* and Grandſon of *Malcolm*, and another *John Maccombie*, alias the Son of *Duncan* and Grandſon of *Duncan*, both then Tenants in *Ardſhiel*, and *John Roy Maccorquodale*, then in *Lettermore*, now in *Ballachelish*, carried the Pannel, and the ſaid *James Stewart* his Uncle, out of the Room: That they inſiſted for being back to the Company; but that young *Ballachelish* came to them, and told them that they muſt not go back, and that they ought to be good Friends: Upon which the Pannel ſaid, he would not ſtir from the Place, till he was told by *Glenure* if he would go to his Houſe next Day; that *Ballachelish* ſaid he would go and get Notice, and accordingly went into the Room, and returned back in a little Time, and told the Pannel that *Glenure* promiſed to ſee him at his Houſe next Day: That the Pannel aſked if *Glenure* had promiſed ſo upon his Honour; and, upon *Ballachelish* anſwering he did, the Deponent and the ſaid *John Roy Maccorquodale* carried the Pannel over a Burn adjoining to the ſaid Houſe of *Kintalline* in the Road to *Aucharn*; upon which the Pannel told them, they were better at that than in doing what they ought to do, and that it was to ſide with *Glenure*, not with him, that they were there; and aſked the Tenants then preſent, what kept them there ſo late, and why they did not go Home in proper Time of Night? And, they anſwering that they were there waiting upon him, the Pannel replied, That it was not waiting upon him they were, but upon *Glenure*, to ſee what they could get by him: That he continued at ſuch Converſation as this, till they came to the Fields of *Auchindarroch*, hard by *Aucharn*, when the ſaid *John Maccombie*, alias the Son of *Duncan Macilchallum*, ſaid, that he was told that *Glenure* had a drawn Hanger in the Room where they had been drinking, after the Pannel and his Uncle were carried out, declaring that he would not allow them to return to his Company any more that Night; upon which the Pannel aſked them, why he did not tell him that before he came away from the Houſe, that he might ſee if it was true, and what *Glenure* meant by it? and inſiſted then on going back to know the Truth of it; but the Deponent and the other Tenants declaring they would not allow him to go back, he bid them go about their Buſineſs and leave him, which they accordingly did; and the Pannel, and the ſaid *James Stewart* his Uncle, went to *Aucharn*, attended only, as he remembers, by the Deponent and a Boy-herd named *Duncan Maccannanich:* That, when this happened, the Pannel *James Stewart* and his Uncle were very drunk. Depones, That, ſome Time in *March* laſt, when the Deponent and *John More Maccoll* were harrowing the Tath-field at *Aucharn*, being the ſame Day, or the Day after the Pannel went for *Edinburgh*, *Allan Breck Stewart* walked for a good Time about the Field; and as they were looſing their Horſes, the ſaid *Allan Breck* and they entered into Converſation about *France*, and People from this Country there; and *John More Maccoll* aſked if there was any Proſpect of any of them's coming back? Upon *Allan Breck*'s anſwering he was afraid they would not, *John More* ſaid, he wiſhed that none had ever come from that Country; in which the ſaid *Allan* joined him, ſaying, it had diſperſed the Friends he moſt regarded; and that it was a particular Misfortune that the Management of any Concerns they left behind them, fell into the Hands of one that was about to ſhew them no manner of Favour; and declared that he meant *Glenure*; and told that the Commoners of *Appin* were little worth, when they did not take him out of the Way before now; and upon their ſaying nobody would run that Riſque, not knowing who would ſtand by them, *Allan* anſwered, That he knew a Way to convey out of the Way any Perſon that would do ſo, in a Way that he would never be catched; and alſo ſaid, that they, and the Tribe they were of, (meaning the *Maccolls*) were not like to be the leaſt Sufferers by *Glenure*'s Proceedings. Depones, That the firſt Time he ſaw *Allan Breck Stewart* at *Aucharn*, was about the Beginning of the Oat-ſowing, which was pretty far advanced in the Month of *March:* That he was then dreſſed in a ſide blue Coat, red Waiſtcoat, and black Breeches, with a Hat and Feather: That, while he was in the Country of *Appin*, he was for the moſt Part at the Pannel's Houſe; but that he was abſent once for a conſiderable Time, when he ſaid he was at *Rannoch:* That the Deponent ſaw him when he ſaid he was going to *Rannoch:* That he was then dreſſed in a black ſhort Coat with ſilver Buttons belonging to the Pannel, blue Trowſers ſtriped with white, and a dun great Coat, which the Deponent thinks belonged to *Allan Stewart*, the Pannel's Son; and, being now ſhewn the two black ſhort Coats in the Clerk's Hands, depones, That the Coat with the ſilver Buttons on the Pockets belonged to the Pannel, and is the ſame the ſaid *Allan Breck* had on when he ſaid he was going to *Rannoch* as aforeſaid; and the other Coat, with no Buttons upon the Pocket, belonged to *Allan Stewart*, the Pannel's Son.

Son. Depones, That he saw him have on the same Dress when he came back from *Rannoch*. Depones, That he does not mind to have seen the said *Allan Breck* wear the said short Coat at any other Time, except upon *Monday* and *Tuesday* the 11th and 12th of *May* last. Depones, That upon *Monday* the 11th Day of *May* last, he went to the Wood for Firewood; and, upon his coming Home in the Afternoon, he found the said *Allan Breck* dressed in the said black short Coat, working at Potatoes along with *John More Maccoll* and *John Beg Maccoll*, two of the Pannel's Servants, having on his own black Breeches. Depones, That he saw the said *Allan Breck*, upon *Tuesday* Morning, the 12th of *May* last, in the Pannel's House, dressed in the said black Coat belonging to the Pannel, and blue Trowsers striped with white, such as now shewn to him in the Clerk's Hands, and a blue Bonnet. Depones, That the Deponent was told the said *Allan Breck* left *Aucharn* early upon the *Tuesday*, and the Deponent has not seen him since. Depones, That upon *Friday* Evening the 15th of *May* last, the Deponent and *John Beg Maccoll* overtook *Katharine Maccoll*, Servant to the Pannel, in the Brae above the House of *Aucharn*, with a Pock or Sack, and something in it, under her Arm; the Deponent asked her, what she had got in the Sack? To which she answered, That it was *Allan Breck*'s Cloaths, and that she was going to hide them; and the Deponent and the said *John Beg Maccoll* saw her hide the Sack in which the said Cloaths were; and that this happened about Four o'Clock in the said Afternoon. Depones, That upon *Thursday* Evening the 14th Day of *May* last, after Notice of *Glenure*'s Murder came to *Aucharn*, *Allan Stewart*, Son to the Pannel, desired the Deponent and *John Beg Maccoll* to hide a large *Spanish* Gun that used to stand in the Brew-House; and told them, that he himself had concealed a lesser Gun that used to stand at the End of the Girnel in the Barn, under the said Girnel, where he thought it would be safe. Depones, That the Deponent, and the said *John Beg Maccoll*, on the said *Thursday* Evening, hid the large or *Spanish* Gun that used to stand in the Brew-house, under the Thatch of the Sheep-house, and three Swords they took out of the Barn, and a fourth that was brought by *John Beg Maccoll*, the Deponent does not know from whence, under the Thatch of the Back of the Barn. Depones, That about Four o'Clock, *Friday* the 15th of *May* last, the Pannel desired the Deponent to carry the above Arms from the Houses, and hide them in the Moor: That accordingly the Deponent and *John Beg Maccoll* took the aforesaid large Gun from the Back of the Sheep-house under the Thatch, and the said four Swords from under the Thatch of the Barn, and found the Gun that used to stand in the Barn under the Girnel, where the said *Allan Stewart*, the Pannel's Son, said he hid it, and carried them to the Moor; and hid them in the Hole of a Rock, above the Peat-Moss: And that it was told at *Aucharn*, that there were Soldiers coming to the Country, before these Arms were hid in the Hill, as above. Depones, That the said *John Beg Maccoll*, and the Deponent, had the above Arms, when they overtook *Katharine Maccoll*, as aforesaid, with the Cloaths. Depones, That the large or *Spanish* Gun, that stood in the Brew-house, was charged with Powder and small Drops; and that there was no Shot in the small or lesser Gun, that used to stand at the End of the Girnel in the Barn; but *Allan Stewart*, the Pannel's Son, carried out the said Gun two or three Mornings, in order to shoot black Cocks in the latter End of *March* or Beginning of *April* last. Depones, That *Allan Breck Stewart* was also in use to carry out the said large or *Spanish* Gun two or three Mornings, in order to shoot black Cocks; and about that Time saw him endeavour to help the Lock of the said Gun with a File. And being interrogate for the Pannel, depones, That he, the Deponent, has no Skill about Guns; but heard the said *Allan Breck* and *Allan Stewart*, the Pannel's Son, more than once complain, that the Guns were in bad Order. Depones, That when the Deponent came Home from the Wood, upon *Monday* the 11th Day of *May* last, the Pannel was not at Home; and the Deponent was told he was gone to *Keels* to meet the Laird of *Airds*: And that the Deponent had gone to Bed before the Pannel came Home that Night: And that early upon *Tuesday* Morning, when the Deponent got up, he saw the Pannel without, who told him that he was going to *Appin*'s House: And that, to the Deponent's Knowledge, *Allan Breck*, or the Pannel's Sons, were not then up: That he saw the Pannel go towards *Letterfhuna*, where *Appin* lives. Depones, That *Allan Breck Stewart* left *Aucharn* before the Pannel returned from *Letterfhuna*: And, upon an Interrogatory put for the Pannel, if the Pannel had given the short black Coat the Deponent saw the said *Allan Breck* wear, and which he has deponed belonged to the Pannel, was given by the Pannel to the Deponent, or any other of his Servants, before the said 11th of *May*, depones, That the said black Coat was not given to him, the Deponent, nor to any other of the Servants, to his Knowledge. And, being interrogate for the Pursuers, after shewing him the Powder-horn, now in the Clerk's Hands, and which had been formerly shewn him when he was examined upon the Precognition, Whether he had ever seen it before the Time of taking the said Precognition? depones, He never did. And being interrogate for the Pannel, depones, That *Glenure* and *Ballieveolan* dined at the Pannel's House, in company with the Pannel, the Day after they were like to have quarrelled at *Kintalline* as aforesaid. Depones, That it was ordinary for the Pannel to give a Dram to his Servants every Time he distilled a double Draught of Whisky. Depones, That the double Draught was a distilling, when the Deponent and the other Servants got the Dram mentioned in the first Part of this Deposition. *Causa scientiæ patet.* And this is the Truth, as he shall answer to God. And declares he cannot write.

(Signed) ARCH. CAMPBELL. JA. FERGUSON.

John Beg Maccoll, Servant to *James Stewart* Pannel, aged twenty-seven Years, unmarried, sworn, purged and examined *ut supra*, by the sworn Interpreter, depones, That the latter End of Winter, or Beginning of Spring last, early in a Morning, the Pannel gave a Dram to the Deponent, *Dougal Maccoll*, and *John More Maccoll*, both Servants to the Pannel, in the Pannel's Brew-house: That the Conversation falling upon *Glenure*, the Pannel complained that *Glenure* was no Friend of his: but that that was not the worst of it; but that, if he was to go on as he did, it was likely in five Years he would be Laird of *Appin*; and the Deponent and the other two *Maccolls* answering, that that was likely to happen, the Pannel replied, That he knew once a Sett of Commoners in *Appin*, who would not allow *Glenure* to carry Matters with such a high Hand; and to which the Deponent and the other two *Maccolls* answered, That they did not believe there was any Commoner in *Appin*, that durst contend or strive with *Glenure* in such a Way: That, immediately thereafter, the Deponent and *Dougal Maccoll* went out of the Brew-house, leaving the Pannel and *John More Maccoll* there. Depones, That, after they went out of the Brew-house, either that Day, or some Time thereafter, the Deponent and *Dougal Maccoll* talked together, what the Import of this Conversation might be; and that the Deponent was at a Loss whether to consider it as an Encouragement to destroy *Glenure*, or as a Complaint against the Commoners of *Appin*, as not being so faithful to the Pannel as he expected them to be. Depones, That, in *March* last, *Allan Breck Stewart* came to the Pannel's House, late in the Evening, dressed in a blue side Coat, red Waistcoat, and black Shag Breeches, and a feathered Hat: That he looked into the Kitchen, and went immediately to the Room where the Pannel and his Family were: That afterwards he used to go to the Country to different Places, and come frequently back to the Pannel's House: That once he remained there a Week, which is the longest Time he staid there at one Time. Depones, That the said *Allan Breck Stewart* came to the Pannel's House from *Fasnacloich* upon *Monday* the 11th of *May* last, about Mid-day, dressed as above: That, upon the Evening of the said Day, the Deponent saw the said *Allan Breck* dressed in a black short Coat with silver Buttons. Depones, That there was two short black Coats with silver Buttons in the Pannel's House; the one belonging to the Pannel, and the other to *Allan Stewart*, his Son; the Deponent does not know which of them the said *Allan Breck* had on. And depones, That the Coats were so like, that he could not distinguish the one from the other. And depones, That it was one of these black Coats he had on, the Deponent having seen him; the said *Allan Breck*, near the Houses, in his side Cloaths; and, some Time thereafter, coming from the House, dressed in the said short Coat, in the Evening of the said *Monday* the 11th of *May*, and came where the Deponent and *John More Maccoll* were covering Potatoes, and wrought with them for some Time. Depones, That, some Time thereafter, a young Lad, Brother to *Glenco*, by Name *Donald*, as the Deponent thinks, came to them, and told that *Glenure* was come Home from *Edinburgh*, and was to go to *Lochaber*; upon which, some Conversation happening about removing the Tenants, *Allan Breck* said, Devil a Bit of the new Tenants would get Possession, unless they had a Warrant to shew, or come in by Force. Depones, That, when the said *Allan Breck* came, upon the 11th of *May* last, to *Aucharn*, the Pannel was seeing the Deponent, *John More Maccoll*, and *Dougal Maccoll*, working at Potatoes; and that *Allan Stewart*, the Pannel's Son, was likewise there: That, when *Allan Breck* came, they were sitting all together; and that he seated himself by the Pannel, and had some Conversation in *English*, which the Deponent does not understand. Depones, That *Charles Stewart*, Son to the Pannel, and *Stewart*, Daughter to *Fasnacloich*, came to *Aucharn* from *Fasnacloich*, a little after the said *Allan Breck*. Depones, That upon *Thursday* the 14th of *May* last, the Pannel gave a Letter to the Deponent, to be delivered to *Charles Stewart*, Notary Public at *Maryburgh*; and told the Deponent, that the Letter was to make or cause the said *Charles Stewart* come to the Country of *Appin* to protest against *Glenure*, in case he had not a sufficient Warrant to remove the Tenants of *Ardshiel*. Depones, That the Pannel desired the Deponent to make all possible Dispatch, and desire *John Breck Maccombie* at *Kintalline*, and the said *John More Maccoll*, Servant to the Pannel, who was then at *Kintalline*, to ferry the Deponent from *Kintalline* to *Onich*, being much shorter than the Ferry of *Ballachelish*. Depones, That the Pannel also told him, that he was to get some Money from *William Stewart*, Merchant at *Maryburgh*, to pay for Milk-Cows that were bought for him in the Country; and that, if the Money was not sent, he would not get the Cows. Depones, That he was ferryed from *Kintalline* to *Onich*, and went on to *Fort-William*, and met *Glenure* at the Three-mile Water, who asked the Deponent from whence he came? To which the Deponent answered, That he had come over *Keilis*. Depones, That, being acquainted with *Glenure*'s Servant, he had some Conversation with him, and told him he was going to *Fort-William*. Depones, That he set out from *Aucharn* about Seven or Eight o'Clock in the Morning, and made all the Dispatch he could to *Fort-William*, where he arrived about Twelve o'Clock. Depones, That, when he came to *Fort-William*, he delivered the Letter he got from the Pannel to *William Stewart*, Merchant in *Maryburgh*, who told him, that *Charles Stewart*, the Notary, was not at Home, he having gone to the Braes of *Lochaber* in the Morning; and told the Deponent, that he, the said *William*, had wrote to the Pannel in the Morning; and that there was a Notary along with *Glenure*, who would serve the Pannel as well as *Glenure*. Depones, That he does not remember that he asked for any Money from *William Stewart*, nor did he give him any, but said, he would send Servants for the Cattle. Depones, That he staid a very short Time at *Fort-William*: That the said *William Stewart* asked him, if he wanted Victuals? Upon the Deponent's answering he did not, the said *William* brought him into his House, and gave him a Dram; and the Deponent immediately returned back by the short Road to the Ferry of *Ballachelish*, and found *Glenure* at the Ferry before him: That the Deponent required of the Ferry-man to ferry him immediately, and the Ferry-man desired him to stay till he would be ferryed with *Glenure*'s Horses; but the Deponent observed to him that the Stream was rapid, and might draw some Time before they would ferry the Horses, he ought to ferry him immediately, which he accordingly did; and that this might be about Four o'Clock: That, upon his crossing the Ferry, he met *Archibald Maciniish*, Ferryer upon the *Appin* Side, to whom he told where he had been, and his Errand; and that the said Ferryer told the Deponent, that he was informed by a Man, that he was going to meet *Glenure*: That the new Tenants, that were to come to *Ardshiel*, had come to *Glenaurer* with their Cattle; and were to take Possession next Day; and the Deponent told him, that he did not believe they would get Possession till their Warrants were seen. Depones, That, a little thereafter, he met *Alexander Stewart* elder of *Ballachelish*, to whom he told where he had been, and his Errand, and the Conversation he had with the Ferry-man; and *Ballachelish* desired him to tell his Master, if he would send for him, he would go along with him to see *Glenure*'s Warrant. Depones,

That he paſſed through the Wood of *Lettermore*, and met or ſaw nobody there: That he went then Home, and gave the Pannel an Account of his Errand. That he was hardly an Hour there, when *John Mackenzie*, *Glenure*'s Servant, came to the Door calling for the Pannel: That the Pannel went immediately to the Door, and aſked the Servant, what was the Matter, and what News he had? To which the Servant replied, The worſt I ever had; my Maſter is murdered in the Wood of *Lettermore*: Upon which *James Stewart* ſaid, Lord bleſs me! was he ſhot? To which the Servant anſwered, that he was ſhot, and ſaid the Pannel ought to go and take Care of his Corpſe: That the Servant immediately went off, but neither the Pannel nor any of his Family went near the Corpſe; and the Pannel ſaid, that, as he and *Glenure* were not in good Terms, and ſome of the People that were to meet *Glenure* had Arms, he did not care to go near them, not knowing what might happen. Depones, That his Maſter ſaid, that it was a dreadful Accident, and was afraid would bring Trouble on the Country; and appeared to be ſorry for what had happened. Depones, That, upon the Evening of *Friday* the 15th of *May* laſt, the Deponent and the ſaid *Dougal Maccoll* overtook *Katharine Maccoll*, Servant to the Pannel, going up the Brae above the Houſe with a Sack, and ſomething in it, under her Arm; and the ſaid *Dougal Maccoll* aſked her, what ſhe had got there? To which ſhe anſwered, That it was *Allan Breck*'s Cloaths, which ſhe was going to hide; and ſhe hid them accordingly in the Deponent's Preſence. Depones, That, when the ſaid *Allan Breck* came firſt to *Aucharn*, he uſed to lie in a Room in the lower End of the Houſe; but afterwards he, and the Pannel's Sons, and any young People that came about the Houſe, when the Seaſon was more advanced, uſed to lie in the Barn. Depones, That, upon the ſaid *Friday* Evening the 15th of *May* laſt, *Margaret Stewart*, the Pannel's Wife, deſired the Deponent and the ſaid *Dougal Maccoll* to hide all the Arms that were about the Houſe, as there was a Party of Soldiers coming to the Country: That accordingly they took two Guns and three Swords, and a fourth Sword was delivered to the Deponent by *Allan Stewart*, Son to the Pannel; which two Guns and four Swords the Deponent and the ſaid *Dougal Maccoll* hid in the Brae a good Way above the Pannel's Houſe; and the two Guns in the Clerk's Hands being ſhewn to the Deponent, depones, That theſe were the ſame two Guns that were hid as above. Depones, That the largeſt of the Guns, now ſhewn the Deponent, was loaded, and lay in the Brew-houſe; and the Deponent believes, that either *Allan Stewart*, the Pannel's Son, or *Allan Breck Stewart*, charged the ſaid Gun; for the Deponent ſaw *Allan Breck Stewart* have the ſaid Gun ſome time before, and go with it in order to ſhoot black Cocks: That, late on *Thurſday* Evening the 14th of *May* laſt, after Notice came of *Glenure*'s Murder, the ſaid *Dougal Maccoll* told the Deponent, that the Pannel's Wife had deſired to hide all the Arms about the Houſe, not knowing but that ſome Soldiers might come to the Country; upon which the Deponent and the ſaid *Dougal* carried the ſaid loaded Gun from the Brew-houſe, and hid it under the Thatch upon the Out-ſide of the Sheep-houſe, and carried three Swords out of the Barn, and hid them under the Thatch upon the Out-ſide of the ſaid Barn, being that Barn where the Pannel's Children and *Allan Breck* uſed to lie: That, upon their being deſired by the ſaid *Margaret Stewart* next Day to hide the Arms better, they took the foreſaid loaded Gun and three Swords out of the Places where they had hid them; and upon their inquiring for the other Gun that uſed to lie in the ſaid Barn, *Allan Stewart*, the Pannel's Son, told them, he had hid it under the large Girnel in the Barn, and told them they need not ſtir it, as it was ſafe enough there; but they anſwered, as they were hiding the reſt, they would hide that likewiſe; and accordingly the Deponent went and took the ſaid Gun from the Girnel, where the ſaid *Allan* told him he had hid it, and concealed them all together as above: Upon Recollection depones, That it was upon the *Thurſday* Evening the Deponent and the ſaid *Dougal Maccoll* inquired about the little Gun which lay at the End of the Girnel in the Barn, and that the ſaid *Allan Stewart*, Son to the Pannel, told them he had hid it, as above, under the Girnel. Depones, ſo far as he can remember, he did not ſee the ſaid little Gun upon *Thurſday*, but ſaw it ſtand as above, either upon *Tueſday* or *Wedneſday* preceding, and uſed for ſome Time preceding to ſee it ſtand in the ſame Place. Depones, That it was upon *Friday* Evening the Deponent took the ſaid Gun from under the Girnel, where the ſaid *Allan* had hid it; and adds, that the Reaſon he did not ſee it on the *Thurſday* was, that he was from Home almoſt that Day. Depones, That he did not ſee the ſaid little Gun loaded ſince *March* laſt, when the black Cocks were crouding; that then there was a Shot of Drops in it, and the ſaid *Allan Breck* carried it out one Morning, and told that it miſgave with him thrice at a black Cock, and ſhot with it the fourth Time without killing the black Cock. Depones, That the Brew-houſe, where the ſaid large Gun uſed to lie, was always locked, but when People were in it: That the Barn, where the ſaid little Gun ſtood, had a Lock and Key, but was not in uſe to be locked ſince the Crop was removed out of it, which was at the Time they were done with their Oat-ſeed, which was ſome Time before *May*-Day. And, being interrogate for the Pannel, depones, That neither of the Guns were in good Order: That the large or loaded Gun was in uſe, when going to be ſnapped, to ſtand at Half-cock, and the little Gun was in uſe to ſnap or miſfire. Depones, That the little Gun had an old wore Flint in it; and that he obſerved this Flint in the ſaid Gun, when he was in uſe to ſee it ſtand at the End of the Girnel as above; but did not obſerve whether it had a Flint or no, when he took it from under the Girnel as above. Depones, That he knows no Fault the Lock of the little Gun had, but its being in uſe to miſfire; and that the Lock was on the ſaid Gun when he hid it the *Friday* Evening as above. Depones, That when *Allan Breck* came, upon *Monday* the 11th of *May* laſt, to the Place where the Pannel, Deponent, and others, were covering Potatoes as above, they had ſit together but for about a Quarter of an Hour; the Deponent went to work at Potatoes at a greater Diſtance, and, before he went away, heard a Meſſage had come for his Maſter, to meet *Airds* at *Keil*, and heard his Maſter ſpeak of going there; but when he went, or who went along with him, the Deponent does not know: That the Deponent continued working at the Potatoes till the Evening, and the Pannel was not come Home when he came from his Work: That the Pannel came Home at Bed-time, accompanied with *John More Macilichattan*, who lay with the Deponent that night. Depones, That it was a while after (the Deponent cannot ſay how long) the Pannel parted from the Deponent, and the other People that wrought at the Potatoe-Ground: That *Allan Breck* came dreſſed in the black ſhort Coat as above, and wrought with them at the Potatoes. Depones, That they all got up together, after the ſaid *Allan Breck* came to them, and ſat with them as above; and he thinks the Pannel went then towards the Houſe. Depones, That *Allan Breck* and the Pannel were in uſe to converſe together, ſometimes in *Engliſh*, and ſometimes in the *Iriſh* Language. Depones, That, when he went to *Fort-William*, with the above Letter, to *Charles Stewart*, the Notary, he had no Orders from his Maſter to inquire after the Motions of *Glenure*, or to acquaint any body thereof. Depones, That he never ſaw the ſaid *Allan Breck Stewart* change his Cloaths, and put on ſhort Cloaths, at any Time, at the ſaid *James Stewart*'s Houſe, before the ſaid 11th of *May*; but that, as the Deponent beſt remembers, at the Time the ſaid *James Stewart* was at *Edinburgh*, he ſaw the ſaid *Allan Breck* dreſſed in a black ſhort Coat, a dun big Coat which the Deponent thinks belonged to *Allan Stewart*, the Pannel's Son; and he heard the ſaid *Allan Breck*, or others about the Houſe ſay, that he was then going to *Rannoch*. *Cauſa ſcientiæ patet.* And this is Truth, as he ſhall anſwer to God; and depones he cannot write.

(Signed) ARCH. CAMPBELL. P. GRANT.

Captain *David Chapeau*, in General *Pulteney*'s Regiment of Foot, married, aged fifty-two, Witneſs cited, ſworn, purged and examined *ut ſupra*, depones, That, upon the 23d of *May* laſt, he was informed by Mr. *Campbell of Barcaldine*, that there were ſome Arms hid among the Rocks near the Pannel's Houſe; and was, at the ſame Time, ſhewn the Paragraph of a Letter from Colonel *Crawfurd*, who commands the Regiment to which the Deponent belongs, addreſſed to *Barcaldine*, wherein the Colonel deſired the Deponent to go in Search of ſuch Arms. Accordingly the Deponent went that Day with a Party, and took along with him Mr. *Patrick Campbell* of *Auchinſicallan*, to direct him the Road; and, when they came to a Hill above the Pannel's Houſe, Mr. *Campbell* found concealed in a Hill above the Pannel's Houſe two Muſkets and four Broad-ſwords, whereof having informed the Deponent, the Deponent went and ſaw them taken out. And the Muſkets or Fuzees, now in the Clerk's Hands, being ſhewn to the Deponent, depones, That they are the very ſame Fuzees he ſaw taken out as aforeſaid: And depones, That the largeſt of the two Fuzees was loaded, and the other not; and that, having drawn the Shot of the loaded Piece, found it to be loaded with Small-ſhot, by which he means Drops and ſmall Slug mixed together: And it appeared to the Deponent, that the ſaid unloaded Piece had been lately fired, having put his Finger in the Muzzle, which he brought out black. And, being interrogate for the Pannel, whether a Piece which is laid by foul, will not, after a Month's Time, file one's Finger, when put in the Muzzle of it, as well as when it has been lately fired? depones, He cannot tell, not being accuſtomed to ſee Arms uſed ſo. And depones, That the ſaid unloaded Piece had a Lock upon it at the Time; but which had only one Screw-nail in it. But depones, That a Gun, having a Lock with one Screw-nail, may be fit enough to be fired with; and adds, That that End of the Lock wanting the Nail, was tied to the Stock by a String. Depones, That the Pieces, or Fuzees, were carried along to *Fort-William*, where the Deponent delivered them over to the Adjutant at *Fort-William*; and does not know by what Means the ſaid Lock upon the ſmall Piece, now amiſſing, was loſt; but believes it to have been by Accident. *Cauſa ſcientiæ patet.* And this is Truth, as he ſhall anſwer to God.

(Signed) D. CHAPEAU. JA. FERGUSON.

Patrick Campbell in *Auchinſicallan*, married, aged thirty-three Years, Witneſs cited, ſworn, purged and examined *ut ſupra*, depones, That ſome Time in *May* laſt, he thinks on the 23d, he was called by Captain *Chapeau* to go along with him to *Aucharn* in Search of Arms; and, having come to a Moſs, above the Pannel's Houſe of *Aucharn*, the Deponent diſcovered two Guns in a Cove; whereupon he immediately called to the Captain, who was with him, when they were taken out of the Cove; as alſo, there was alſo there three or four Broad-ſwords. Depones, That one of the Guns was heavier than the other; and the lighteſt Gun had a Stick laid along the Lock tied by a String about the Stock: But, whether the ſaid Lock had any Screw-nail, or not, he does not remember; and that theſe Arms were carried away by Captain *Chapeau*. Depones, That the lighteſt of the ſaid two Guns was unloaded, and the heavieſt loaded: That he ſaw the Shot of the loaded Gun drawn, which conſiſted of Drops, with ſome ſmall Slug among them. Depones, That, in order to know whether the unloaded Piece had been lately fired, ſeverals put their Finger in the Muzzle of it; and particularly the Deponent; and the Finger coming out black, he, and the reſt with him, from thence concluded, that it had been lately fired. And, being interrogate for the Pannel, whether a Muſket that has been laid by foul, after firing, will not, in like Manner, file a Man's Finger put in the Muzzle of it, after it has been fired a Month or longer before? depones, that he never made that Trial upon a Gun that he knew to have been ſo long before fired. *Cauſa ſcientiæ patet.* And this is the Truth, as he ſhall anſwer to God.

(Signed) PAT. CAMPBELL. JA. FERGUSON.

William Stewart, Merchant in *Maryburgh*, aged thirty-ſix Years, married, ſworn, purged and examined *ut ſupra*; and, being ſhewn a Letter, dated at *Maryburgh* the 14th of *May* laſt, ſigned *William Stewart*, and addreſſed on the Back to the Pannel, being the Writing Number 10. in the Inventory ſubjoined to the Libel; depones, That the Letter is of his Hand-writing, and was ſubſcribed by him, and ſent to the Pannel, of the Date it bears, by *Ewan Mackenzie*, a common Carrier in *Maryburgh*. And, being alſo ſhewn a Letter dated at *Aucharn* the 14th of *May* laſt, Eight o'Clock in the Morning, ſigned *James Stewart*, and addreſſed on the Back to Mr. *Charles Stewart*, Writer at *Auchintour*, depones, That the ſaid Letter was wrote by the Pannel, and ſent, of the Date it bears, by *John Beg Maccoll*, and in Abſence of the ſaid *Charles Stewart*, who was not then at *Maryburgh*, was delivered by the ſaid *Maccoll* to the Deponent, who broke it open, and told *Maccoll*, that *Charles Stewart* was not then in *Maryburgh*, but that he expected him that Night, but thought that he could not go along with *Maccoll*: That *Maccoll* aſked the Deponent, if he ſhould wait for him, or go after him? The Deponent anſwered, it was needleſs; for, if *Charles Stewart* could

could go, he would take a Boat. And, being interrogate whether he wrote any Answer by *John Maccell*, or if he gave him any verbal Answer to the Postscript, wherein the Pannel wrote to *Charles Stewart*, to tell the Deponent to send him eight Pounds Sterling? depones, He gave no Answer in Writing; and thinks he did not give any verbal Answer, if it was not, that he bid him tell his Master he was not in Cash, which was the Case. And depones, That the Deponent was himself intended by the *William* in the Postscript. Depones, That *Maccoll* did not stay three Minutes with the Deponent, when he went away. Depones, That the next Day, being *Friday*, or the Day thereafter, the Deponent had a Message from the Pannel about Ten o'Clock Forenoon, or betwixt Ten and Twelve, by *Alexander Stewart*, Packman, who told the Deponent, that he was sent by the Pannel to *Glenevis*, and was ordered in his Way to call at the Deponent to send the Pannel five Pounds Sterling; and that his Errand to *Glenevis* was, to desire him to send for a Horse that he had bought from the Pannel: That the Deponent told the Packman, that he was not in Cash, and could not send the five Pounds; upon which the Packman said, that the five Pounds was to relieve some Cows that the Pannel had bought for the Deponent at *Ardshiel*; and, if the Deponent did not send the Money, he could not get the Cows: That the Deponent said, he was indifferent, but had not the Money to send; upon which the Deponent's Wife desired the Packman to go forward to *Glenevis*, and to call there in his Return, and he would get the Money, because they could not conveniently want the Cows: That the Packman accordingly went away; and the Deponent's Wife, as she afterwards told him, for he was not present, gave him three Guineas: That the Deponent is sure the Money was not given on a *Sunday*, and thinks it was on a *Saturday*; and therefore believes it was upon *Friday* the 15th that the Packman first called the Deponent, being certain that a Night intervened betwixt his calling and getting the Money. Depones, That he had no Conversation with the Packman touching *Allan Breck Stewart*, whose Name was not mentioned by either of them; but the Deponent asked him, if he had come by the Road where that unlucky Murder of *Glenure* had happened? And the Packman told him, he did; but the Deponent did not ask him who was suspected for it; nor had any other Conversation on that Subject, there being a great many People present in the Shop at the Time. Depones, That the Deponent received two of the Cows about eight or ten Days after, and other two he did not get at all. And being interrogate for the Pannel, depones, That, upon *Allan Breck Stewart*'s first coming to this Country, which was in the Month of *February* or *March* last, the Deponent saw him at *Edinburgh*: That thereafter, upon the 1st of *May* last, the Deponent happening to be at the Pannel's House, *Allan Breck Stewart* came there from *Rannoch*, and was dressed in a short black Coat with clear Buttons, such as these now lying in the Court. Depones, That when the Deponent saw *Allan Breck Stewart* at *Edinburgh*, which, he thinks, was in *February*, he told the Deponent, that it was then but three or four Days since he arrived from *France*. Depones, That, at that Time, *Allan Breck Stewart* was dressed in long Cloaths, a blue Coat, and, as the Deponent thinks, a red Vest, a Hat feathered in the Inside. Depones, That, when the Deponent was at the Pannel's, the 1st of *May*, *Charles Stewart* was there also, in order to go to *Glenure*, and intimate a Sist that had been obtained in Name of the Tenants of *Ardshiel*, upon a Bill of Suspension of a Removing against them. Depones, That *Allan Breck Stewart* told the Deponent, that he had been a Soldier in the King's Troops at the Battle of *Preston*; and he thinks, he said, it was in *Lascelles*' Regiment, but is not positive, whether it was *Lascelles*' or *Murray*'s. And depones, That thereafter he was in the Rebellion. Depones, That, when he was at the Pannel's House, the 1st of *May*, as aforesaid, he did not sleep within the Pannel's House, and seemed to be on the Watch, lest he should be searched for. And, being interrogate, whether *Allan Breck Stewart* did not then lie in the Barn, and some of the Pannel's Children with him? he says, it is very probable he might; but the Deponent knows nothing of it; for the Deponent saw him next Morning, and, he thinks, breakfasted with him at the Pannel's House. Depones, That the Deponent is First-Cousin to the Pannel, and also his Brother-in-law. Depones, That, before *Charles Stewart* went with the Tenants to *Glenure*'s House, upon the 1st of *May*, the Deponent heard the Pannel say to the Tenants, that they might go, or not, as they thought proper; but he would be far from advising them. *Causa Scientiæ patet.* And this is Truth, as he shall answer to God.

(Signed) WILLIAM STEWART. P. GRANT.

Barbara Watt, Spouse to *William Stewart*, Merchant in *Maryburgh*, aged twenty-eight Years, sworn, purged and examined *ut supra*, depones, That the Day immediately after the Murder of *Glenure*, about Mid-day, *Alexander Stewart*, Packman, brought the Deponent's Husband, the preceding Witness, a Message from the Pannel, to send him five Pounds Sterling, to pay for some Cows that the Pannel had bought for him: That the Deponent's Husband was angry at the Message, and said, that he had not then the Money to give, having given away some Money that Morning; but that though he had it, he would not send it; and the Packman answered, that he was a sufficient *but* himself for all the Sum, though the Pannel had not sent for it: That the Packman told at the same Time, that he was going to *Glenevis* on some Message from the Pannel touching a Horse; therefore the Deponent interposed, and desired the Packman to call there in his Return from *Glenevis*, and he would get the Money; for that they behoved to have the Cows to stock a Farm they had: That this Conversation happened in the Deponent's Shop, where several other Persons were present. Depones, That, next Day in the Afternoon, the Deponent's Husband not being then at Home, the Deponent met the Packman in the Street of *Maryburgh*, and happening to have three Guineas then in her Purse, she gave them to him there in the Street, and called her Servant-Maid to be Witness, because there was no Letter from the Pannel, nor Receipt to be given by the Packman. *Causa Scientiæ patet.* And this is Truth, as she shall answer to God.

(Signed) BARBARA WATT. P. GRANT.

Alexander Stewart, travelling Packman in *Appin*, aged thirty, unmarried, Witness cited, sworn, purged and examined *ut supra*, by *Archibald Campbell*, Writer in *Inverary*, sworn Interpreter foresaid, depones, That, upon *Friday* the 15th Day of *May* last, about Twelve o'Clock, the Pannel desired the Deponent to go to *Fort William*, to *William Stewart*, Merchant there, and get from him five Pounds, or five Guineas; and told the Deponent, that his Friend *Allan Breck* was about to leave the Country, as there were Troops coming into it, and that he might be suspected of *Glenure*'s Murder; and that it was incumbent upon him, the Pannel, to supply the said *Allan Breck* in Money; and the Pannel desired the Deponent to tell the said *William Stewart*, that he must send him Money, though he should borrow it from twenty Purses; and desired him also to tell the said *William* to give Credit in five Pounds Sterling to *John Breck Maccoll*, Bouman to *Appin* at *Koalisnacoan*, in case he came to demand such a Sum; and the Pannel desired the Deponent to demand four Pounds Sterling more from the said *William*, as the Price of a Couple of Milk-Cows bought for him. Depones, That, in consequence of the above Message, he went to *Fort-William*, where he arrived early in the Evening: That he met the said *William Stewart*, and demanded from him, for the Use of the Pannel, the two Sums above-mentioned: That the said *William* told him he had not Money, but desired the Deponent to go to *Glenevis*, and that he, the said *William*, had Business to *Glenevis*, would meet the Deponent there in the Morning, and give him his Errand. Depones, That the Pannel desired the Deponent to tell the said *William Stewart* to send Notice to *Glenevis*, that he should send for a stoned Horse *Glenevis* had bought from the Pannel. Depones, That he went to *Glenevis*, where he arrived about Sun-set, and staid there the said *Friday*'s Night: That, as the said *William* did not come there *Saturday* Morning, the 16th Day of *May* last, the Deponent went back to *Fort-William*, and met the said *William Stewart* upon the Street, and asked him if his Answer was ready? That the said *William* said, that he would let him go immediately, and went into his own House, and immediately thereafter Mrs. *Stewart*, Spouse to the said *William*, came to the Door, and gave the Deponent three Guineas, with which the Deponent went back immediately to *Aucharn*, and arrived there in the Evening of the said *Saturday* the 16th of *May*: That when he came to *Aucharn*, the Pannel was not at Home; but soon after the Deponent's Arrival, Notice came, that the Pannel, and *Allan Stewart* his Son, were made Prisoners at *Inshaig*, a Place of about a Quarter of a Mile from *Aucharn*: That, immediately upon this Notice, Mrs. *Stewart*, the Pannel's Wife, and the Deponent, went to *Inshaig*, and by the Way the Deponent offered the three Guineas he had brought from *Fort-William* to Mrs. *Stewart*, but she desired him to keep them: That, upon their Arrival at *Inshaig*, they found the Pannel a Prisoner; but Mrs. *Stewart* and the Deponent having had Access to converse with the Pannel apart, the Pannel asked the Deponent, what Money he brought from *Fort-William?* And upon the Deponent's telling him, that he brought three Guineas, the Pannel pulled a green Purse out of his Pocket, out of which he took two Guineas, and gave them to Mrs. *Stewart*, and Mrs. *Stewart* delivered the two Guineas immediately to the Deponent; and the Pannel desired, that the five Guineas should be sent to that unhappy Man, meaning *Allan Breck*, to see if he could make his Escape; and pitched upon the Deponent as a Person that should go with the Money; and does not remember positively, that the Pannel spoke about *Allan Breck*'s Cloaths: That soon thereafter the Pannel was carried off by a Party to *Fort-William*, and the Deponent returned to *Aucharn* with the Pannel's Wife: That the Party and Pannel called at *Aucharn*, and took a Dram; and upon their going off, Mrs. *Stewart*, the Pannel's Wife, told the Deponent, that he must go to *Allan Breck* with the five Guineas and his Cloaths; and upon the Deponent's inquiring where he would find him? Mrs. *Stewart* told him, that he would cast up in *Koalisnacoan*. Depones, That, some Time after Night-fall, the Deponent got his Supper at *Aucharn*, and how soon he was done eating, Mrs. *Stewart*, the Pannel's Wife, carried the Deponent to the Back of the Brewhouse, where there lay a Sack, out of which the said Mrs. *Stewart* took a blue side Coat, red Waistcoat, black Breeches, a Hat, and some Shirts, all which she delivered to the Deponent, ordering him to go with the Cloaths and Money to *Koalisnacoan* immediately, and deliver them to *John Breck Maccoll*, Bouman to *Appin*, if he did not meet *Allan Breck* himself. Depones, That the said Mrs. *Stewart* directed the Deponent not to carry the Cloaths to *John Breck Maccoll*'s House, lest any body might see them. Depones, That he declined going, and told Mrs. *Stewart* that she might send some other Person, and that, at any Rate, he did not chuse to go alone in the Night-time; but that Mrs. *Stewart* insisted upon his going, telling there was no other Body she could send, as both her Servants were gone to *Fort-William*, and desired the Deponent to carry his Sister, *Margaret Stewart*, a Part of the Way with him: That accordingly the said *Margaret* his Sister went along with the Deponent as far as *Larich* in *Glenco*, where she parted with him about Day-light *Sunday* Morning: That thereafter the Deponent travelled alone to *Koalisnacoan*, and left the Cloaths, as directed, at the Root of a Fir-tree, at some Distance from the Houses; and as the Deponent was going to the House, he met said *John Breck Maccoll*, and asked him if *Allan Breck* was there? And upon his denying that he was there, the Deponent expressed some Surprize, and told that he was sent with Money and Cloaths to him; told from whence he came, and how he got the Money and Cloaths above-mentioned; upon which the said *John Breck Maccoll* told the Deponent, that *Allan Breck* was in the Heugh of *Corrynakeigh*, above the House of *Koalisnacoan*; and if the Deponent inclined to see the said *John Breck Maccoll* directed him to go to a Hill above the Houses and whistle, and that the said *Allan Breck* would come to him: That the Deponent answered, he had gone far enough after the said *Allan Breck* already, pointed out to *John Breck* where he had left the Cloaths, and gave him the five Guineas to be given *Allan Breck*. Depones, That he went to the said *John Breck*'s House, where he slept for some Time, and thereafter dined with the said *John Breck* at his House. Depones, That the said *John Breck Maccoll* told the Deponent, he did not know how the said *Allan Breck* could leave the Country, as he had no Victuals, and he, the said *John*, had none to give him, and desired the Deponent to go to Mrs. *Macdonald* of *Glenco*'s House at *Inver*, and get a

Peck of Meal for *Allan Breck*'s Uſe, which the Deponent refuſed. Depones, That the ſaid *John Breck Maccoll* told the Deponent, that, unleſs he had come with the Money and Cloaths, he, the ſaid *John Breck*, would hence been obliged to go to *Fort-William* for Money to the ſaid *Allan Breck*. Depones, That he, the Deponent, came back to *Aucharn* upon the Evening of the *Sunday* the 17th Day of *May* laſt, and the Pannel's Wife aſked him if he had ſeen *Allan Breck?* And upon his anſwering he had not, and telling that *Allan Breck* was at *Koaliſnacoan*, tho' he had not ſeen him, and that he had given the Cloaths and Money to *John Breck*, ſhe appeared ſatisfied. Depones, That the ſaid *John Breck Maccoll* deſired the Deponent to conceal his carrying the Cloaths and Money to *Koaliſnacoan*, as above; told him that he could not prove it againſt him, and that he could ſafely depone he did not deliver the Cloaths to him, ſince he only pointed out where they were. *Cauſa ſcientiæ patet.* And this is the Truth, as he ſhall anſwer to God. And declares he cannot write. And further depones, That he is a diſtant Relation of the Pannel's, tho' he cannot tell the Degree: That his Father lives at a Quarter of a Mile's Diſtance from *Aucharn*; and that he, the Deponent, uſed to be often in the Pannel's Houſe. And this is alſo Truth, as he ſhall anſwer to God.

(Signed) ARCH. CAMPBELL. P. GRANT.

John Breck Maccoll, Bouman, to *Appin* in *Koaliſnacoan*, aged forty Years, married, ſworn, purged and examined *ut ſupra*, by the above Mr. *Archibald Campbell*, ſworn Interpreter, depones, That, upon the Afternoon of *Saturday* the 16th Day of *May* laſt, as the Deponent was in a Fir-buſh near *Aldaveim*, at the Foot of the Heugh of *Corrynakeigh* in *Koaliſnacoan*, he heard a Whiſtle; and, upon looking up, ſaw *Allan Breck Stewart*, at a little Diſtance, beckoning to the Deponent to come towards him; which he did: That after Salutations, the Deponent told him, he was afraid it was no good Action that occaſioned his being in ſuch a remote Place, and at ſuch a Diſtance from any common Road: That *Allan Breck* anſwered, the Place was not very far from a common Road: That the Deponent, having heard the Day before of *Glenure*'s Murder, charged *Allan Breck* with being guilty of it: That *Allan Breck* aſked the Deponent, what he had heard about the Murder? That Deponent anſwered, That he had ſeen no Perſon from the Strath of *Appin*; but that two poor Women, that had come up *Glenco*, were telling that *Glenure* was murdered *Thurſday* Evening in the Wood of *Lettermore*, and that two People were ſeen going from the Place where he was murdered; and that he, *Allan Breck*, was ſaid to be one of them: That *Allan Breck* anſwered, he had no Concern in it; and that, if his Information was right, there was but one Perſon about the Murder; and that, as he was idle in the Country, he was ſure he would be ſuſpected of it; but that that would give him little Concern, if he had not been a Deſerter, which would bear harder upon him, in caſe he was apprehended, than any thing could be proved againſt him about the Murder: That the Deponent did not believe him, when he ſaid he had no Hand in the Murder of *Glenure*; and not caring to preſs it much upon him, told him, that, as he was already ſuſpected, it was dangerous to have any Intercourſe with him, and preſſed him to leave the Place, leſt he ſhould bring the Deponent and his Family to Trouble: That *Allan Breck* ſaid, he did not doubt but the Family of *Ardſhiel* would be ſuſpected of the Murder, and it was probable the Pannel, and *Allan Stewart* his Son, might be taken into Cuſtody about it; and that he, *Allan Breck*, was afraid *Allan Stewart* the Pannel's Son's Tongue was not ſo good as his Father's; by which Words the Deponent underſtood, that *Allan* was eaſier entrapped than the Pannel; and the Deponent ſtill inſiſting upon *Allan Breck*'s leaving that Neighbourhood, the ſaid *Allan Breck* told him, he would not leave the Town for eight Days, unleſs ſome Neceſſaries he expected came to him; and told the Deponent, unleſs ſome Money came for him before next Morning, he, the Deponent, muſt go to *Fort-William* with a Letter: That tho' the Deponent refuſed to go, *Allan Breck* looked about among the Trees, and finding a Wood-pigeon's Quill, made a Pen of it, and having made Ink of ſome Powder he took out of a Powder-horn that was in his Pocket, he wrote a Letter, which he told the Deponent he muſt deliver to *William Stewart*, Merchant at *Maryburgh*; and, upon the Deponent's telling him that he would by no Means undertake that, as he was informed that every body that went to *Fort-William* was ſearched, *Allan Breck* ſaid it was an eaſy Matter to hide a Letter; the Deponent anſwered, If he was catched upon the Streets, what would he do with it? *Allan Breck* told him, that the Letter muſt not be found upon him by any Means, and, if he was catched with the Letter, he muſt eat it before it was found: That the Deponent then told the ſaid *Allan Breck*, that he did not know but he would be obliged to go for ſome Beer next Day to *Fort-William*, in which Caſe he might poſſibly carry the Letter; but at the ſame Time told the ſaid *Allan Breck*, if he was catched with the Letter, he would tell all he knew about him: That the ſaid *Allan Breck* deſired the Deponent to go to *Callart* or *Glenco*'s Houſe for a Peck of Meal to him, which the Deponent refuſed; and at parting, the ſaid *Allan Breck* told the Deponent, he would ſee him next Day. Depones, That, at the Time of the above Converſation, the ſaid *Allan Breck Stewart* was dreſſed in a dun-coloured great Coat, black ſhort Coat, and blue Trowſers ſtriped with white. And the Deponent having ſeen in Court the black ſhort Coat with the Buttons on the Pockets, and the Trowſers, depones, That they are the ſhort Coat and Trowſers he ſaw the ſaid *Allan Breck* wear, or exactly like them. Depones, That early upon *Sunday* Morning the 17th Day of *May* laſt, as the Deponent got up to look about his Corns, he ſaw a Man, which he at firſt imagined to be the ſaid *Allan Breck Stewart*, travelling towards him up the Glen; but, upon his coming near, the Deponent knew him to be *Alexander Stewart*, travelling Packman in *Appin* (the immediate preceding Witneſs), who is Couſin-german by the Father's Side to *Allan Breck*; and after Salutation, and the Deponent's expreſſing his Surprize at ſeeing him ſo early, the ſaid *Alexander Stewart* aſked the Deponent, if he had ſeen *Allan Breck?* And the Deponent refuſing his having ſeen him, *Alexander Stewart* ſeemed ſurprized, and told that he was informed he would meet *Allan Breck* there; and that he had brought ſome Neceſſaries for him: And the Deponent inquiring what he had brought, the ſaid *Alexander Stewart* informed him, that he had brought five Guineas and ſome Cloaths; and told that he had a great deal of Trouble in getting the Money: That he had been ſent by the Pannel to *William Stewart*, Merchant, at *Fort-William*, from whoſe Wife he got three Guineas; and that the Pannel, or his Wife, gave him the other two Guineas; and that the Pannel's Wife gave him the Cloaths, and informed him that *Allan Breck* was to meet him at *Koaliſnacoan*; but that now he would leave the Money and Cloaths with the Deponent: Upon this the Deponent told the ſaid *Alexander Stewart*, that he had ſeen *Allan Breck* the Day before, and that he expected theſe Things; and told him, that he believed *Allan Breck* was then in the Heugh of *Corrynakeigh*, and, if he would go to a Hill that the Deponent pointed out to him, and whiſtle once or twice, he believed *Allan Breck* would come to him: The ſaid *Alexander Stewart* declined going, alledging he was very much fatigued: That the Deponent told the ſaid *Alexander Stewart*, that he wondered he would not go that Length to ſee his Uncle's Son; the ſaid *Alexander Stewart* anſwered, That he had ſlept none for two Nights, and was very much fatigued; and upon this he delivered to the Deponent the five Guineas, and told he had left the Cloaths at ſome Diſtance, and would ſhew them to the Deponent when he was going away: That the Deponent told the ſaid *Alexander Stewart*, that *Allan Breck* wanted a Peck of Meal from *Glenco* or *Callart*'s Houſe; and that he, the ſaid *Alexander Stewart*, ought to get it for him; but the ſaid *Alexander Stewart* refuſed to go for it: That, afterwards, the ſaid *Alexander Stewart* ſlept in the Deponent's Houſe. Depones, That the ſaid *Alexander Stewart* told him, that the Pannel, and *Allan* his Son, were made Priſoners the Evening before, and ſent to *Fort-William*; and, upon the Deponent's inquiring, who was ſuſpected of *Glenure*'s Murder? the ſaid *Alexander* anſwered, That it was *Allan Breck*, and that it was likely that the Pannel, and *Allan* his Son, would ſtand the firſt Trial for it. Depones, That the ſaid *Alexander Stewart* and the Deponent dined together; and as the ſaid *Alexander Stewart* was going away, about Twelve o'Clock, he pointed out a Fir-tree, at the Root of which he ſaid he had hid *Allan Breck*'s Cloaths. Depones, That, after the Deponent had gone to Bed, upon the ſaid *Sunday* Evening, he heard one knocking at the Window, and imagined it might be *Allan Breck*; the Deponent got up, and went out in his Shirt, and ſaw the ſaid *Allan Breck* at a little Diſtance from the Houſe; and, upon the Deponent's coming up to him, the ſaid *Allan Breck* aſked him if any Meſſage had come for him? The Deponent told him, That his Uncle's Son had come with five Guineas and ſome Cloaths: That *Allan Breck* complained there was but little Money, but hoped it would do his Buſineſs: That the Deponent told the ſaid *Allan Breck*, he was afraid he would ſtarve among the Heather; and that he was not able to help him: That *Allan Breck* anſwered, he had no Occaſion for Victuals, but wanted a Drink very much: Upon which the Deponent went back to his Houſe, and carried out ſome Whey, or ſome Milk and Water, in a Noggin, and the five Guineas, and gave both to *Allan Breck*: That the Deponent then went for the Cloaths, which he alſo gave the ſaid *Allan Breck*, which conſiſted of a blue long Coat, red Waiſtcoat, black Breeches, a Hat, ſome Stockings and Shirts: That the Deponent told the ſaid *Allan Breck*, that the Pannel, and his Son *Allan*, were apprehended upon Account of *Glenure*'s Murder; to which *Allan Breck* anſwered, That that was no more than he expected; but it would not ſignify much, as there could be no Proof againſt them; but expreſſed ſome Apprehenſion, leſt *Allan Stewart*, Son to the Pannel, might be betrayed by his own Tongue: That the Deponent deſired the ſaid *Allan*, now that he had got all the Neceſſaries he expected, to go about his Buſineſs; and the ſaid *Allan Breck* promiſed to do ſo; but told the Deponent, that he muſt meet him, the ſaid *Allan Breck*, next Morning; that he muſt deliver the Deponent the Cloaths he, the ſaid *Allan Breck*, had then on, to wit, the black ſhort Coat and Trowſers ſhewn to the Deponent in the Clerk's Hands, in order to be kept by the Deponent till he delivered them to the Pannel's Wife: That the Deponent promiſed to meet the ſaid *Allan Breck* next Morning, but did not ſee him; and when the Deponent went out next Morning, he found the ſaid ſhort black Coat, Trowſers, and the Noggin in which the Deponent carried the Drink to the ſaid *Allan Breck*, lying together in the Place where the Deponent parted with the ſaid *Allan Breck* the Night before; and found in one of the Pockets of the ſaid ſhort Coat the Powder-horn now ſhewn him in the Clerk's Hands; and depones, That he has not ſeen the ſaid *Allan Breck* ſince. Depones, That, in a Converſation the Deponent had with the Pannel, as the Deponent beſt remembers, about two Years ago, Mention being made of *Glenure*'s being about to take on the Management of the Eſtate of *Ardſhiel* from the ſaid Pannel, and thereby diſabling the Pannel from being of any Service to *Ardſhiel*'s Children, he heard the Pannel ſay, he would be willing to ſpend a Shot upon *Glenure*, though he went upon his Knees to his Window to fire it. Depones, That he heard a waif Report in the Country, that *Ardſhiel* (attainted) had ſent Home a Meſſage, that he believed all his Friends were dead, when *Glenure* was allowed to go on at the Rate he did. Depones, That, upon the Evening of the ſaid *Saturday* the 16th Day of *May* laſt, *Katharine Maccoll*, Spouſe to *Hugh Maccoll*, in *Koaliſnacoan*, told the Deponent, that ſhe had ſeen a Man in the Heugh of *Corrynakeigh* that Day, at ſome Diſtance, and was greatly frighted: That the Deponent told her, there uſed to be Bogles ſeen in that Place, but ſhe muſt take no Notice of what ſhe had ſeen, for fear of frighting the Women of the Town, and prevent them from attending their Cattle in that Part; and that the Reaſon of telling her ſo, was for Fear it would be known it was *Allan Breck* ſhe ſaw. Depones, That, when he found the black ſhort Coat and Trowſers he ſaw *Allan Breck* wear, upon *Monday* Morning the 18th of *May* laſt, he hid them; and that, after he, the Deponent, had been ſome time Priſoner at *Fort-William*, he came along with a Party of Soldiers, to whom he ſhewed the Place he hid the ſaid Coaths; and the ſaid Party took the ſaid Cloaths out of the Place he had hid them in, in the Deponent's Preſence, and carried them to *Fort-William*. *Cauſa ſcientiæ patet.* And this is Truth, as he ſhall anſwer to God; and depones he cannot write.

(Signed) ARCH. CAMPBELL. JA. FERGUSON.

Hugh Macclean, Barber in *Maryburgh*, aged twenty-ſeven Years, married, ſworn, purged and examined *ut ſupra*, depones, That being a Barber to his Trade, and one Day being called by the Pannel to the Priſon to ſhave him, which he thinks was upon a *Saturday*, the Pannel aſked him,

him, what News he heard in the Town? To which the Deponent answered, That he heard that he, the Pannel, was to be carried to *Edinburgh* on the *Monday* following: Whereupon the Pannel said, That that was a Matter gave him no Concern, and wished it had happened sooner, and was afraid of nothing but that his Servants might be enticed to take Money, and turn against him; and desired the Deponent, as from him, to tell his Servants to say nothing but Truth, to keep their Minds to themselves, and he would take Care of them; and accordingly the Deponent delivered the Pannel's Message, in his own Words, to two of his Servants, who were then in separate Custody in the same Prison; and that they were both of the Name of *Maccoll*. Depones, That at this Time the Pannel gave the Deponent a Shilling, and said, when he came again to shave him, he would give him more; but that he never got more from him than the said Shilling. Depones, That from the Pannel he went to his Son *Allan* also to shave him, to whom he told the Commission his Father had given to be delivered to the Servants; and the said *Allan* gave him Half-a-Crown. *Causa scientiæ patet.* And this is the Truth, as he shall answer to God; and depones he cannot write.

(Signed) JA. FERGUSON.

Thomas Baird, Serjeant in General *Pulteney*'s Regiment of Foot, aged thirty-two Years, married, Witness cited, solemnly sworn, purged of Malice and partial Counsel; and having been called into Court, before closing of a former Deposition, in order to open a Bundle containing two short Coats and a Pair of Trowsers, to be shewn to a preceding Witness during his Examination; and, after opening the said Bundle, was removed, and called in again; and being solemnly sworn and interrogate, depones, That, about the Beginning of *July* last, to the best of the Deponent's Remembrance, he was sent with a Party of Soldiers, and a Guide along with him, whose Name, he thinks, was *John Breck Maccoll*, to a Place computed of above ten Miles Distance from *Fort-William* over *Lochleven*; but after passing the Loch, their Guide carried them two Miles down the Side of the Loch, and up to the Top of a Rock, and out of a Clift in the Rock, the Guide took a short black Coat with silver Buttons, and a Powder-horn in the Pocket, and a Pair of Trowsers, and gave them to the Deponent; and the Deponent carried them to *Fort-William*, and delivered them to Colonel *Crawfurd*. Depones, That one of the black Coats, with the Powder-horn and Trowsers, that the Deponent took out of the Pocket as above-mentioned, are the same that his Guide delivered to him, and which he delivered to Colonel *Crawfurd*, as above deponed. *Causa scientiæ patet.* And this is the Truth, as he shall answer to God.

(Signed) THOMAS BAIRD. P. GRANT.

The Prosecutors Proof being concluded, the Pannel, for his Exculpation, adduced the following Witnesses.

HUGH STEWART, Residenter in *Edinburgh*, aged thirty and upwards, married, being sworn, purged and examined *ut supra*, depones, That he knows *Allan Breck Stewart* to have several Times gone to *France*, and returned again to this Country; particularly that he went to *France* in 1747, and returned to *Scotland* in *December* 1749; returned to *France* in *May* 1751, and came back in *February* 1752; and when in this Country, he was in use to lodge at the Deponent's House in *Edinburgh*: That he observed him to be afraid to be seen abroad, and kept at home in the Day-time, and went abroad under the Cloud of Night; for which he gave this Reason to the Deponent, that he had been a Soldier in Colonel *Lee*'s Regiment, from which he had deserted, and was afraid to be discovered. And being interrogate, depones, That, when *Allan Breck* went abroad, as has been said, in *May* 1751, he owed the Deponent a Guinea, and, being run short of Money, he drew a Bill on the Pannel for that Sum, whereof he acquainted the Pannel some Time he thinks in *July*; and some Time in *August* he received the Money by *Maccoll*, the *Appin* Carrier; and by the same Carrier sent the Pannel the Bill upon him. *Causa scientiæ patet.* And this is Truth, as he shall answer to God.

(Signed) HUGH STEWART. JA. FERGUSON.

Duncan Stewart of *Glenbuckie*, aged twenty-seven Years, unmarried, sworn, purged and examined *ut supra*, depones, That he was acquainted with *Allan Breck Stewart*; and that, at any Time, when he came from *France* to this Country, he had no fixed Residence to the Deponent known, but went about among his Friends and Acquaintances: That when he came last to *Scotland*, his Dress was a long blue Coat, a red Waistcoat, black Breeches, and a feathered Hat: That, in *March* last, when he was at the Deponent's House, he was in that Dress; but, at other Times, he has seen him in a different Dress, particularly in *April* last at *Glenenty*, which was the last Time he saw him; his Dress was, a black short Coat with clear Buttons, a Tartan Waistcoat, Trowsers, and a Bonnet; and, above all, a dun-coloured great Coat. Depones, That he remembers, that upon one Occasion, while *Allan Breck* was at his House, being the first Time he came, he for two Days, to the Deponent's certain Knowledge, wore a short blue Coat of the Deponent's, which the Deponent, at his Desire, lent him; and whether he wore it any more than two Days, of the ten Days he at that Time staid at the Deponent's House, the Deponent does not know, not having been at Home all the Time. *Causa scientiæ patet.* And this is Truth, as he shall answer to God.

(Signed) DUN. STEWART. JA. FERGUSON.

Duncan Ferguson, Servant to *Duncan Stewart* of *Glenbuckie*, aged twenty-nine, unmarried, sworn, purged and examined *ut supra*, depones, That, about the 20th of *April* last, he saw *Allan Breck Stewart* at the House of *Branachile*, the House of the former Witness; at which Time he was dressed in a short black Coat with clear white Buttons, a Tartan Vest, Trowsers, Tartan Hose, and Bonnet. Depones, That he staid there two Nights, and went from thence, as the Deponent was informed, to *Glenfinlas*, and staid a Night there. Depones, That the Deponent also saw him at *Glenbuckie*'s House in *March* last, at which Time he was dressed in a blue Coat, red Vest, and feathered Hat. *Causa scientiæ patet.* And this is Truth, as he shall answer to God; and depones he cannot write.

(Signed) P. GRANT.

Duncan Stewart in *Glenfinlas*, aged thirty-two Years, married, sworn, purged and examined *ut supra*, depones, That one Night, between the 20th and 23d of *April*, the Deponent saw *Allan Breck Stewart* at *Glenfinlas*, and was dressed in a black short Coat and white clear Buttons, Trowsers, and a Bonnet, and had on a dun big Coat above the short Coat. *Causa scientiæ patet.* And this is Truth, as he shall answer to God.

(Signed) DUNCAN STEWART. P. GRANT.

Katharine Macinnes, late Servant to *Alexander Stewart* of *Ballachelish*, aged twenty-two Years, sworn, purged and examined *ut supra*, by Mr. *Archibald Campbell* of *Stonefield*, sworn Interpreter, depones, That in the Evening of the 14th of *May* last, the Deponent saw *Allan Breck Stewart* at the Goat-house in the Moor of *Ballachelish* after *Glenure* was killed; and that *Allan Breck* then asked her, what was the Occasion of the Stir in the Town? and that she told him, *Glenure* was murdered; and further asked her, who might have committed the Murder? and that she told him she did not know; and that the said *Allan* further desired the Deponent to tell *Donald Stewart* in *Ballachelish* to go to the Pannel and desire him to send the said *Allan* Money; and that she delivered this Message to *Donald Stewart* that same Night. Depones, That she told the said *Donald Stewart* where she saw *Allan Breck*; but that she did not tell him to go to the said *Allan*, nor did he desire her. *Causa scientiæ patet.* And this is Truth, as she shall answer to God; and depones she cannot write.

(Signed) ARCH. CAMPBELL. P. GRANT.

John Stewart younger of *Ballachelish*, aged twenty-six, unmarried, sworn, purged and examined *ut supra*, depones, That, the Day after the Murder of *Glenure*, the Deponent was at the Pannel's House, who, after Twelve o'Clock of the Day, told the Deponent, that he had had a Message that Morning from *Allan Breck* by *Donald Stewart*, to send him Money; but does not remember, whether the Pannel told him the Place where he was directed to send it; and the Pannel told the Deponent, that he was resolved to send him Money. Depones, That the last Day of *December* last, the Deponent was in Company with the deceased *Glenure*, an Uncle of *Ardshiel*'s, and the Pannel, and Mr. *Campbell* of *Ballieveolan*, when, after the Company had drunk very hard, and were all drunk, some high Words arose between *Glenure* and *Ardshiel*'s Uncle, and they were like to come to Blows, which both of them attempted; but the Deponent once and again separated them: That *Ardshiel*'s Uncle happened to go out of the House, as did also the Pannel, and the Deponent called to the People without not to let them in again, because they were drunk: That the Pannel had invited *Glenure* next Day to his House, which *Glenure* had accepted of, and therefore the Pannel pressed to come in again to the House to renew the Invitation, and take his Leave of *Glenure*; but the Deponent would not allow him to come in, and undertook to make his Excuse to *Glenure*: That the Deponent, coming into the House, found *Glenure* standing with a drawn Hanger in his Hand; and the Deponent asked what he meant by that? and *Glenure* answered, That he should not allow him to be mobbed there; upon which the Deponent assured him he should not be mobbed there; and then *Glenure* threw the Hanger upon the Bed: That the Deponent went Home with the Pannel, and next Day *Glenure* came there before Dinner, and dined, and made Apologies mutually for what passed the Night before; and that Mr. *Campbell* of *Ballieveolan* dined there also. And being interrogate for the Pursuers, depones, That the Deponent was in *Edinburgh* in *August* last, and was present at Consultations of the Pannel, his Lawyers and Agents, touching his Defence. *Causa scientiæ patet.* And this is Truth, as he shall answer to God.

(Signed) JOHN STEWART. P. GRANT.

Alexander Stewart in *Auchindarroch*, aged about eighteen, unmarried, Witness cited, sworn, purged and examined *ut supra*, by Mr. *Archibald Campbell* of *Stonefield*, sworn Interpreter, depones, That, to the best of his Knowledge, he saw *Donald Stewart* in *Ballachelish* and the Pannel together, upon the Marches between *Aucharn* and *Auchindarroch*, in the Morning of the 15th of *May*; and that he himself was at the Time digging Ground, with the other Tenants of the Town. *Causa scientiæ patet.* And this is the Truth, as he shall answer to God.

(Signed) ALEX. STEWART.
ARCH. CAMPBELL.
P. GRANT.

Alexander Stewart of *Ballachelish* elder, Witness cited, sworn, purged and examined *ut supra*, depones, That the Deponent was with *Allan Breck Stewart*'s Father a considerable Time before his Death; but, after he had contracted the Indisposition whereof he died, he told the Deponent, that he intended to leave the Care of his Children, and of his Affairs, to *Ardshiel* and the Pannel: That the Deponent knows they accordingly took upon them the Management, tho' he believes the Nomination was only verbal, and not in Writing. *Causa scientiæ patet.* And this is the Truth, as he shall answer to God.

(Signed) ALEX. STEWART. P. GRANT.

John Stewart, Tenant in *Auchnacoan*, aged fifty-two Years, married, Witness cited, sworn, purged and examined *ut supra*, depones, That *Allan Breck*'s Father, as he believes, named the Pannel to be Tutor to his Children, and no other Tutor; and the Cause of the Deponent's Belief is, because he saw the Pannel take the Management of their Affairs upon him. *Causa scientiæ patet.* And this is the Truth, as he shall answer to God.

(Signed) JOHN STEWART. P. GRANT.

John Flockhart, Writer in *Edinburgh*, aged thirty and upwards, married, Witness cited, sworn, purged and examined *ut supra*, depones, That being shewn a Letter by the Pannel to Mr. *John Macfarlane*, Writer to the Signet, dated the 19th of *May* last, depones, That that Letter came to the Deponent's Hands at *Edinburgh* by Course of Post the 24th of *May* last, and the Deponent being to go for *Perth* next Day, he gave the Letter to *Alexander Hart*, Clerk to Mr. *Macfarlane*, to be delivered to his Master; and knows not whether any Thing was done by Mr. *Macfarlane*, pursuant to that Letter. *Causa scientiæ patet.* And this is the Truth, as he shall answer to God.

(Signed) JO. FLOCKHART.

And after closing the Oath, being further interrogate for the Pannel, depones, That there was no other Letter accompanying the one

one before-mentioned. And this is alſo Truth, as he ſhall anſwer to God.

(Signed) Jo. FLOCKHART. P. GRANT.

John Cameron of *Strone*, aged twenty-five, married, Witneſs cited, and ſworn *ut ſupra*, depones, That, about a Year ago, being in Company with ſome of the Tenants of *Rannoch*, in a Houſe in *Rannoch*, a Man came unto them, whom they called Serjeant *More Cameron*, whom the Deponent never ſaw before, nor ſince: That the Tenants were complaining of *Glenure* for his hard Uſage of the Tenants of *Ardſhiel*; and the ſaid Serjeant *More* ſaid, that if he met him in the Highway, he would ſhoot him. *Cauſa ſcientiæ patet.* And this is the Truth, as he ſhall anſwer to God.

(Signed) JOHN CAMERON. P. GRANT.

Ewan Cameron, Servant to *John Cameron* of *Strone*, aged twenty Years, unmarried, Witneſs cited, ſworn, purged and examined *ut ſupra*, by *Archibald Campbell*, Writer in *Inverary*, ſworn Interpreter foreſaid, depones, That he had Occaſion to be in *Rannoch* Harveſt laſt: That he ſaw there a Man that was called Serjeant *More Cameron*, whom he never ſaw before, or ſince. Depones, That he ſaw the Man called Serjeant *More* in a Houſe; but does not know the Name of the Town, or the Name of the Man to whom the Houſe belonged, the Deponent having never been in *Rannoch* but that one Time. Depones, That he heard the ſaid Serjeant *More* ſay, That, if he, the ſaid Serjeant *More*, met with *Glenure*, he did not care tho' he ſhould be up-ſides with him; but had no Reaſon for ſaying ſo, he having heard no more of his Diſcourſe. Depones, That the Deponent was then Servant to the former Witneſs, and was then in *Rannoch* attending him. *Cauſa ſcientiæ patet.* And this is the Truth, as he ſhall anſwer to God; and declares he cannot write.

(Signed) ARCH. CAMPBELL. P. GRANT.

Then the Procurators for the Pannel declared their Probation to be concluded.

Follows the Writings produced in Evidence for the Proſecutors.

The judicial Declarations of the Pannel, his Wife, and Children.

AT *Fort-William*, the 2d Day of *June* 1752 Years, in Preſence of *George Douglas*, Sheriff-Subſtitute of the Sheriffdom of *Inverneſs*, ſitting in Judgment, compeared *James Stewart* in *Aucharn*, now Priſoner at this Place; who being judicially examined anent the Matter underwritten, declares judicially, 'That *Allan Breck Stewart* came to his 'Houſe in the latter End of *March*, upon his coming from *France*; that 'he ſtaid two Nights there, when the Declarant went to *Edinburgh*, 'leaving the ſaid *Allan* at his Houſe: That the ſaid *Allan* came to the 'Declarant's Houſe in the Month of *April*, after being at *Glenbuckie*'s 'and *Rannoch*; and that, upon *Monday* the 11th Day of *May* laſt, the 'ſaid *Allan* came to the Declarant's Houſe from *Faſnacloich*;' and the Declarant being called upon by Mr. *Campbell* of *Airds* to go to *Keil*, had little Converſation with the ſaid *Allan* till his Return, and no other after his Return, than what was in the Preſence of the Family; 'Nor does 'the Declarant remember, whether he ſupped with the ſaid *Allan* that 'Night or not; but rather thinks he did; or whether the ſaid *Allan* was 'dreſſed in a long blue Coat and Hat, or in a black ſhort Coat with 'ſilver Buttons:' That the Declarant thought himſelf concerned in Drink that Night, having drunk at the Miller of *Keil*'s Houſe with the old Piper, the young Piper, the ſaid Miller, and old *Duncan Maccombich*, and his Son *Archibald*: The Declarant went away to *Appin*'s Houſe early upon *Tueſday* the 12th Day of *May* laſt, and did not ſee *Allan* that Day or ſince: That when the Declarant was at *Edinburgh*, the ſaid *Allan* carried a ſhort black Coat with ſilver Buttons, belonging to the Declarant, with him to *Glenbuckie*'s and *Rannoch*, and wore it upon his Return; when the Declarant told the ſaid *Allan*, that he wondered how his ſhort Coat fitted him, as *Allan* was a large Man, and the Declarant a little Man; to which he anſwered, that it ſerved him well enough: That, upon *Monday* Night the 11th Day of *May* laſt, the Declarant's Son *Charles* told him, he was to go to *Glenco*, *Callart*, and *Fort-William*; and that he did not ſee his ſaid Son from that Night, till he ſaw him in this Place, after that he, the Declarant, was made Priſoner; nor is the Declarant ſure if his ſaid Son went to *Glenco* or *Callart* till *Wedneſday* the 13th Day of *May* laſt. Declares alſo, That his Son *Allan* was at Home on *Sunday*'s Night the 10th of *May* laſt; but is not ſure whether he was at Home all that Day or not. 'That there were no Strangers at the De-'clarant's Houſe upon the ſaid *Sunday*'s Night, or on the following *Mon-'day* or *Monday*'s Night, nor yet on the *Tueſday* or *Tueſday*'s Night follow-'ing, except the ſaid *Allan Breck* and *Faſnacloich*'s Daughter upon the ſaid 'Monday's Night.' Declares, That *John Stewart* younger of *Ballachelish* was at his Houſe upon *Wedneſday*'s Night, and is ſure that *Ewan Roy Maccoll*, Brother to *Appin*'s Bouman at *Kealiſnacoan*, ſupped at his, the Declarant's Houſe, either upon the *Wedneſday* or *Thurſday*'s Night the 13th or 14th Days of *May* laſt; and that the ſaid *Ewan Roy Maccoll* was alſo at the Declarant's Houſe upon *Saturday* thereafter, in the Forenoon, along with his Siſter, Spouſe to *Ewan Maccombich*, Padler in *Guil*, and then paid the Declarant ten Pounds *Scots*, except ſeven Shillings and Two-Pence, for which the ſaid *Ewan Maccombich*, Padler, became Debitor; which ten Pounds *Scots* was in Payment of the Graſs-meal of Cattle; and that the ſaid *Ewan Roy Maccoll* did then give to the Declarant a Liſt of Debts due to him in the Country, whereof twenty Pounds *Scots* was to be applied towards Payment of a Debt due by the ſaid *Ewan* to his ſaid Siſter, as the Declarant had the Management of her Effects in the Country of *Appin*; and which Siſter's Name is *Chriſtian Maccoll*, and was laſt Winter Servitrix to Mr. *Stewart* of *Ballachallan*: That the Declarant delivered ſome Cattle to *Duncan Stewart*, Servitor to *Glenbuckie*, and *Solomon Maccoll*, Servitor to the Declarant's Son *Allan Stewart*, and *John Maccoll*, now Priſoner at *Fort-William*, at the Marches betwixt *Aucharn* and *Sallachan*; and that the ſaid *Ewan Roy Maccoll* was to meet them at *Glenduror* with Cattle of his own that were to be ſent South along with the Declarant's; and that the ſaid *John Maccoll* parted with them at a Shealing called the *Immerin*; and that the Declarant did not ſee the ſaid *Ewan Roy Maccoll* ſince. And being interrogate, if he had any Arms in his Houſe? declares, That when he was made Priſoner, he had a ſmall Fowling-Piece and a Broad-ſword, which Broad-ſword was to be kept for the Children of the deceaſed *Allan Stewart* of *Cuil*, till they were of Age. Declares alſo, That the ſaid *Solomon Maccoll*, formerly Servant to *Donald Stewart* at *Taybarnan*, came Home to his Service on the 15th or 16th Days of *May* laſt: That *John Stewart* in *Auchnacoan* came to the Declarant's Houſe upon the Evening of the 14th Day of *May* laſt, and ſtaid there that Night; and declares, that he did not ſend him any Meſſage, either that Day or the preceding Day, nor had he any Buſineſs that the Declarant knows of. Declares alſo, That, the Afternoon of *Glenure*'s Murder, ſeveral of the Tenants in the Neighbourhood, particularly the Tenants of *Auchindarroch*, and *Duncan Stewart* at *Inſhaig*, and *Robert Stewart* the Miller, came to the Declarant, to know what they ſhould do, or whether they ſhould go near the Corpſe; and that he adviſed them to go; but that neither he nor his Son *Allan* went there, becauſe he underſtood that *Ballieveolan* and his Sons were to be there; 'and 'that there were ſome Chagrine betwixt him and them, they having 'taken the Declarant's Poſſeſſion the Year before, wherein he had a Stock 'of Cattle, *viz. Glenduror*, a Part of the Eſtate of *Ardſhiel*: That when 'young *Ballachelish* was over-night at the Declarant's Houſe as aforeſaid, 'they had a Converſation about the Removal of the Tenants from the 'Eſtate of *Ardſhiel*; the Reſult of which was, that they ſhould continue 'their Poſſeſſion, and take the Hazard of the violent Profits, unleſs they 'were forced out; and that he had Converſations with old *Ballachelish* 'to the ſame Purpoſe; and that he gave the ſame Opinion to ſuch of the 'ſaid Tenants as applied to him;' but recommended to them to uſe no Force in keeping their Poſſeſſions: That the Declarant had no written, but a verbal Commiſſion from the ſaid Tenants, to negotiate for them at Law; nor did he receive any Money from them; but that the Tenants of *Lettermore* and *Ardſhiel* and the Miller promiſed to refund his Expences for repreſenting their Caſe, particularly *Dugald* and *John Maccombichs* in *Ardſhiel*. 'And being interrogate, if he had any Converſation 'with the ſaid *Allan Breck* concerning *Glenure*? the ſaid *Allan* aſked the 'Declarant, if he heard that Serjeant *More* was come from *France*, or 'if he was in the Country of *Appin*? To which the Declarant an-'ſwered, That he did not hear he was in *Appin*, but heard he was in '*Glenlive* laſt Year; whereupon the ſaid *Allan* told the Declarant, that 'Serjeant *More* ſwore he would kill *Glenure*, becauſe of the Treatment 'he gave the Tenants on the Eſtate of *Mamore*, Part of *Lochiel* Eſtate.' Declares alſo, 'That the ſaid *Allan Breck* threatened, that he would 'challenge *Ballieveolan* and his Sons to fight, whenever he met them, 'becauſe of his removing the Declarant laſt Year from *Glenduror*, and 'being about to remove the other Tenants this Year from ſome other 'Parts of the Eſtate of *Ardſhiel*;' and that the Declarant told him then, they would not fight him, as they would not conſider him as their Equal; and if he had come to the Country to fight, he had better ſtaid in *France*. 'And being interrogate, if he had any Converſation with *Wil-'liam Stewart*, Merchant in *Maryburgh*? declares he had, about the Ex-'pediency of the ſaid Tenants their keeping their Poſſeſſions; and that 'it was the ſaid *William*'s Opinion, that they ſhould keep their Poſſeſ-'ſions; and that their Caſe ſhould be repreſented to the Barons of Ex-'chequer; and that it was hard they ſhould be turned out, until their 'Caſe was ſtated.' And being aſked, if he had any Converſation with *Callart* anent the Removings? declares, he does not remember; but that commonly every body he ſaw aſked him, what ſhould become of the Tenants of the Eſtate of *Ardſhiel*? To which he anſwered, he did not know till the Term-day. This Declaration is emitted before the ſaid Sheriff-Subſtitute, Place and Date foreſaid, before theſe Witneſſes, Colonel *Howard*, Colonel *Crawfurd*, *Donald Campbell* of *Airds*, and *Colin Campbell* of *Carquhin*, Eſqrs.

(Signed) JAMES STEWART.
GEORGE DOUGLAS, *S. S.*

G. HOWARD, Witneſs.
DONALD CAMPBELL, Witneſs.
CO. CAMPBELL, Witneſs.

Eodem die, The ſaid *James Stewart*, being re-examined, judicially declares, upon Recollection, That it was upon *Thurſday* the 14th Day of *May* laſt, that his ſaid Son *Charles* went to *Glenco*, and not on *Wedneſday*, as before-mentioned; and that *Callart* was at the Declarant's Houſe upon *Sunday*'s Night the 10th Day of *May* laſt. Declares, That, before *Glenure* ſerved the Warnings againſt the Tenants of the Eſtate of *Ardſhiel*, the Laird of *Appin* propoſed to accommodate ſome of them in Land: That how ſoon the Declarant heard of *Glenure*'s Murder, it came in his mind, that Serjeant *More* had done it, 'becauſe *Allan Breck* told him, 'that the ſaid Serjeant ſwore bloody Revenge againſt *Glenure* before the 'Serjeant came from *France*, upon Account of *Glenure*'s Treatment of '*Lochiel*'s Tenants, and his differing with *John Cameron* of *Faſſafern*, 'Brother to *Lochiel*: That the Declarant's Reaſon for ſuſpecting *Allan* '*Breck* afterwards, was, becauſe he left the Country abruptly, without 'taking leave of him, as he expected; and if the ſaid *Allan* was guilty of 'the ſaid Murder, he believes it behoved to be on Account of the Diſtur-'bance given to the Tenants of the Eſtate of *Ardſhiel*, and knows no 'other.' Declares, That he did ſet out for *Edinburgh* on *Friday* the 3d Day of *April* laſt, was at *Glenco* that Night, the 4th at *Innerkenvie*, the 5th at *Lanerick*, the 6th at *Annat*, and called next Day at *Newton*, and was that Night at Mr. *Wordie* of *Cambuſbaron*'s Houſe at St. *Ninian*'s, called at *Touch* on the 8th, and got a Letter from Mr. *Seaton* to Mr. *David Moncrief*, Secretary to the Barons of Exchequer; called at Mr. *Wilſon*'s Houſe of *Murray's-hall*, and was that Night at Mr. *Foſter* of *Dunivan*'s Houſe, and got a Letter from him to Mr. *Patrick Haldane*, the Solicitor; but did not deliver it, or the other Letter, as he was told they would be of no Conſequence; and went to *Edinburgh* upon *Thurſday* the 9th Day of *April* laſt, where he continued for eleven Days: That he left *Edinburgh* upon *Sunday* the 19th, was that Night at *Dunivan*, called at Mr. *Wilſon*'s and Mr. *Wordie*'s, and was at *Stirling* at Night; which Place he left on the 21ſt; called at Mr. *Dundas* of *Manner*'s Houſe, *Dunblain* and *Newton*, and was at *Annat*'s at Night; upon the 22d came to *Ballachallan*'s, and ſtaid there that Night; came to *Glenbuckie*'s the 23d, and ſtaid there two Nights; on the 25th came to *Tayindrom*; on the 26th came to *Duncan Stewart*'s Houſe in *Glenco*; and upon the 27th came Home; that, upon the 25th, he called at Mr. *Murray* of *Glenkernock*: 'That, 'ſoon after the Declarant came Home, he gave Notice to the Tenants of '*Ardſhiel*, that he had procured a Siſt for them againſt the Decreet of Re-'moving; and that, if they had a Mind to continue their Poſſeſſions, they 'were adviſed to go to *Glenure* and ſeek their Poſſeſſions, and if did not 'grant

grant their Desire, they should send for a Notary, and go with him to protest against *Glenure*; and if they pleased he would send for a Notary; to which they agreed: That accordingly the Declarant sent for *Charles Stewart*, Notary, and writ him a Letter, signifying they had obtained a Sist for the Tenants of the Estate of *Ardshiel*, and desired him to come to intimate the same to *Glenure*, to the Purpose above-mentioned; and that the said *Charles* did accordingly come to the Declarant's House at Night, and the Tenants came also next Morning; and that the Declarant told them, in Presence of the said *Charles*, that, if it was not their Mind to proceed in that Method, he would not desire them to do it, because he could not assure them of Success; and that now they had the Advice as it was given to him: and particularly remembers, that three of the Tenants of *Ardshiel* met the Notary at the Declarant's House, but is not sure if old *John Colquhoun*, the fourth Tenant in *Ardshiel*, was there, but rather believes he was: That he was informed on *Monday* the 11th Day of *May* last, by his Son *Charles*, *Allan Breck*, and *Fasnacloich*'s Daughter, that they heard *Glenure* was to go to *Lochaber* that Day.' Declares also, That he saw *James Stewart*, younger of *Fasnacloich*, at *Glenco*'s House, upon the 5th Day of *May* last, who asking him what he had done at *Edinburgh?* the Declarant told him, he had procured a Sist for the Tenants of *Ardshiel*'s Estate; and that he did not know what Service it might be of, but that some People thought they might sit, and take the Hazard of the violent Profits, till they had an Opportunity of laying their Case before the Barons of Exchequer: That at this Time the Declarant told the said *James Stewart*, that he wished some Persons of Understanding were present on the Term-day, to see if there was Law for ejecting them; and asked the said *James*, if he was to be in *Duror* about that Time? who said, he did not know: That when the said *John Stewart* of *Ballachelish* was at the Declarant's House, he asked him, if he would be present with the Tenants, to see if there was Law for turning them out? who said he would, if he did not go to *Inverary*. Declares also, That, in general, he recommended to every body not to make any Disturbance, and particularly recommended to his own Servants not to be present, not knowing what might happen if a Mob of People gathered; nor did he intend to be present himself. This Declaration is emitted judicially, Place and Date foresaid, before these Witnesses, Colonel *Howard*, *Donald Campbell* of *Airds*, and *Colin Campbell* of *Carwhin*, Esqrs.

(Signed) James Stewart. George Douglas, *S. S.*
G. Howard, Witness.
Donald Campbell, Witness.
Co. Campbell, Witness.

At *Maryburgh*, the 3d Day of *June*, 1752 Years, in Presence of the said Sheriff-Substitute, compeared the said *James Stewart*, who, after having his former Declarations fully read, recollects, that he was not a Night at *Annat*, but called there on his Way to *Edinburgh*, and so was a Day sooner there than what's mentioned in his former Declaration. And being interrogate, if *Allan Breck*, the Declarant's Son *Charles*, or *Fasnacloich*'s Daughter told him, when she came to his House upon *Monday* the 11th of *May* last, that *Glenure* had got the said Sist removed? declares, they did not; *but that one of them told him, he heard* Glenure *was to remove the Tenants of* Ardshiel, but which of them said so, he does not remember. This Declaration emitted, Place and Date foresaid, before the said *Donald Campbell* of *Airds*, and *Colin Campbell* of *Carwhin*, Esqrs.

(Signed) James Stewart. George Douglas, *S. S.*
Donald Campbell, Witness.
Co. Campbell, Witness.

At *Maryburgh*, the 3d Day of *June*, 1752 Years, in Presence of the said *George Douglas*, Sheriff-Substitute of the Shire of *Inverness*, compeared *Allan Stewart*, Son to *James Stewart* in *Aucharn*; who, being examined judicially, declares, 'That *Allan Breck Stewart* came to the Declarant's Father's House on *Monday*'s Afternoon, the 11th Day of *May* last, dressed in a long blue Coat, red Waistcoat, black Breeches, Tartan Hose, and a Hat; and after being some time there, did put off his blue Coat and Waistcoat, and put on a black short Coat with silver Buttons, belonging to the Declarant's Father; and went that Afternoon to work with the Declarant's Father's Servants in covering Potatoes: That the said *Allan Breck* staid that Night, and was dressed next Morning in his blue Coat and red Waistcoat, as the Day before:' That the Declarant did not see him go away from *Aucharn* upon the 12th, the Declarant being in the Fields from the Time he rose in the Morning till Twelve of the Clock that Forenoon, sowing Barley, except once that he made a Start Home for more Bear. Declares, 'That upon the Afternoon that the said *Allan Breck* came to *Aucharn*, as aforesaid, he told the Declarant, that he heard in *Glencrearen*, that the Tenants who had taken the Lands of *Ardshiel* were to be at *Glenduror* on *Thursday*'s Night, in order to enter to the Possession on *Friday* the 15th Day of *May* last; and told him likewise, that he heard *Glenure* had come Home, and had Orders to remove the former Possessors: That *Archibald Cameron*, Cousin to *Drumnasailly*, came along with *Fasnacloich*'s Daughter, and the Declarant's Brother *Charles*, to his Father's House, upon the said 11th Day of *May* last, and staid all Night; the said *Allan Breck* having come by himself about Two of the Clock in the Afternoon that Day: That the DECLARANT'S FATHER CONVERSED WITH THE SAID *ALLAN BRECK* ASIDE, UPON HIS FIRST ARRIVAL AT *AUCHARN* UPON THE SAID 11th DAY of *MAY*; but that the Conversation did not last above five Minutes, or thereabouts; nor did the Declarant hear what passed: That the Declarant's Father did not appear to be the least in Drink upon his coming Home upon the Evening the *Monday* aforesaid, but told that Mr. *Campbell* of *Airds* had given the Declarant's Father, and the Tenants of *Keil*, three or four Bottles of Whisky; and that the Declarant's Father supped at Home along with the said *Allan Breck* that Night:' That, upon *Tuesday* Afternoon, the 12th of *May* last, the Declarant, and the said *Archibald Cameron*, and *Donald Macdonald*, Brother to *Glenco*, went to the Isle of *Ballienageiwan*; and the Declarant, and the said *Donald Macdonald*, returned in the Evening to *Aucharn*; but the said *Archibald Cameron* went to his Aunt's at *Cuil*: That in the Morning of the 13th of *May* last, the Declarant went to *Sallachan*, where he saw *John More Macilichatten*, and delivered them a Mare and a Filly, and then returned Home; and in the Afternoon of that Day went to *Kintalline*, in order to go to *Tayphinst*; but being informed by *Donald Mackendrick*, the old Piper at *Keil*, whom he met there, that young *Ballachelish* was to be at *Aucharn* that Night, the Declarant returned with the said Piper, and went along with him to the Moss: That accordingly *Ballachelish* younger came to, and staid at the Declarant's Father's House that Night, and went next Day to *Appin*'s House: That the said *Ewan Roy Maccoll*, Brother to *Appin*'s Bouman at *Koalisnacoan*, wrought at the Declarant's Father's Peat-moss upon the said 13th of *May* last, and supped at the Declarant's Father's House that Night, and believes he took his Bed with *Duncan Maccoll*, his Uncle's Son, at *Auchindarroch* that Night: That, upon the 14th of *May* in the Morning, the Declarant went up to *Frenchie*, and returned by the Houses of *Glenduror*, where he saw two Women, and spoke with one of them, to hinder the Cattle to trespass on his Father's Grounds; and whilst the Declarant was speaking to that Woman, he saw a Man passing at a little Distance, who was enquiring for *Glenure*, as the said Woman told the Declarant; which Man the Declarant thereafter observed travelling on the Road towards *Auchindarroch:* That the Declarant came straight Home from *Glenduror*, and continued at Home till he went to *Inshaig*, along with his Brother *Charles* and *Fasnacloich*'s Daughter, and continued there till the News of *Glenure*'s Murder reached his Father's House, where he heard the first Accounts of it, *Glenure*'s Servant being just gone, as the Declarant was informed: That the Declarant was at Home all Day the 15th of said *May*; only that he made a Start to *Cuil*, where he was in Company with *Duncan Stewart* senior, and *Duncan Stewart* younger, his Son; and *Duncan Stewart* at *Inshaig*. And being interrogate, what Conversation passed betwixt him and his Father, on his Return Home from *Inshaig?* his Father told him, 'That *Glenure*'s Servant was there; and upon the Declarant's Father's asking his News, he told him, the worst that ever he had; that his Master was killed at *Lettermore*; and that his Father asked, if it was by a Shot; and that the Servant answered, that it was; and that the said Servant also desired his Father to go and take Care of the Corpse; which he proposed to do, but that his Wife would not let him; but that he sent for the Tenants of *Auchindarroch*, and desired them to go to take Care of the Corpse; and that the Reason that he, the Declarant, did not go to take Care of the Corpse, was, because it did not at first occur to him; and that it was too late, and the rest of the People gone; yet it was clear Day-light, but thinks the Sun was set; and that the Declarant's Mother also hindered his going, and assigned for a Reason, that if the Friends of the Deceased were there, and had Arms, they might, in their Passion, do Hurt to him and his Father;' and that he was but a little Time at Home after his Return from *Inshaig*, when he saw *Glenure*'s Servant returning from *Glenduror*, and passing towards *Kintalline:* That the Declarant thinks his Brother *Charles* went in the Afternoon of the 14th of *May* last with *Fasnacloich*'s Daughter, and the said *Archibald Cameron*, and the Declarant's Sister, to *Lagnaha*, where they dined in *Alexander Stewart* senior his House, and afterwards came back to *Aucharn*, and then went to *Inshaig* as aforesaid. Declares, That he heard the said *Ewan Roy Maccoll* say, upon the 13th, two several Times, that it was hard in *Glenure* to turn out the honest Tenants of the *Ardshiel* Estate, as they paid their Rents well, and offered an Augmentation of Rent, and were willing to give Obedience to the Government; and that one of the Times was after Breakfast, when the People were together, at the End of the Declarant's Father's House, going to the Moss; but that his Father was not present: That some of the Tenants of the Neighbourhood were there, as well as his Father's Servants; and that they generally talked in the same Strain with the said *Ewan Maccoll*; and that the other Time was after their returning from their Work that Evening at the Declarant's Father's House: That the Declarant does not know what became of the said *Ewan Roy Maccoll* all *Thursday* said 14th of *May* last; but is positive that he came into the Barn where the Declarant was lying, that same Night, about Twelve of the Clock, asking for a Bed, which was refused him; but ordered to go and lie with the Servants in another Barn in *Aucharn*, meaning *Dougal* and *John Maccolls*, now Prisoners at *Fort-William:* That the Declarant saw the said *Ewan Roy Maccoll* at *Aucharn*, upon the 15th of *May* in the Morning, and saw him again at *Cuil* about Twelve of the Clock that Day; and that they came together from thence to *Aucharn*, where they parted, and that the Declarant does not remember if they had any Conversation all that Time about *Glenure*'s Murder. This emitted judicially, Place and Date foresaid, before these Witnesses, *Donald Campbell* of *Airds*, and *Colin Campbell* of *Carwhin*.

(Signed) Allan Stewart. George Douglas, *S. S.*
Donald Campbell, Witness.
Co. Campbell, Witness.

Eodem die, The said *Allan Stewart* being re-examined judicially, and being interrogate whom he suspected guilty of *Glenure*'s Murder? declares, 'That he thought, if *Allan Breck* did not soon cast up in the Country, he was the most likely Man to have done it: And further declares, 'That, in a Conversation between him and his Father, and others, they were of Opinion, that the People of *Ballachelish* and *Lettermore* must have known who committed the Murder at the Time it happened: That, upon the *Friday* after the Murder happened, he heard his Father say, he did not doubt but he would be taken up upon Suspicion of the said Murder: That when the Declarant's Father was at *Edinburgh*, he expected a Letter from him about what he was doing about the Removings; which Letter came to *Aucharn* in the Declarant's Absence, and was opened by *James Stewart* younger of *Fasnacloich*, and contained an Account of what the Declarant's Father had done about the Removings;' and that he was about buying a Bargain of Meal. Declares also, 'That he heard his Father express his Desire to young *Ballachelish* to be present when the new Tenants came to take Possession of the Estate of *Ardshiel*; and that *Donald Macintyre* in *Aucharn* told him, that young *Ballachelish* had come back from *Appin* to *Keil*, in order to attend; but, upon hearing of *Glenure*'s Murder, returned to *Appin:* That the Declarant's Father told him he would not be present at the Entering of the said new Tenants; nor was the Declarant resolved to be present himself; nor did his Father desire him to go, or suspect him such a Fool as to go: That he knows that the said *Allan Breck Stewart* lay with the Declarant's Brother *Charles* in a Barn in *Aucharn*, upon *Monday*'s Night the 11th Day of *May* last: That the Declarant has a black short Coat, with nine round silver Buttons on the Breast, two upon each Haunch, whereof one is small, and it has no Buttons on the Sleeves or Pockets; and that his Father has also a black short Coat, with silver Buttons

'on

'on the Breaſt and Pockets, and has none upon the Haunches or Sleeves, 'to the Declarant's Remembrance:' That the ſaid *Allan Breck* had no big Coat on upon the 11th Day of *May* laſt, when he came to *Aucharn*, nor had he any big Coat of his own that the Declarant knows of; for the ſaid *Allan borrowed the Declarant's big Coat*, when he came to *Rannoch*: That, in a Converſation the Declarant had with old *Ballachelish* on the *Sunday* before *Glenure*'s Murder, *Ballachelish* then told the Declarant, that the Man that had taken the Ferry of North *Ballachelish*, came there with his Boat, and was refuſed to enter to the Poſſeſſion by the Tenants, who thought they had as good a Right to the Ferry as to the Land: That thereupon the Ferry-man drew his Boat, and went to *Glenure*, the Tenants being reſolved to keep their Poſſeſſions for the Year; and that *Ballachelish* ſaid, that the Tenants of the *Ardſhiel* Eſtate had as good a Title to ſit, as the Tenants of *Ballachelish*, if the Suſpenſion was not diſcuſſed; 'and that it was a cant Word through the Country, That the Tenants 'might ſit, ſince the worſt of it would be paying the violent Profits.' Declares alſo, That he has a Gun and Broad-ſword: That he left the Gun in his Father's Brew-houſe, and the Sword he gave to *John Maccoll*, his Father's Servant, that is Priſoner at *Fort-William*: That *John Roy Stewart*, Nephew to *Faſnacloich*, lay in the Barn with the Declarant upon *Thurſday*'s Night the 14th Day of *May* laſt; and that *John Stewart* in *Auchnacoan* lay in the ſame Barn with the Declarant's Brother *Charles*, being the Night that the ſaid *Ewan Roy Maccoll* came to look for a Bed there. This judicial Declaration emitted in Preſence of the ſaid Sheriff-Subſtitute, Place and Date foreſaid, before theſe Witneſſes, the Right Honourable the Lord *Bury*, Colonels *Howard* and *Crawfurd*, *Donald Campbell* of *Airds*, and *Colin Campbell* of *Carwhin*.

(Signed) ALLAN STEWART. GEORGE DOUGLAS, *S. S.*
DONALD CAMPBELL, Witneſs.
Co. CAMPBELL, Witneſs.

At *Maryburgh*, the 4th Day of *June*, 1752 Years, in Preſence of the ſaid *George Douglas*, Sheriff-Subſtitute aforeſaid, compeared *Charles Stewart*, Son to *James Stewart* in *Aucharn*; who being examined judicially, declares, That he was at Home all Day of the 14th Day of *May* laſt, and that he dined with his Father, Mother, Brother, Siſter, and *Faſnacloich*'s Daughter; and after Dinner went to *Auchindarroch*, and there converſed with *Duncan Maccombie*, *Duncan* and *John Maccolls*, and others that were covering Potatoes, and deſired *Solomon Maccoll* to go with *Faſnacloich*'s Daughter to *Ardnamurchan*, but he would not go: That *Faſnacloich*'s Daughter and the Declarant's Siſter went along with him to *Auchindarroch*, and returned before him to *Aucharn*, the Declarant having ſtaid a Quarter of an Hour after them, to perſuade the ſaid *Solomon* to go to *Ardnamurchan*, and then followed them directly to *Aucharn*; and did not go nearer *Lettermore* that Day, than the Place where the People of *Auchindarroch* were covering Potatoes; and, in an Hour thereafter, went with *Faſnacloich*'s Daughter, and the Declarant's Brother *Allan*, and Siſter, to *Inſhaig*, where he received the News of *Glenure*'s Murder from *John Maccoll, now Priſoner at* Fort-William; *being ſent there, by the Declarant's Father, to deſire him and his Brother* Allan *to come Home*; but that his ſaid Brother was gone a little before the ſaid *John Maccoll* came. Declares alſo, That he ſaw *Ewan Roy Maccoll*, Brother to *Appin*'s Bouman at *Koaliſnacoan*, at the Declarant's Father's Houſe, upon the Evening of the 14th Day of *May* laſt before they lighted Candles, and told he had come from *Glenco* that Day; that he afterwards, that Night, came into the Barn where the Declarant was lying with his Uncle *John Stewart*, looking for a Bed, and was directed to lie with the Servants in the other Barn in *Aucharn*. Declares, That upon his Return from *Inſhaig* with the ſaid *John Maccoll* Priſoner, that the Declarant aſked him where *Glenure* was murdered, what Way it was done, and if any Perſon was ſeen by the Place? and that the ſaid *John* anſwered, That it was done in the Wood of *Lettermore*; whether it was South or North of the Houſes, he could not tell; that it was by a Shot, and that there was a Man or two ſeen near the Place; and this is all the Declarant remembers of the Converſation upon that Head; and that upon his coming Home, he heard his Father deſire the People of *Auchindarroch* to go and take Care of the Corpſe; and that his Father propoſed to go himſelf, but that his Wife would not let him; and, 'at the 'ſame Time, heard his Father ſay that he would be ſuſpected of the 'Murder, as he was taking ſo much Part with the Tenants againſt *Glen-'ure* the Factor:' That he heard *Ewan Roy Maccoll* ſay, upon the 13th Day of *May* laſt, that he wondered that *Glenure* was removing the Tenants that paid their Rent well, and were willing to qualify to the Government; That he obſerved his Father and the ſaid *Ewan Roy Maccoll* have ſeveral Converſations aſide about that Time. This Declaration emitted judicially, Place and Date foreſaid, before theſe Witneſſes, *Donald Campbell* of *Airds*, and *Colin Campbell* of *Carwhin*, Eſqrs.

(Signed) CHARLES STEWART.
GEORGE DOUGLAS, *S. S.*
DONALD CAMPBELL, Witneſs.
Co. CAMPBELL, Witneſs.

Charles Stewart, Son to the ſaid *James Stewart* in *Aucharn*, being ſolemnly ſworn and examined, depones, That, upon *Tueſday* the 5th Day of *May* current, the Deponent and the ſaid *Allan Breck Stewart* went from the Deponent's Father's Houſe, where the ſaid *Allan* had been on and from the 1ſt current (except that he was *Saturday*'s Night at *Cuil*), and ſtaid at *Appin*'s Houſe on *Tueſday*'s Night, were *Wedneſday*'s Night at *Auchnacoan*'s, *Thurſday*'s Night at *Auchaouran*'s, '*Friday*, *Saturday*, and '*Sunday*'s Night at *Faſnacloich*'s, and came on *Monday* the 11th current 'to his Father's Houſe: That the Dreſs the ſaid *Allan* wore all this while, 'was a long-bodied blue Coat, red Waiſtcoat, black Breeches, a Hat 'with a black Feather, and Tartan Hoſe, with a big Coat dun-coloured; 'in which very Dreſs, and with which big Coat, he came along with the 'Deponent to his Father's Houſe upon the 11th current, continued there 'that Night, and the Deponent and he lay together: That he roſe before 'the Deponent on *Tueſday* the 12th current, but that the Deponent 'was up before he left his Father's; and that as he was going away, 'which was about Eight or Nine of the Clock in the Morning, was 'told by him he was going for *Glenco*: THAT THEN HE HAD 'ON THE WHOLE OF THE SAME DRESS AS ABOVE DE-'SCRIBED:' That the Deponent accompanied him to *Kintalline*, and did not part with him any where on the Road: That they paſſed through *Auchin-darroch* and *Lagnaha*, and ſpoke with ſome People as they went along, particularly *Alexander Stewart* in *Lagnaha*, and *Alexander Stewart* his Son: *That the blue Coat* Allan *were had yellow metal Buttons*: That the Deponent and he parted at *Kintalline*, after the Deponent aſked *John Breck Maccombie* for Ale there. And this is Truth, as he ſhall anſwer to God.

(Signed) CHARLES STEWART. ARCH. CAMPBELL, *S. D.*

Margaret Stewart, Spouſe to *James Stewart* in *Aucharn*, being ſolemnly ſworn and examined, depones, 'That *Allan Breck Stewart* came to her 'Houſe upon *Monday* immediately before *Glenure*'s Murder, dreſſed as men-'tioned in the laſt Depoſition, and with a big Coat of the ſame Colour; 'that he ſtaid all Night, and went away next Day about Eight or Nine 'of the Clock in the Forenoon, dreſſed in the ſame Habit; and at his tak-'ing Leave of the Deponent, aſked her, if ſhe had any Commands for *Ran-'noch?* That, to the beſt of her Knowledge, he came by himſelf, and went 'away by himſelf.' And this is the Truth, as ſhe ſhall anſwer to God; and declares ſhe cannot write.

(Signed) ARCH. CAMPBELL, *S. D.*

Elizabeth Stewart, Daughter of the ſaid *James Stewart* in *Aucharn*, being ſolemnly ſworn and examined, depones, 'conform to her Mother's 'Depoſition in every Thing, only that ſhe is poſitive that *Allan Breck Stew-'art* came all alone to *Aucharn*, upon *Monday* immediately before *Glenure*'s 'Murder, ſhe having ſeen him come there.' And this is Truth, as ſhe ſhall anſwer to God; and declares ſhe cannot write; and adds, that *Solomon Maccoll*, her Father's Servant, went off for the South Country upon *Saturday* the 16th current.

(Signed) ARCH. CAMPBELL, *S. D.*

Charles Stewart, Son of the ſaid *James Stewart* in *Aucharn*, being re-examined, judicially acknowledges, That *Dugald Maccoll*, former Declarant, told the ſaid *Charles Stewart*, that there were Arms in his Father's Houſe, which he had hid; and this judicial Acknowledgment is ſigned this 23d Day of *May*, 1752 Years, before theſe Witneſſes, *Donald Campbell* of *Airds*, and *James Campbell*, Writer in *Inverary*, Writer hereof.

(Signed) CHARLES STEWART.
DONALD CAMPBELL, Witneſs. JA. CAMPBELL, Witneſs.

Thereafter the ſaid *Charles Stewart* judicially owns, 'That, upon the '12th Day of *May* current, the black ſhort Coat with ſilver Buttons, then 'wore by *Allan Breck Stewart*, was given to him by the Declarant's Fa-'ther; and that he had got the plaiden Trowſers, then wore by him, from 'the Declarant's Father, or Brother *Allan*;' and this is alſo ſigned, Place and Date foreſaid.

(Signed) CHARLES STEWART. ARCH. CAMPBELL, *S. D.*
DONALD CAMPBELL, Witneſs. JA. CAMPBELL, Witneſs.

The ſaid *Margaret Stewart*, Spouſe to *James Stewart* in *Aucharn*, being re-examined, judicially declares, That her Huſband *James Stewart* was at Home, and lay in the ſame Bed with her, on *Monday*'s Night the 11th of *May* current. And this is alſo Truth, as ſhe ſhall anſwer to God; and declares ſhe cannot write.

(Signed) ARCH. CAMPBELL, *S. D.*

The ſaid *Elizabeth Stewart*, her Daughter, re-examined, judicially owns, That her Father was at Home on *Monday*'s Night the 11th Day of *May* current. And this is alſo Truth, as ſhe ſhall anſwer to God; and declares ſhe cannot write.

(Signed) ARCH. CAMPBELL, *S. D.*

At *Taynabeinſaig*, the 25th Day of *May*, 1752 Years, the ſaid *Charles Stewart*, being re-examined by the ſaid Sheriff-Depute, judicially declares, That the ſaid *Allan Breck Stewart* had on a black ſhort Coat with round ſilver Buttons, upon the 30th Day of *April* laſt, when he came to the Declarant's Father's Houſe in *Aucharn* from *Rannoch*: That the Declarant left the ſaid *Allan Breck* at his Father's Houſe, 'he himſelf having, upon the 'firſt Day of *May* current, gone to *Glenure* along with the Tenants of '*Ardſhiel* and *Charles Stewart*, Notary, to be a Witneſs to the Intimation 'of the Siſt they had obtained againſt the Decreet of Removing; and that, 'upon his Return that Evening, he found the ſaid *Allan Breck* at his Fa-'ther's, and was then dreſſed in a black ſhort Coat and round ſilver But-'tons; and then obſerved, that the ſaid Coat was lined with red in the 'Breaſt and Skirts; and that the ſaid *Allan* told him, that he had got the 'ſaid ſhort Coat from the Declarant's Father;' but does not remember when it was he told him ſo. Declares alſo, That the ſaid *Allan Breck Stewart* had on blue and white Trowſers, when he came from *Rannoch* to his Father's Houſe, on the 30th Day of *April*; and had them likewiſe on, on the 2d Day of *May* current, when he went to *Cuil* in *Appin*; and that he wore the ſame Dreſs upon the 3d and 4th Days of *May* current: That the ſaid *Allan* did put on his ſide blue Coat on the 5th Day of *May* current, when he went to *Appin*'s Houſe: And likewiſe declares, 'That he ſaw *Allan Breck*'s 'blue Coat, upon the 13th current, lying upon a Trunk in the Room 'upon the right Hand of the Entry of his Father's Houſe: That the ſaid '*Allan* had on the ſaid black ſhort Coat, when at Breakfaſt at the Decla-'rant's Father's Houſe, upon the 12th Day of *May* current, but had on no 'Jockey-Coat then.' This Declaration is judicially ſigned, Place and Date foreſaid, before theſe Witneſſes, *Donald Campbell* of *Airds*, and *Colin Campbell* of *Carwhin*.

(Signed) CHARLES STEWART. ARCH. CAMPBELL, *S. D.*
DONALD CAMPBELL, Witneſs.
COLIN CAMPBELL, Witneſs.

The ſaid *Margaret Stewart*, Spouſe to the ſaid *James Stewart* in *Aucharn*, being re-examined, declares, 'That the black ſhort Coat now ſhewn to 'her, is the ſame which was brought from her Houſe upon *Saturday*'s 'Evening the 23d current, and belongs to *Allan Stewart*, her Son: That 'her Huſband has had no black Coat for three Quarters of a Year paſt; 'and that the laſt black ſhort Coat he had, was given by him to *John More 'Maccoll*; and that the round ſilver Buttons, which are upon the Coat 'now produced, were formerly upon the Coat given to the ſaid *John 'More Maccoll.*' This judicial Declaration is emitted this 25th Day of *May*, 1752 Years, before theſe Witneſſes, *Colin Campbell* of *Carwhin*, and *Donald Campbell* of *Airds*; and the Declarant declares ſhe cannot write.

(Signed) ARCH. CAMPBELL, *S. D.*
COLIN CAMPBELL, Witneſs. DONALD CAMPBELL, Witneſs.

The

The ſaid *Margaret Stewart* alſo owns, That there was a Gun in her Huſband's Houſe this Spring, which ſhe ſaw her Son *Allan* go out with once or twice to kill black Cocks. This judicial Declaration is alſo ſigned, Place and Date aforeſaid, and before the Witneſſes above named and deſigned.

(Signed) ARCH. CAMPBELL, *S. D.*
DONALD CAMPBELL, Witneſs.

Letter addreſſed to *Duncan Stewart* of *Glenbuckie.*

NOW I am ſorry to acquaint you, Affairs is going quite wrong upon this Eſtate of your Couſin's: Glenure *wants* Ardſhiel *and* Lettermore *in his own Hands, and more Rent for our Tenement, and the Carriages to himſelf. How far theſe Things will take Place, God knows! The Man that makes the whole Noiſe, is* Ballieveolan, *upon Account of our keeping* John More; *for he does not deny but what he offers more Rents for* Glenduror, *and gives this as his Reaſons. However, it ſhall be A DEAR GLEN TO THEM OR THEY SHALL HAVE IT.* All you heard about the Country is true: I go, in a few Days, to *Kingailoch* for the Stallion, which ſtands us eight Guineas; he wants to harrow him this Spring, and to get him broke for the Saddle again Harveſt. *Faſnacloich* has made the Purchaſe for himſelf. You'll not neglect to ſend all the Money you can in a very ſhort Time, as Money never was ſcarcer in this Country. *Kingailoch* has got Money; ſo that we are ſure of his Cows. *Malcolm Livingſton* has ſent for more Money; for he employed what he got. I ſhall refer the whole Hiſtory of the Country till I have the Pleaſure of ſeeing you. I beg you'll not neglect ſending a Servant ſoon, with as much as poſſible; let nothing ſtop him. Neglect not about your Brother. No more, but my Compliments to Miſs *Jeany*, *Sandy*, and little *Donald*, is all from, dear Couſin, I am your affectionate Couſin,

(Signed) ALLAN STEWART.

Dated *Aucharn*, *April* the 1ſt, 1751.

Maryburgh, 4th *June*, 1752 Years. This Letter was found among *James Stewart* in *Aucharn*'s Papers, and ſhewn this Day to *Allan Stewart* his Son, who refuſes it to be his Hand-writing, in Preſence of *Colin Campbell* of *Carwhin*, and *Donald Campbell* of *Airds*, Eſqrs. two of his Majeſty's Juſtices of Peace for *Argyllſhire.*

(Signed) ARCH. CAMPBELL, *S. D.*
DONALD CAMPBELL, Witneſs.
Co. CAMPBELL, Witneſs

The above Letter was addreſſed on the Back, *To* Duncan Stewart *of* Glenbuckie, *at* Brenchyle.

Letter, James Stewart *to* Charles Stewart, *Notary.*

Dear Charles,

NOT knowing of your Return from *Mudart*, ſent for your Father *Tueſday*'s Afternoon; but the Raſcal I ſent, went not by *Glencrearan* that Night, by which he miſſed the old Man, who went a-fiſhing, as you'll ſee by the incloſed, early that Morning; which I reckon a very great Misfortune. *The next beſt I can think of is, that you be here without fail this Night, if you ſhould hire a Horſe, as every Thing muſt go wrong without a Perſon can act, and that I can truſt. This is ſuch a Tie upon all the Members of our Family, that I'll preſs you no further, but do depend on ſeeing you once this Night; and am your own,* &c. *dear Couſin,*

(Signed) JAMES STEWART.

Aucharn, May 14th, Eight o'Clock Morning, 1752.

P. S. *As I have not Time to write to* William, *let him ſend down immediately* 8*l. Sterling, to pay four Milk Cows I bought for his Wife at* Ardſhiel.

Addreſſed on the Back thus: *To Mr.* Charles Stewart *at* Auchintour. *Per Expreſs.*

Letter, Wiliam Stewart *to* James Stewart.

Dear Sir, Maryburgh, 14*th* May, 1752.

I Send the Bearer for the beſt Mare, and my young Beaſts in Salachan; *unleſs you keep by it (which I think you ought), and ſend ſome other Body up with him, and let them carry the Milk Cows you bought for me. Let the Filly be grazed thereabouts, waiting Market.*

I find Glenure *has a Mind to eject the Tenants; but they ought to be deaf to it, and, at all Riſques, keep Poſſeſſion, as they are in good Hands, as it muſt end in Exchequer; ſo that I beg they keep Poſſeſſion; as there will be no Troops, they ought to repel Force by Force, and take their Hazard of the Conſequence; as it can be no more than violent Profits, which is often modified in inferior Courts, beſides the Exchequer, who will inſiſt for no ſuch; their chief Deſign being to have a Sett of peaceable Tenantry, and a well-paid Rent; ſo that the People ought to be aſſured they ſhall be ſupported as far as Law will, which no Doubt muſt determine in their Favours; and am, dear Sir, your own,* &c.

(Signed WILLIAM STEWART.

Addreſſed on the Back thus: *To Mr.* James Stewart *in* Aucharn.

Wrote on the Back thus:

Maryburgh, *the 5th Day of* June, 1752. *This is the Letter relative to the Declaration emitted this Day before me, by* William Stewart, *Merchant in* Maryburgh.

(Signed) GEORGE DOUGLAS, *S. S.*

Letter, James Stewart *to* John Macfarlane.

SIR,

JUST now had your Favour, and am ſorry theſe poor Tenants ſhould have made uſe of me for repreſenting their Grievance, as, in all Appearance, it has brought a great deal of Trouble upon me; being carried here, and my Son upon *Sunday* laſt, ſuſpected to be knowing to the barbarous Murder of *Glenure*, who was ſhot dead upon *Thurſday* the 14th current, in a Wood within two Miles of my Houſe. It is not pretended that I or my Son were actors in this horrid Action, as we both can be well atteſted; but alledges, it was a premeditated Thing, to which I muſt have been knowing: But ſo far otherwiſe, that no Man (I thank God) abhors the Fact more, and would, if at Liberty, do all in my Power to bring it to Light. *There is one* Allan Stewart, *a diſtant Friend of the late* Ardſhiel's, *who is in the* French *Service, and came over in* March *laſt, as he ſaid to ſome, in order to ſettle at Home; to others, that he was to go ſoon back; and was, as I hear, the Day the Murder was committed, ſeen not far from the Place where it happened, and is not now to be ſeen; by which it is believed he was the Actor; he is a deſperate fooliſh Fellow;* and, if he is guilty, came to the Country for that very Purpoſe. He is a tall pock-pitted Lad, very black Hair, and wore a blue Coat and metal Buttons, an old red Veſt, and Breeches of the ſame Colour. I would own myſelf under many Obligations to any Friend would diſcover him; am perſuaded he is gone South, in order to embrace the firſt Opportunity of going abroad. When at *Edinburgh*, he ſtaid in Mr. *Hugh Stewart*'s at the Back of the *Fountain-Well*; ſo begs, as you have any Regard for my Intereſt, recommend all that wiſh the Country well to be in ſearch of him. What makes my Confinement very uneaſy to me is, that this is the Time of the Year that my Buſineſs would require my Preſence moſt; having bought Cattle (wherein I yearly deal) in different Countries, and taken Graſings South for the Cattle, which I muſt pay, if I ſhould never ſend a Beaſt upon it; which I am afraid will be the Caſe, if either my Son or ſelf be not admitted to Bail, to put our Affairs in Order: So hopes you'll ſpare no Pains in this, as *Airds* and *Appin* will bail me in any Sum whatever.

Your Return I'll expect in Courſe of Poſt; and am, with Compliments to your Lady and ſelf, dear Sir, your humble Servant,

(Signed) JAMES STEWART.

Fort-William, May 19, 1752.

Addreſſed thus: *To Mr.* John Macfarlane, *Writer to the Signet; in his Abſence, To Mr.* John Flockhart, *his principal Clerk, at his Houſe in the* Mint, Edinburgh.

Inverary, 22d *September*, 1752.

This is the Letter referred to in Colonel *Crawfurd*'s Oath of this Date.

Follows the Writings produced for the Pannel, being *Five Letters wrote to him by* Colin Campbell *of* Glenure.

SIR, *Glenure*, 8th *November*, 1748.

I Think I can now, with ſome Certainty, tell you, that I am appointed Factor over the Lands you poſſeſs, and other Lands that belonged to your Brother *Ardſhiel*; and as the Term is now at Hand, will beg the Favour, you deſire the Tenants and Poſſeſſors to be preparing the Rents. I am, Sir, your moſt obedient humble Servant,

(Signed) COLIN CAMPBELL.

Addreſſed thus: *To* James Stewart *in* Auchindarroch, *in* Duror.

SIR, *Glenure*, 14th *October*, 1749.

AS I intend *Monday* next to be in *Duror*, to hold a Baron-Bailie-Court on the Eſtate of *Ardſhiel*, and call for bygone Rents, have ſent you this, to beg the Favour you would let the Tenants know of it, that they may be prepared to make Payments, and not be out of the Way; and I ſhall be glad to have the Pleaſure of ſeeing you at *Taynabeinſdig' Monday* Afternoon. I am, Sir, your moſt obedient humble Servant, (Signed) COLIN CAMPBELL.

Addreſſed on the Back, *To Mr.* James Stewart, *Brother to* Ardſhiel.

SIR, *Glenure, December* 11, 1749.

THIS Moment I had yours by your Servant, with the twenty Pounds, eighteen Shillings, and five Pence Sterling; and the Warrant I formerly gave you. Receive incloſed your Note: Your Payments are very good, for which I am obliged to you. I intend, God will, to be at *Edinburgh* on, or a Day or two before the 25th current; that is, I intend to ſet out from this Place this Day, or To-morrow eight Days, and will go by *Glaſgow*, and make no Stop by the Way. Remember Lady *Ardſhiel*'s Diſcharges, and all your other Tackling. I heartily wiſh you a good Journey.

(Signed) COLIN CAMPBELL.

My Wife, who, I find, is your ſincere Wellwiſher, returns you her hearty Thanks, and is ſorry you have had ſuch bad Weather to travel, when you are ſo weak.

Addreſſed on the Back thus: *To* James Stewart *in* Auchindarroch *in* Duror.

SIR, *Glenure*, 6th *April*, 1750.

I Have yours, and think it's quite right to have Burliemen: They are frequently very neceſſary, and can't well be wanted. You will therefore appoint two diſcreet honeſt Men for that Purpoſe of the Tenants; and, to prevent any Complaints or Objections, be ſure you ſwear them to Fidelity in their Office. My Wife returns you her Thanks for your good Wiſhes. I am, Sir, your moſt obedient,

(Signed) COLIN CAMPBELL.

Addreſſed on the Back thus: *To Mr.* James Stewart *in* Auchindarroch.

SIR, *Glenure*, 14th *March*, 1751.

AFTER you left this, ſomething has occurred that makes it neceſſary that you do not ſet any Part of *Ardſhiel*, *Auchindarroch*, or *Aucharn*, till I ſee you after my Return from *Inverary*; which is the Reaſon I run you this Expreſs. I am, Sir, your affectionate humble Servant,

(Signed) COLIN CAMPBELL.

Addreſſed thus: *To* James Stewart *of* Aucharn, Duror.

Then, the Proof on both Sides being concluded, the Lord *Elchies* ſaid to the Lord Advocate, that now was his Time to proceed to give his Charge to the Jury; which his Lordſhip did as follows.

LORD ADVOCATE.

Gentlemen of the Jury,

IT now becomes my Duty, to be aſſiſting to you in the Diſcharge of yours, by ſtating to you this Caſe, and ſumming up the Evidence that hath been given in your Preſence; which I ſhall now proceed to do as well as I am able, after ſo long an Attendance.

That Attendance, I am ſenſible, muſt have been very heavy upon you, and hath been ſuch, as the like hath not happened ſince the Circuit-Courts of Juſticiary were brought to be held in this County: But I hope you will not repine at the great Fatigue of this Trial, in a Caſe, whereof the Importance is as unuſual as the Length of it; and in which your giving a juſt Verdict will be highly for the Service and Credit of your Country.

N. B. By the ſixteenth Act *Anno* 1672, concerning the Regulation of Judicatories, Article Tenth, on the Juſticiary Court, it is provided in theſe Words: "That, in all "criminal Purſuits, the Defender, or his Advocate, be always the laſt Speaker, except in Caſes of Treaſon or Rebellion againſt the King."

I need not resume to you, Gentlemen, the Libel or Indictment, whereof I presume you have been furnished with printed Copies before you came here; that, being thereby informed of the principal Circumstances which have been discovered concerning the Murder of Mr. *Campbell* of *Glenure*, you might have Leisure to weigh the Import of these, and be the better enabled to attend to the Evidence that should be brought before you; and, on the other Hand, the Pannel *James Stewart*, who is now standing his Trial, was, by that Libel, fairly informed of the principal Facts and Circumstances that were then discovered against him, so as he might have Opportunity to account for these, and clear himself, if notwithstanding such strong Appearances, he was truly innocent.

The Crime itself, which gives Occasion to this Trial, was of its Nature the most horrid and atrocious that can well be conceived. Wilful Murder, at any Rate, is a Crime most heinous; and concerning the first Murder, God Almighty himself said to *Cain*, *The Voice of thy Brother's Blood crieth unto me from the Ground*. And the Murder now in Question, as to this Pannel's Accession to it, was one of the most causeless and unprovoked that ever happened. Poor Mr. *Campbell* of *Glenure* was cut off in the Vigour of his Life, in the very Road of his Duty in the King's Service, and for no other Cause or Provocation than his doing that Duty; and then was he basely assassinated by a Ruffian, who lay in wait for him, and shot him from behind his Back, so as he died upon the Spot, leaving two infant Children, and his Widow pregnant.

And to this horrid Violation of the Laws of God and of Humanity, is to be added, in the present Case, that the sole Offence taken at *Glenure*, was his acting in the Quality of Factor on the forfeited Estate of *Ardshiel*, agreeably to his Powers and Instructions from the Barons of Exchequer, as being Administrators for the King, whose Property that Estate was; and it was resented as a capital Injury, that the King's Factor should venture to exercise his Majesty's Property as freely, as every Subject may do his own.

And last of all, That this Murder was committed on the 14th Day of *May* last, just seven Weeks after his Majesty had given his Royal Assent, and passed into a Law, the Bill for annexing this and other forfeited Estates to the Crown unalienably, and for applying the Rents and Profits thereof for the better civilizing and improving the Highlands of *Scotland*.

The Clemency of the King had been extended early after the last Rebellion, by the Act of Grace of the 20th Year of his Reign, of which the Pannel *James Stewart*, among many others, had the Benefit; and other beneficial Laws were then made, to secure and promote Freedom, Property, and good Order in all Parts of *Scotland*. And, to crown all, this last most beneficent Act was made, for the more immediate Benefit of the Highlands of *Scotland*, out of which three Rebellions have been raised, since the Accession of the Royal Family now happily reigning; an Act of Beneficence not to be paralleled in History, and calculated to render all the Inhabitants of the Highlands good and useful Subjects under this Government, by making them feel their own Interest in being such, and rendering the meanest of them, who will be honest and industrious, free and happy: And at such a Juncture, the Murder you are now inquiring into received no small Aggravation, as it was flying in the Face of the Legislature itself, and endeavouring, as much as in these Criminals lay, to defeat or discourage the Prosecution of a Measure of Government, so highly gracious and beneficial to this Country.

The Truth is, Gentlemen, that though, God be praised, the Highlands of *Scotland* are in this Age less barbarous than they have been in former Times; yet, in our own Time, there have been such Instances of remaining Barbarism, as serve to prove but too strongly, that these Countries stand yet in need of being better civilized. I think it was in the Year 1724, that, for an Offence of the same Nature with what was here taken, an Attempt to remove certain *Macphersons* living on the Estate of the Duke of *Gordon* in *Badenoch*, the late *Gordon* of *Glenbucket*, his Factor or Tacksman, was invaded, and received many Wounds, given with Intent to bereave him of his Life, though he chanced to recover.

You must all remember, how basely Captain *Monro* of *Culcairn* was assassinated, by lying in wait, when he was acting in his Duty in the King's Service, soon after the Defeat of the late Rebellion.

And you must have all heard of the late barbarous Enterprize of *Robert Macgregor* and his Accomplices, in carrying off from her own House the unfortunate *Jean Kay*, a young Widow and an Heiress, in the Depth of Winter, and Middle of the Night, into remote Parts of the Highlands, and causing her to be married to that *Robert*, a Person of no Fortune, and an Outlaw for Murder; for being a Conductor in which Attempt, *James Drummond*, alias *Macgregor*, a Brother of *Robert*, has been lately convicted.

The Excuse offered for *James Macgregor*, was the same mistaken Principle that appears to have misled the unhappy Prisoner at the Bar. It was said, that *James Macgregor* was actuated by one of the best Affections; he was seeking no personal Advantage to himself by that Enterprize, but only to make the Fortune of *Robert* his Brother.

And the now Pannel *James Stewart* conceived a mortal Enmity against Mr. *Campbell* of *Glenure*, for disabling him to provide for the Children of his Brother, *Charles Stewart* late of *Ardshiel*, attainted, by Contributions levied from the Tenants on that Estate, who had been under his Influence.

But alas! what a Delusion is it, from such Principle to be led to commit or justify the most heinous and abominable Crimes! The Care of the Interest of one's Kindred is doubtless a laudable Affection; and even when that Good-will is extended to the remoter Degrees, and enlarges the Circle of Benevolence, there is no Harm in it; provided in both Cases it be conducted with Justice, and Men exert themselves to serve their Friends, without violating the Rights of other Individuals, or the Laws of Society and civil Government; but he who robs or defrauds his Neighbour, to provide for his own Houshold, or the immediate Children of his own Body, is not the less criminal in the Sight of God and Man, that he was moved by an Affection, in itself natural and just, but which he pursued in a wicked Manner.

And, in the present Case of the Murder of *Glenure*, there appears to have been no reasonable or probable Scheme of Advantage to the Family of the late *Ardshiel*, or any body; but that it proceeded from mere Wickedness, Malice, and Resentment, the most groundless that ever was; It affords a recent and shameful Instance of that Spirit of Revenge, which was the Characteristic of the barbarous Highlanders in former Times; and a Pity it is, Gentlemen, and a Reproach to the present Age, that it should be yet capable of furnishing such an Example.

I am far from meaning by this, that the Crimes of a few wicked Persons can justly bring a general Imputation on the whole Country where these were committed; we daily hear of most horrid and unnatural Crimes perpetrated in the Parts of the Kingdom the most wealthy, populous, and civilized; but the Part incumbent on the Country where such Things happen, is, to purify the Land of the innocent Blood with which it is polluted, by bringing the Guilty to condign Punishment; and this is what you are now employed in; and as you have attended to the Evidence patiently, I desire nothing more, than, as an impartial and intelligent Jury, you may consider it carefully, in order to discern the Truth, and then to follow that resolutely according to the Conviction of your own Minds; which, if it lead you to believe the Pannel guilty, you will do Justice to your Country by saying so; and if you are not convinced of his Guilt, in God's Name, let him be acquitted; for better that this Murder, atrocious and scandalous as it is, should go altogether unpunished, than that one innocent Man should suffer for it.

In order to lay before you distinctly the Evidence that you have heard of this Pannel's Accession to the Murder of *Glenure*, I shall *first* of all recite the State or Situation in which the Deceased and the Pannel stood towards each other, previous to the Murder, and also that of *Allan Breck Stewart* in respect of both the others. *2dly*, I shall point out to you the Evidence that *Allan Breck* was the actual Murderer, which I admit to be a Fact that was incumbent on us to prove, in order to convict this Pannel of wilful Accession to it: And, *lastly*, I shall sum up the Evidence that has been brought of that Accession, and examine the Force of the Defences or Excuses which the Pannel has endeavoured to prove.

As to the first of these, the Situation of the Pannel himself; That, Gentlemen, you partly know, and have heard proved: He is a bastard Brother of *Charles Stewart* late of *Ardshiel*, attainted, who, out of his own Tenants, and those of *Dougal Stewart* of *Appin*, his Chieftain, levied a Regiment or Battalion, at the Head of which he went into the late Rebellion, accompanied, among others, by this Pannel, who had the Benefit of his Majesty's Act of Grace or Indemnity; whereby he was left at Liberty to remain with his Family in the Country, whilst *Ardshiel* himself, the attainted Person, made his Escape into foreign Parts, leaving at Home his Wife and a Family of Children, who, as Mr. *Campbell* of *Airds* has deposed, were all young, his eldest Son being now, as he thinks, about eighteen Years of Age, and consequently, at the breaking out of the late Rebellion, must have been about eleven.

The late Rebellion, as you all know, was finally suppressed by his Royal Highness the Duke, in the Spring and Summer 1746: In the Year following, the Act vesting the forfeited Estates in the King was passed; and, in 1748, the Lands of *Ardshiel*, among others, were surveyed by Order of the Barons of the Exchequer; to the Property whereof a Claim was entered on Behalf of *Alexander* the eldest Son of *Charles Stewart*, the attainted Person; which Claim, upon Answers made for the King, was dismissed by the Court of Session: And thus it happened, that there was no Factor appointed by the Barons on the Estate of *Ardshiel*, until *Colin Campbell* of *Glenure* was made Factor, by Commission, bearing Date the 23d *February* 1749, upon that Estate, and also upon the neighbouring Lands of *Allan Cameron* of *Callart*, attainted, and, adjoining to these, that Part of the Estate of *Lochiel* which lies in the Shire of *Inverness*, to the Southward of *Fort-William*, and betwixt that Fort and the Ferry of *Ballachelish*, of which you have heard so much, upon that Loch or Arm of the Sea, which separates *Lochaber* in *Invernesshire*, from the Country or District of *Appin* in this Shire.

Now, as this Factory was granted full three Years after the Rebellion, it is to be observed how the Estate of *Ardshiel* was possessed and managed in this Interval; and this appears by the Oath of *Alexander Stewart* of *Innernahyle*, who hath deposed, "That, before the Factory, as he believes, "the Tenants paid their Rents to the Lady of *Ardshiel*, and that she "again employed the Pannel to deal with them."

It was during this Period, that the Pannel, as the same *Alexander Stewart* deposes, who had been a great many Years ago Tenant to his Brother *Ardshiel* in the Farm of *Glenduror*, and had been removed also several Years ago by his Brother, again took Possession of the same Farm; and that *Ardshiel*'s Lady and the Pannel, jointly, introduced certain new Tenants of their own Choice, into different Parcels of the Land, which *Ardshiel*, the attainted Person, had himself occupied before the Rebellion.

Again, when *Glenure* had obtained this Factory, after he had been for some Time abroad with the Regiment to which he belonged, in *Flanders*; and being now come Home, was occupied with the Treaty for his Marriage with the young Lady who is now his Widow; he did, as Mr. *Campbell* of *Airds* hath deposed, for some Time employ the now Pannel, as his Sub-factor, in levying the Rents of *Ardshiel*, and setting the Lands; and, to the same Purpose, the said *Alexander Stewart* deposes, "That the "Factor gave the Pannel the Opportunity of having the greatest Influence "with the Tenants of *Ardshiel*, more than any other Person, by allow-"ing the Pannel to set the Lands, which he continued doing to *Whit-"sunday* 1751, if not at that Time also: But adds, That the Pannel's "Connexion with the Family of *Ardshiel*, gave him also *a natural In-"fluence* over the Tenants, even before *Glenure*'s Factory."

The Use which the Pannel made of this Influence, natural or acquired, appears partly from the Evidence of the same two Gentlemen: For, upon this Article, Mr. *Campbell* of *Airds* hath deposed, "That the Pannel told "him, that whatever was made of these Rents, over what was paid into "the Exchequer, was accounted for to the Children of *Ardshiel*; and, "when he removed from *Glenduror*, he told the Deponent, that he had "Reason to believe, that the said *Excrescence* of the Rents would still be "accounted for to them; and, in that Case, he would be easy as to his "own Removal."

And Mr. *Stewart* of *Innernahyle* deposes upon this Article, "That the "Pannel was again removed by the deceased *Glenure*, the Factor, from the "Farm of *Glenduror* at *Whitsunday* 1751, and the Lands lett to Mr. *Camp-"bell* of *Ballieveolan*: That as the Pannel is the Deponent's near Neigh-

" bour, the Deponent had frequent Opportunities of converſing with " him touching his ſaid Removal: That the Pannel did not expect to " have been removed, and ſeemed diſſatisfied that he was; and ſaid, " he believed, that *Glenure* would not have removed him, if (Mr. *Camp-* " *bell* of) *Ballieveolan* had not ſought thoſe Lands from him: That the " Pannel further ſaid, that the Tenants generally allowed ſome *Gratuity* " to *Ardſhiel*'s Children, and that theſe Lands were the beſt Farms on " the Eſtate, and moſt of the Benefits accreſced from them; and tho' " he himſelf could be provided of a Farm elſewhere, yet the Children " would be deprived of that Benefit."

In what Manner this Removal of the Pannel, from this beneficial Farm of *Glenduror*, to which he had laſt entered ſince the Rebellion, without any lawful Title whatever, was brought about, appears from the Inſtructions to *Glenure* from the Barons of Exchequer, produced and proved before you; the laſt of which is in theſe Words: " You are, on no Con- " dition whatever, to lett a Farm to any of the Friends (*i.e.* the Relations) " of the forfeiting Perſon." And though it be true, that theſe Inſtructions bear Date the 25th *July* 1751, about two Months after the actual Removal of the Pannel from *Glenduror*, theſe were nevertheleſs the true Cauſe of that Removal; for it was known or expected by the Factor, that he would receive ſuch Inſtructions, there having been Notice given to the Lords Commiſſioners of the Treaſury, of a conſiderable Poſſeſſion of the Eſtate of *Lochiel* having been lett to, or for the Uſe of one of the Brothers of the attainted Perſon; upon which their Lordſhips had directed the Barons of the Exchequer to provide againſt the like being done for the future, in order to avoid the Occaſions of continuing that Leading or Influence over the Vulgar inhabiting thoſe Eſtates, that had produced ſo much Diſturbance and Miſchief to the Public.

And thus it was through Neceſſity, and in order to the faithful Diſcharge of the Duty of his Office, that Mr. *Campbell* of *Glenure*, at *Whitſunday*, or in *May* 1751, removed the Pannel from his Poſſeſſion of the Farm of *Glenduror*, to the Continuance whereof he had no legal Title or Claim whatſoever; and alſo reſolved to employ the Pannel no longer as his Sub-factor or Aſſiſtant, in managing the Eſtate of *Ardſhiel*.

It is not eaſy to conceive, that there was any Reaſon or juſt Cauſe given by this Conduct of *Glenure*, for Reſentment or Hatred from this Pannel, even if it had been true, which the Pannel expreſſed to *Stewart of Innernahyle*, that, as he believed, *Glenure* would not have removed himſelf, if *Ballieveolan* had not ſought or ſolicited this Poſſeſſion of *Glenduror* from him; and yet, that the Pannel conceived and expreſſed, and proſecuted ſuch Diſpoſition in the moſt outrageous Manner, hath been now fully proved before you. But, before I mention the particular Evidence of this, I muſt proceed to recite the freſh Cauſe of Difference betwixt theſe Perſons, and of Animoſity conceived by this Pannel, from the after-Proceedings of *Glenure* in the Spring of this preſent Year; when he having taken the Reſolution to remove a few of thoſe Tenants, who had been introduced to their Poſſeſſions, as I have mentioned, by *Ardſhiel*'s Lady and this Pannel, in the Interval betwixt the Rebellion and the Date of the Factory, it appears, that the Pannel being apprehenſive, that this would leſſen his Intereſt and Influence among the People, if he ſhould not be able to protect thoſe Perſons in the Poſſeſſions, which he himſelf had beſtowed or procured, took the Reſolution to oppoſe theſe Removings; which he proſecuted, by repreſenting and complaining of it in the Country as a mighty Act of Oppreſſion, becauſe the King's Factor thought fit to remove four or five Tenants lately introduced upon this Eſtate, who had neither ſtanding Leaſes nor old Poſſeſſions, to intitle them in Point of Right, or in Point of Favour, to be continued; and this groundleſs Oppoſition to thoſe Removings the Pannel ſet about and conducted at his own Expence, and gave himſelf great Agitation and Trouble in the Proſecution of it, having gone to *Edinburgh* in *April* laſt, on purpoſe to preſent the Bill of Suſpenſion of thoſe Removings, which you have heard, ſetting forth moſt frivolous Grounds; and all this without the Knowledge, Application, or Contribution for the Expence by the Tenants themſelves, in whoſe Names he took upon him to offer that Bill of Suſpenſion, until he had obtained at *Edinburgh* an Order upon the Bill from the Lord *Dun* Ordinary, that Anſwers ſhould be put in to the ſame, and ſiſting or ſtaying Execution in the *interim*; with which Siſt, and certain Advices he had received at *Edinburgh*, for making Application for thoſe Tenants to the Barons of Exchequer, when they ſhould meet in the Beginning of *June*, the Pannel returned to his own Houſe on the 27th *April*; and then ſent for thoſe Tenants, and gave them Notice of his Proceedings at *Edinburgh* on their Account; and that if they had a Mind to continue their Poſſeſſions, they were adviſed to go to *Glenure*, and ſeek their Poſſeſſions (or demand ſuch Continuance); and if he did not grant their Deſire, they ſhould ſend for a Notary, and go with him to proteſt againſt *Glenure*; and if they pleaſed, he would ſend for a Notary, to which they agreed: And accordingly the Pannel ſent for *Charles Stewart*, who hath been examined on this Fact, and ſent him along with the Tenants to *Glenure*'s Houſe, where he intimated the Siſt, and took a Proteſt againſt him on the 1ſt of *May* laſt.

It was upon receiving this Notice of a Suſpenſion preſented, and a Siſt granted, that *Glenure* repaired to *Edinburgh*, and put in his Anſwer to the Bill; upon Conſideration of which, the Bill was refuſed or diſmiſſed by the Lord *Haining* Ordinary; and then *Glenure* returned to his own Houſe on *Saturday* the 9th *May* laſt, in order to take the neceſſary Meaſures for executing the Removings that had been thus oppoſed.

This Part of the Pannel's Proceedings is proved by the Oath of *Charles Stewart*, his Notary, by the Pannel's own Examinations, which you have heard read, and by *Duncan Maccoll* in *Ardſhiel*, one of thoſe Tenants, who hath now depoſed, " That, upon himſelf and others being " warned to remove from the Lands of *Ardſhiel*, as at *Whitſunday* laſt, he " for his Part had no Intention other than to ſubmit to the Warning, " till a Paper was procured from *Edinburgh*, which he heard read by " *Charles Stewart*, Notary at *Aucharn*, as on a Day he was there, being " along with his Neighbours adverti ſed to meet there, where he and his " Neighbours were told by the Pannel and *Charles Stewart*, the Notary, " that the Paper brought from *Edinburgh*, contained Advice for thoſe " who had been warned to remove, to continue in their Poſſeſſions; and " that they ſhould go to *Glenure*, and aſk the ſame from him. And de- " poſes, That he gave no Allowance or Mandate to the Pannel to make " any Application at *Edinburgh* againſt the Removing: That, before he " heard any thing of this Paper from *Edinburgh*, he had engaged to ſerve " as *Bouman* to the Tenants *Glenure* was to introduce; but that, on " hearing of this Paper, he preferred keeping by his Neighbours, as he " conſidered the being continued in his Poſſeſſion, did the Law ſupport " him in it, as more beneficial to him: And adds, That the procuring the " Paper at *Edinburgh* coſt him no Money."

To the ſame Purpoſe, *John Maccombich*, another of thoſe Tenants in *Ardſhiel*, hath depoſed, and adds this farther Circumſtance, " That as to " his agreeing with the incoming Tenants to be their *Bouman*, he heard " both *Glenure* and theſe Tenants ſay, that it was by *Glenure*'s Advice " that this was done;" which is, by the way, an Inſtance of the Humanity, with which *Glenure* acted on this Occaſion, in being at Pains to provide Bread for thoſe Perſons whom he did not think fit to continue as Tenants on this Eſtate of *Ardſhiel*, where they had been ſo lately introduced by the Pannel.

Theſe then were all the Cauſes of Offence, that, after the ſtricteſt Inquiry, can be diſcovered to have been ever given by *Glenure* to this Pannel, namely, That *Glenure*, as Factor upon this Eſtate of *Ardſhiel*, removed the Pannel himſelf from the Farm or Poſſeſſion of *Glenduror* at *Whitſunday* laſt Year, and gave over employing or entruſting the Pannel to act under him in the Management of the Lands of *Ardſhiel*; and that he was taking Meaſures for removing the few Tenants lately introduced by the Pannel, at *Whitſunday* this Year; which Meaſure he perſiſted in, the Oppoſition that the Pannel was pleaſed to make, notwithſtanding. Very ſtrange Cauſes, it muſt be confeſſed, for the Pannel's conceiving a violent, and even a mortal Enmity againſt *Glenure!* And yet nothing is more certain, than that violent Offence may be taken, where no juſt, or even plauſible Cauſe for it hath been given: And, from the firſt Murder recorded in ſacred Hiſtory, down to this now in Queſtion, often hath it happened, that wicked Men have hated their Brothers without a Cauſe, that is, without a Reaſon or juſt Cauſe, tho' there was always an Occaſion, or a Motive, ſuch as it was, for that Hatred being conceived.

Again, it is to be conſidered, that Occaſions of Offence operate differently, according to the Education, Temper, and Character of the Party who meets with them; and we have now heard from the Evidence in this Trial, what a wrong Way of thinking this unfortunate Pannel is poſſeſſed of, in holding it to be a Cauſe of mortal Enmity, that a Man ſhould be removed by another from his Farm or Poſſeſſion which he hath no manner of Title to hold or retain; which is a Prejudice or Deluſion, that, in a lower Degree, prevails elſewhere, but ſeems to be in a particular Manner prevalent in the Highlands, and was the Cauſe of the Attempt made by the *Macphersons* to aſſaſſinate *Glenbucket* ſome Years ago, as well as the Cauſe of the horrid Murder into which you are now inquiring.

And, for one Proof that this Pannel is deeply poiſoned with this moſt erroneous Opinion, you heard, Gentlemen, a little while ago the Objection that was by him made to *Alexander Stewart* ſenior in *Lagnahaw*, one of the Witneſſes in the Liſt ſerved upon him, and called up to give Evidence againſt him, to whom the Pannel objected, that this Witneſs bore Enmity againſt him, for that the Witneſs was formerly in Poſſeſſion of the Lands of *Aucharn*, which the Pannel now holds under Mr. *Campbell* of *Airds*; and that the Pannel had cauſed the Witneſs to be removed from that Poſſeſſion, and ſucceeded him in it: An Objection in itſelf inſufficient in Point of Law, which cannot ſuppoſe Men to be ſo wicked as to entertain mortal Enmity for ſuch a Cauſe; and therefore, as you heard, it was over-ruled by the Court; notwithſtanding which we freely paſſed from the Witneſs, being ſatisfied that we had Evidence enough beſides, and unwilling to leave any Room for the Pannel to complain, or for you, Gentlemen of the Jury, to apprehend that any one Witneſs was uſed againſt him, of whoſe Credibility there could be the ſmalleſt Suſpicion; but the very moving of ſuch Objection on the Part of the Pannel, affords one Proof of his own Senſe of the Nature and Degree of ſuch Offence.

Another ſignal Proof of this appears from the Oath of *Ewan Macintyre*, late Herd in *Glenduror*, who hath depoſed, " That he engaged to be " Herd to Mr. *Campbell* of *Ballieveolan* in the Farm of *Glenduror*, for the " Year 1751; and that, the Day after he entered into his Service there, " the Pannel challenged him for accepting thereof, and told him, that he " would be *fit-ſides* with him ſooner or later for doing it; and that, if " he did not meet with Reſentment himſelf in his Life-time, others, ſuch " as his Friends, might meet with it after his Death." And adds, " That " he himſelf was never in the Pannel's Service." This was ſurely carrying this Deluſion to a moſt extravagant Pitch, and ſuch as, to any Stranger to this odd Way of thinking, muſt have appeared incredible, till he heard the Proof of a Fact, which demonſtrates how deeply that Opinion is rooted in the Mind of this Pannel.

And, accordingly, we have heard how that was farther diſplayed by his Words and by his Actions on other Occaſions, in reſpect of the deceaſed *Glenure*, for the Cauſes of Offence I have mentioned, by the Evidence I ſhall now point out.

And firſt of all, *John Breck Maccoll*, the Bouman to *Appin* (who, tho' he lives in a Deſart, appeared, to me, to have given his Evidence in a moſt natural ingenuous Manner; and, by his own Words and Behaviour related in it, diſcovers a Degree of Sagacity which, in a Perſon of his Situation, ſurpriſed me; and) upon the Article I am now ſpeaking of, he depoſes, " That, in a Converſation the Deponent had with the Pannel, " as the Deponent beſt remembers, about two Years ago," (whether he was herein accurate in the Chronology, is not eſſential to the Queſtion in Iſſue) " Mention being made of *Glenure*'s being about to take on himſelf " the Management of the Eſtate of *Ardſhiel* from the ſaid Pannel, and " thereby diſable the Pannel from being of any Service to *Ardſhiel*'s Chil- " dren, he heard the Pannel ſay, he would be willing to ſpend a Shot " upon *Glenure*, tho' he went upon his Knees to his Window to fire it: " And farther depoſes, That he heard a *waif* (that is a flying or uncer- " tain Rumour or) Report in the Country, that *Ardſhiel* (the attainted " Perſon) had ſent Home a Meſſage, that he believed all his Friends were " dead, when *Glenure* was allowed to go on at the Rate he did."

Again,

Again, another remarkable Converſation of the Pannel's in the ſame Spirit, but carried a good deal farther, is proved to have happened about *Chriſtmas* laſt 1751, within the Pannel's own Brewhouſe at *Aucharn*, betwixt him and three of his own Servants, who all concur in proving it, namely, *John More Maccoll*, *Dougal Maccoll*, and *John Beg Maccoll*; of whom the firſt hath depoſed, " That he was preſent at a Converſation " that happened betwixt the Pannel, *John Beg* and *Dougal Maccolls*, both " Servants to the Pannel, in his Brew-houſe at *Aucharn*, before Day-" light, upon a Morning about *Yule* (or *Chriſtmas*) laſt, as the Deponent " beſt remembers: That the Deponent was then employed in diſtilling " the ſecond Draught of a Brewing of Aquavitæ, and the Pannel or-" dered the Deponent to give him, and People preſent, a Dram; which " the Deponent did: That the Pannel ſaid, *Glenure* would not take " the Rent from the Tenants of *Aucharn*, Part of the *Ardſhiel* Eſtate, " becauſe they had given the Pannel ſome Barley, which *Glenure* alledg-" ed they ought to have paid him: That the Pannel complained, it was " hard to refuſe the Rent in Money from the Tenants in a ſcarce Year; " and obſerved, that it would be of no great Conſequence to him, the " Pannel, tho' he ſhould pay back the Barley, in compariſon of what " it would be to the Tenants for ſubſequent Years, in caſe they were " obliged to pay their Farm, Bear and Meal," *(to-wit, in Kind according to their Leaſes)* " and ſaid the Tenants or Commoners were likely to be " very ill off; for, if *Glenure* went on in the Way he then did, it was " likely he would be Laird of *Appin* in a very ſhort Time; and *that he* " *knew once a Sett of* Commoners in *Appin*, who would not allow *Glenure* " to go on at ſuch a Rate: To which the Deponent and the reſt anſwer-" ed, That they knew no Commoners in the Country who could ſtrive " or contend with *Glenure* in that Manner."

This Converſation in the Brew-houſe is further proved or explained by the other two Servants preſent: And *John Beg Maccoll* adds this Circumſtance, " That after he and *Dugald Maccoll* went out of the Brew-" houſe, either that Day, or ſome time thereafter, they talked together " what the Import of this Converſation might be; and that the Depo-" nent was at a Loſs, whether to conſider it as an Encouragement *to de-" ſtroy Glenure*, or as a Complaint againſt the Commoners of *Appin*, as " not being ſo *faithful to the Pannel*, as he expected them to be."

It muſt be left to your Conſideration, Gentlemen, whether this *John Beg Maccoll* was not in the right in his Conjecture; and that this Converſation can receive no other Conſtruction, than that the Pannel took that Occaſion to inſtigate theſe Servants of his own, who were all of one Tribe, to reſent againſt *Glenure* the ſuppoſed Injuries to the common People of that Country, which the Pannel had thus repreſented and exaggerated to them; or at leaſt to feel their Pulſes, and try how they would reliſh ſuch a Propoſal or Inſinuation.

But farther ſtill, the Pannel continued to diſcover the Rancour with which his own Heart was filled againſt *Glenure*; the next Inſtance of which that hath appeared upon the Evidence, happened in *April* laſt, when he was on his Road to *Edinburgh*, with Intent to offer a Bill of Suſpenſion of the Removing of the Tenants that hath been mentioned: And here three Circumſtances are proved by the Teſtimonies of *Alexander Campbell* and *Ewan Murray*, two of his Landlords or Innkeepers by the Way, and *Colin Maclaren*, Merchant in *Stirling*, who fell into Company with the Pannel at both their Houſes, and travelled in the Pannel's Company ſome Miles on the Road towards *Stirling*.

Alexander Campbell in *Teynaluib* hath depoſed, " That in *April* laſt the " Pannel called at the Deponent's Houſe in the Morning, to have his Horſe " corned; and having called for, and got a Dram, which was afterwards " ſet down upon the Table, one *Maclaren*, a Merchant in *Stirling*, who " had lodged with the Deponent the Night before, being preſent, aſked " the Pannel, if he would not help the Deponent to a Dram? and the " Pannel anſwered, he did not know any Thing that he would help the " Deponent, or any of his Name to, if it was not to the Gibbet: And " after ſome farther Converſation, the Deponent ſaid, that *Glenure*, as " he ſuppoſed, was the Perſon of the (Deponent's) Name with whom " the Pannel had the greateſt Quarrel; and the Deponent did not know " any good Cauſe the Pannel had for it. To which the Pannel anſwer-" ed, That if *Glenure* had uſed the Deponent as ill as he had uſed him " (the Pannel), by turning him out of his Poſſeſſion, he would have no " leſs Quarrel with him than he had. And, upon the Pannel's Interro-" gatories, the Witneſs added, That at that Time he thought what the " Pannel ſaid proceeded from Malice, and that the Pannel was then " perfectly ſober."

This Converſation was confirmed by *Colin Maclaren*, the Merchant, who lodged in that Houſe all Night, who adds, " That the Pannel then " ſaid (ſpeaking of the *Campbells*) that he did not chuſe to be an Exe-" cutioner, but he could draw down ſome of their Feet;—and that at " firſt, during this Converſation in *Campbell*'s Houſe, he thought that " the Pannel had been in Joke, but afterwards it was like to become " very ſerious; for the Landlord and he came to pretty high Words " together."

The next Landlord, *Ewan Murray*, at the Weſt End of *Lochern*, hath depoſed, " That in *April* laſt, the Pannel, and *Colin Maclaren*, Merchant " in *Stirling*, came to the Deponent's Houſe, and the Pannel told the " Deponent, that *Glenure* had warned away ſeveral Families in *Ardſhiel*'s " Eſtate to remove; and that he was informed, that none of the Factors " on the forfeited Eſtates had Power to remove the Tenants; and that " he was going to *Edinburgh* to take Advice of Lawyers about it; and " if he had not that Power, that the Pannel would apply for Suſpenſion " in his own Name, and in Name of the reſt of the Tenants: And the " Converſation turning upon an Officer in the Army that was branded " with Cowardice, and had been broke on that Account; the Pannel " ſaid, That he had Reaſon to ſay, that *Glenure* was as great a Coward " as that Officer; for that he, the Pannel, had challenged him to fight " him, which *Glenure* declined; and deſired the Deponent to tell *Glenure*, " that he had told him ſo: But the Deponent anſwered, That he would " not carry any ſuch Meſſage from one Gentleman to another: And " from the Converſation, the Deponent underſtood, that the Arms " with which the Pannel had challenged *Glenure* to fight, was with " Piſtols."

And it is true, Gentlemen, that this Witneſs adds, upon the Pannel's Interrogatory, " That he thought the Pannel was a little con-" cerned with Drink; but if it was ſo, *tum veræ voces*."

This Converſation is again confirmed by Mr. *Maclaren*, the Pannel's Fellow-Traveller, in both the Parts of it; who adds this Circumſtance, That the latter Part of the Converſation happened upon the Road after they left that Houſe, and *Murray* the Landlord rode ſome Part of the Way along with them: And then Mr. *Maclaren* depoſes to a third Converſation betwixt himſelf and the Pannel, in theſe Words: " That, after " parting with *Ewan Murray*, in the Courſe of their Journey, the Depo-" nent found, *that the Removing was much at the Pannel's Heart*, and the " Deponent endeavoured all he could to divert the Converſation to an-" other Subject: That the Pannel told him, That if he failed in a Suſ-" penſion at *Edinburgh*, he would carry it to the *Britiſh* Parliament; " and if he failed there, told him, after a little Pauſe, and with an Em-" phaſis, that he behoved to take the *only other Remedy* that remained."

Theſe laſt Words, Gentlemen, need no Explanation; for ſurely, after the Judgment of the *Britiſh* Parliament, no other legal or lawful Remedy could remain.

And, as to the Condition of the Pannel during theſe Converſations, Mr. *Maclaren* farther depoſes, " That he did not think the " Pannel drunk either in *Campbell*'s Houſe, or in *Ewan Murray*'s " Houſe; but after leaving *Murray*'s Houſe, they drank two or three " Drams at a Dram-houſe, and after that the Deponent thought " him much concerned with Liquor; and it was after taking theſe " Drams that the Converſation between *Murray* and the Pannel, with " reſpect to challenging *Glenure*, happened; and that the Depo-" nent and the Pannel had rode ſeveral Miles together before the Con-" verſation about the *Britiſh* Parliament; and the Deponent thought him " even then ſtill concerned with Drink:" And very likely it was this that threw the Pannel ſo much off his Guard as to ſpeak out, to his Landlord and his Fellow-Traveller, ſo much of what lay deeply at his own Heart, and to tell upon himſelf this Matter of Fact about the Challenge he had given *Glenure* to fight him with Piſtols.

Such appearing to have been the Temper and Diſpoſition of the Pannel towards *Glenure* in the Month of *April* laſt, and before that Time; I ſhall next point out to you, Gentlemen, the Evidence concerning that of his Friend *Allan Breck*, who himſelf does not appear ever to have had any Acquaintance of, or Intercourſe with *Glenure* in his Life, but, by the Pannel's own ſhewing, was his Kinſman, and had been his Ward or Pupil; and, by *Breck*'s Character, and his then Situation, as being engaged in foreign Service, and not at Liberty to live openly in this Kingdom for any long Time, though he went about among his Highland Friends without any Scruple, he was a fitter Inſtrument of the Vengeance meditated againſt *Glenure*, than the *Maccolls* the Pannel's own Servants, or any of the common People of *Appin*, could be.

And, concerning this *Allan Breck*, *John Beg Maccoll*, one of the Pannel's Servants, hath depoſed, " That, in *March* laſt, he came to the " Pannel's Houſe, late in the Evening, dreſſed in a blue Coat, red " Waiſtcoat, black ſhag Breeches, and a feathered Hat," (that is in his *French* Dreſs, which the Witneſſes call a ſide or long Coat, in Oppoſition to the black ſhort Coat with ſilver Buttons belonging to the Pannel, which he was afterwards ſeen in; and, upon this his firſt Arrival, the Witneſs proceeds to depoſe,) " That he looked into the Kitchen, and " went immediately to the Room where the Pannel and his Family were; " that afterwards he uſed to go through the Country to different Places, " and came frequently back to the Pannel's Houſe: That once he re-" mained there a Week, which was the longeſt Time that he ſtaid there " at one Time."

Here is then the Intimacy ſtill ſubſiſting betwixt the Pannel and *Breck*, that naturally aroſe from the acknowledged Connexion betwixt them; the Pannel's Houſe was his Head-Quarters in the Country of *Appin*, from whence he made his Excurſions to viſit his other Friends in thoſe Parts; and, during the Pannel's Abſence on his Journey to *Edinburgh*, *Breck* went over to ſee his Relations in *Rannoch*. And it hath appeared upon the Evidence, how thoroughly Mr. *Breck* eſpouſed, and entered into the Notions and Sentiments of his old Guardian and Friend the now Pannel, with reſpect to *Glenure*.

And on this Head *Duncan Campbell*, Change-keeper at *Annat*, depoſes, " That, in the Month of *April* laſt, the Deponent met with *Allan* " *Breck Stewart*, with whom he was not before acquainted, and *John* " *Stewart* of *Auchnacoan*, at the Houſe of the Walk-miller of *Acheſ-" ragan*, and went on with them to the Houſe; that *Allan Breck* ſaid, " that he hated all the Name of *Campbell*; and the Deponent ſaid, he " had no Reaſon for doing ſo; but *Allan* ſaid he had very good Reaſon " for it: That thereafter they left that Houſe; and, after drinking a Dram " at another Houſe, came to the Deponent's Houſe, where they went in, " drunk ſome Drams, and *Allan Breck* renewed the former Converſation; " and the Deponent making the ſame Anſwer, *Allan* ſaid, That if the " Deponent had any Reſpect for his Friends, he would tell them, that " if they offered to turn out the Poſſeſſors of *Ardſhiel*'s Eſtate, he would " make *black Cocks* of them before they entered into Poſſeſſion; by which " the Deponent underſtood ſhooting them, it being a common Phraſe in " the Country: That *John Stewart* ſaid he did not blame *Glenure* ſo much " as *Ballieveolan*, for taking thoſe Poſſeſſions, whereas *Glenure* was doing " the King's Service: And *Allan Breck* replied, That beſides that, he had " another Ground of Quarrel againſt *Glenure*, for writing to Colonel " *Crawfurd*, that he, *Allan*, was come Home from *France*; but that he " was too cunning for him; for that, when at *Edinburgh*, he had made " up his Peace with General *Churchill*, and had got his Paſs, which he " had in his Pocket-Book: That the Deponent aſked a Sight of it; " that he ſearched his Pocket-Book, but could not find it; upon which " he tore a Leaf out of the Book, and ſaid, There it was. And depoſes, " That he ſaid twenty Times over, he would be *fit-ſides* with *Glenure* " where-ever he met him, and wanted nothing more, than to meet him " at a convenient Place."

This Converſation is confirmed by *Anne Maclaren*, Servant to the ſaid *Duncan Campbell*, who depoſes, " That ſhe heard *Allan Breck* then ſay, " That he would *not ſhun* Glenure, where-ever he met him; by which " ſhe underſtood, that he was to do Hurt or Harm to *Glenure*, where-ever " he ſaw him."

And it is farther confirmed by *Angus Macdonald*, the Walk-miller mentioned by *Duncan Campbell*, and by *Robert Stewart*, a fourth Person present in the Company, who adds indeed, that *Allan Breck* was much in Drink at the Time of uttering the above Expressions; but they are not the less to be regarded in this Trial, when the *Occasion* of these *Threats*, the *Repetition* of them, and, last of all, the fatal *Execution* hath been at the same Time proved before you.

Another like Conversation of *Allan Breck*'s was proved to have happened at the House of *Malcolm Maccoll*, Change-keeper at *Pertnacrosh*, by the Landlord, and by *Anne* his Wife, who depose, "That, one Morning "in *April* last, *Allan Breck* being in his House with *John Stewart*, *John* "*Maccoll*, then Servant to the Deponent, came into the Company in a "shabby Condition; that *Allan Breck* asked who he was? that the said "*John Stewart* answered, That he was an honest poor Man, with a nume-"rous Family of small Children, and that it would be great Charity in "any body to assist him; upon which *Allan Breck* desired the said *John* "*Stewart* to give the said *John Maccoll* a Stone of Meal, and he would pay "for it, which the said *John Stewart* promised to do: That the said *Allan* "then gave the said *John Maccoll* a Dram, and told him, if he would fetch "him *the Red Fox's Skin*, he would give him what was much better.— "And depose, That they gave no great Notice to these Expressions at the "Time; but, after they heard of *Glenure*'s Murder, believed he meant "*Glenure*, as he was commonly called *Colin Roy*, which means *Red Colin*, "in the Country."

A third and very remarkable Instance of *Allan Breck*'s Conversations on this Subject, was one which he held with two of the Pannel's Servants above-mentioned, *Dugald* and *John More Maccolls*; whereof the former deposes, "That as he and *John Maccoll* were harrowing in a Field belong-"ing to the Pannel at *Auchairn*, being the same Day, or the Day after the "Pannel went for *Edinburgh*, (that is, on the 3d or 4th of *April*) *Allan* "*Breck Stewart* walked for a good Time about the Field; and as they were "looshing their Horses, the said *Allan Breck* and they entered into Conver-"sation about *France*, and People from this Country there; and *John More* "*Maccoll* asked, if there was any Prospect of any of them coming back? "Upon *Allan Breck*'s answering, he was afraid they would not, *John More* "said, he wished that none had ever come from that Country; in which "the said *Allan* joined him, saying, it had dispersed the Friends he most "regarded; and (then added) that it was a particular Misfortune, that the "Management of any Concerns they left behind them, fell into the Hands "of one that was about to shew them no Manner of Favour; and declar-"ed, that he meant *Glenure*; and told, that the Commoners of *Appin* were "little worth, when they did not take him out of the Way before now; "and upon their saying, nobody would run that Risque, not knowing who "would stand by them; *Allan Breck* answered, That he knew how to con-"vey out of the Way any Person that would do so, that he would never "be catched; and also said, That they, and the Tribe they were of, "(meaning the *Maccolls*) were not like to be the least Sufferers by *Glen-*"*ure*'s Proceedings."

John More Maccoll swears to the same Conversation at the *harrowing*, and deposes, that *Allan Breck* then said, "If they, the Commoners of "*Appin*, were worth themselves, they could keep out *Glenure*, and hinder "him from oppressing them; in which Case they would not be banished "from their natural Possessions; and, upon the Deponent's answering, "he did not see how any body could pretend to strive or struggle with "*Glenure* in that Way, as he had the Laws of the King and Country for "him, and nobody to support or take them by the Hand after their so do-"ing; *Allan* said, he had it in his Power to save or protect any body that "would put *Glenure* from trampling upon the Country in the Manner he "then did."

Here then was *Allan Breck* the Pupil, in Spring last, a few Weeks before the Murder happened, speaking the very *same Language*, and using the *same Arguments*, with two of these *Maccolls*, the Servants of the Pannel, with which the Pannel himself had been practising upon them in his own *Brew-house* about *Christmas last*; and this Conversation of *Breck*'s was not like the former, after drinking Drams in Change-houses, but when he was sober and cool, walking in the Fields about the Pannel's House, which was in effect his Home.

And, to the Evidence on this Article, may be added, what the Pannel himself hath declared at his first Examination before the Sheriff-Substitute, which has been proved and read in your Presence, when, being interrogated, "If he had any Conversation with *Allan Breck* concerning *Glenure?* "answered, That the said *Allan* asked the Declarant, if he heard that Ser-"jeant *More (Cameron)* was come from *France*, or if he was in the Country "of *Appin?* To which the Declarant answered, That he did not hear he was "in *Appin*, but he heard he was in *Glenetive* last Year; whereupon the said "*Allan* told the Declarant, that Serjeant *More* swore he would kill *Glen-*"*ure*, because of the Treatment he gave the Tenants on the Estate of "*Mamore*, Part of *Lochiel* Estate. Declared also, That the said *Allan* "*Breck* threatened that he would challenge *Ballievoolan* and his Sons to "fight, because of his removing the Declarant last Year from *Glenduror*, "and being about to remove the other Tenants this Year from some other "Parts of the Estate of *Ardshiel*."

Now, as to the Mention here made by the Pannel of Serjeant *More Cameron*, I shall hereafter have Occasion to take Notice of the Use the Pannel made of it; but have here only to observe, that the *Causes of Offence*, for which the Pannel says *Breck* threatened to fight *Ballievoolan*, were the very same which the Pannel himself, as well as *Breck*, resented so highly against *Glenure*, namely, the removing the Pannel himself from *Glenduror* the last Year, and being about to remove other Tenants of *Ardshiel* this Year: And though the Pannel carefully avoids saying any thing of *Breck*'s Threatenings against *Glenure*, after he had been actually murdered, and had attempted to throw the Suspicion of that upon Serjeant *More*; yet here, by the Pannel's own shewing, *Breck* had entered thoroughly into *those Quarrels of his* for the *actual Removal* of himself, and the *intended Removal* of others, and threatened to challenge and fight *Ballievoolan* upon that Account.

And as to the other Ground of Quarrel against *Glenure*, which *Allan Breck* mentions in one of the above Conversations, namely, for his supposed writing to Colonel *Crawfurd*, that he, *Allan*, was come Home from *France*, I shall not take upon me to explain, or to guess in what Manner *Allan Breck* came to be possessed with such a Conceit; because we have heard no Evidence concerning the Manner in which he received such Piece of false Information or Intelligence; for that it was false hath been fully proved before you. First of all, Colonel *Crawfurd* himself "being asked whe-"ther the deceased *Colin Campbell* of *Glenure* ever told him, that *Allan* "*Breck Stewart* was a Deserter, and in this Country; hath answered upon "Oath, in the *negative*."

And next, Mr. *Campbell* of *Airds* hath deposed, That, in Spring last, "he had a Letter from Colonel *Crawfurd*, telling him, that he heard *Allan* "*Breck Stewart* was come to the Country, and inlisting Men for the *French* "King's Service, and desired the Deponent to inquire if it was so: That "the Deponent did inquire, and wrote the Colonel for Answer, That he "heard he had been in the Country, but that he was then gone away: "That this was in the Month of *April*, to the best of the Deponent's "Remembrance; and it seems about that Time *Allan Breck Stewart* had "gone to *Rannoch*, which gave Occasion to the Deponent's being informed "that he was gone away, and did not hear of his having returned to the "Country till after *Glenure*'s Murder; and thinks he wrote also to Colo-"nel *Crawfurd*, according to the Information he had got, that *Allan* "*Breck Stewart* was in use of coming every Year to the Country since "*Ardshiel* went to *France*."

And *Alexander Stewart* of *Innernahyle* deposes, "That he remembers that "*Allan Breck Stewart* came over to this Country a Year or two ago, and "staid some Weeks among his Friends; but neither at that Time, nor the "last Time, did he seem, so far as the Deponent observed, to be in any "Apprehension of being taken; only, as he had been once in the Army, "he did not chuse to meet with any of the King's Troops."

And besides all this, it hath appeared in the Proof before you, that *Breck Stewart* remained in the Country, as usual, a full Month or more, after he had mentioned the supposed Notice given concerning him by *Glenure* to Colonel *Crawfurd*; and it hath not been proved, or even alledg-ed, that in pursuance of that Notice, whoever gave it, there was any Search made for *Breck*, or the smallest Disquiet given to him, or any Alarm or Precautions taken by him, till after the Murder of *Glenure*: To say nothing therefore of the Injustice of that Cause of Offence, had it been true, that *Glenure*, a good Subject to his Majesty, formerly a military, and still a civil Officer in his Service, had given Notice to the command-ing Officer in a neighbouring Garrison, of such a Person as *Breck Stewart*, a late Rebel, a Deserter, or a *French* Emissary, possibly for raising Recruits, being then lately come into that Country; I have only to observe on this Occasion, that in Fact it is incredible, that *Breck Stewart* himself, upon a bare Surmise, which was not true, that *Glenure* had given such Notice to Colonel *Crawfurd*, and upon which no Molestation followed to himself, should have conceived or prosecuted a deadly Hatred against *Glenure*; and therefore the true Cause of that Enmity must have been the other main Quarrel or Cause of Offence, which was first taken up by the now Pannel, and thereafter adopted and espoused by *Breck* in the Manner that you have heard.

And, for the Truth of this Observation, we have the Authority of the Pannel himself, who had the best Opportunity to be thoroughly acquaint-ed with *Allan Breck*'s Sentiments; for, in the Pannel's Examination that hath been read before you, he says, "That how soon the Declarant heard "of *Glenure*'s Murder, it came into his Mind, that Serjeant *More* had done "it, because *Allan Breck* had told him, that the said Serjeant swore bloody "Revenge against *Glenure*, before the Serjeant came from *France*, upon "Account of *Glenure*'s Treatment of *Lochiel*'s Tenants, and his differing "with *John Cameron* of *Fassafern*, Brother to *Lochiel*: That the Decla-"rant's Reason for suspecting *Allan Breck* afterwards was, because he left "the Country abruptly, without taking Leave of him, as he expected; "and, if the said *Allan* was guilty of the said Murder, he believes it be-"hoved to be on Account of the Disturbance given to the Tenants of the "Estate of *Ardshiel*, *and he knows no other*."

Thus, Gentlemen, stands the Evidence you have heard of the *Causes of Offence*, such as they were, that were *taken* by the Pannel and his Friend *Breck Stewart* against the late *Glenure*, and of the *Manner* in which their *Resentment* against him had been *expressed* and *displayed* in and before the Month of *April* last, when the Pannel went to *Edinburgh* to obtain a Sus-pension for staying the Removings. And we must now proceed to examine the Evidence of the *Sequel* of these *Animosities* and *Threatenings*, and of the *fatal Execution* thereof by the *actual Murder* of *Glenure*, upon the very Eve of *Whitsunday*, or the 15th of *May*, when he was to have proceeded to the removing of the Tenants of *Ardshiel*, after he had, upon Answers made, obtained the Bill of Suspension offered by the Pannel to be refused or dis-missed; whereby the Pannel's *last Effort*, to prevent those Removings, and to preserve his own Authority or Influence with the Tenants of *Ard-shiel*, had been frustrated.

On the 27th *April* last, by the Pannel's own Account, he returned to his own House from *Edinburgh*, with the Order he had obtained on his Bill of Suspension, that the same should be answered, and a Sist or Stay of Proceeding in the *Interim*; soon after which, he called the Tenants, and gave them Notice what he had been doing for them, and sent them with his Notary to intimate the Sist to *Glenure*; which was accordingly done on the 1st of *May*, as *Charles Stewart*, the Notary, hath deposed.

On *Saturday* the 9th of *May*, *Glenure* returned to his own House from *Edinburgh*, whither he had gone to make an Answer to that Bill of Sus-pension that had been intimated to him; and, upon that Answer, had got the same refused or dismissed; and gave out, in his Family, his Resolution, after reposing himself that *Sunday* at Home, to set out on *Monday* the 11th for *Fort-William*, in order to settle the Affairs of his Factory on the *Lochiel* Estate, and to return to *Appin* or *Ardshiel* before the 15th.

At this Time *Allan Breck Stewart* is proved to have been at the House of *John Stewart* of *Fasnacloich*, distant but one Mile from *Glenure*'s House, which, in that Country, is near Neighbourhood; and there accompanied by *Charles*, one of the Pannel's Sons, where *Allan Breck* had Opportunity to get Intelligence of the Motions of *Glenure*; which accordingly he re-ceived from his Landlord *John Stewart* the elder of *Fasnacloich*, who hath

deposed, " That he told *Allan Breck*, that *Glenure* was come from *Edin-*
" *burgh*, with a Warrant to remove the Tenants; to which *Allan Breck*
" said, That if there was a Warrant, there was no more to be said; but
" that if he had no Warrant, he would not be allowed to remove them:
" And the Witness adds, That he heard, on *Sunday* the 10th of *May*,
" that *Glenure* was going to *Fort-William*; and *Allan Breck* left his House
" about Nine o'Clock *Monday* Morning."

This is confirmed by *James Stewart* the younger of *Fasnacloich*, who adds, " That *Breck* was then in his *French* Dress, and that, when he
" went away on *Monday* the 11th, about Nine in the Morning, he
" told the Family that he was going to leave the Country soon, but
" would see them again at *Fasnacloich* before he went away: And further
" says, That, on *Sunday* the 10th, he heard, being in Company with
" *Allan Breck*, that *Glenure* had got an Order from *Edinburgh* to remove
" the Tenants, and was gone to *Fort-William*."

From *Fasnacloich*, *Allan Breck* came directly the same Day to the Pannel's House at *Aucharn*, where, soon after, he *put off* his *French Cloaths*, and *put on* the *black* or dark-coloured *short Coat* belonging to the *Pannel* with silver Buttons, with a Bonnet or Trowsers, being, as several of the Pannel's Servants have deposed, the second Time they ever saw him in that Dress; the only former Time having been, when *Breck* went in these Cloaths for some Days to *Rannoch* in *April* preceding, whilst the Pannel was at *Edinburgh*.

And now the Pannel himself hath declared, " That he was informed
" on *Monday* the 11th of *May*, by his Son *Charles*, *Allan Breck*, and *Fas-*
" *nacloich*'s Daughter, that they heard *Glenure* was to go to *Lochaber* that
" Day; and that one or other of them told him, that *Glenure* was to re-
" move the Tenants of *Ardshiel*."

By the Communication of this Intelligence, it appeared, that the Matter in Dispute was coming to a *Crisis*; the laborious Efforts made by the Pannel, in going to *Edinburgh*, of his own Accord, to get a Stop put to the Removing, he now saw were rendered ineffectual, by Means of *Glenure*'s having gone thither after him: And it is presumeable from the *Facts* that *preceded*, and that *followed this Day*, that this was the Time when the Pannel and *Breck*, at his own House, concerted, that *Glenure* should be cut off by the Hands of *Breck*, upon his Return from *Fort-William* into that Country of *Appin*; and, as it appears from the Evidence, that the Pannel at this Time was low in Cash, the Facts that have been proved serve to evince, or to render it further presumeable, that at this Time it was *concerted* betwixt the Pannel and *Breck*, that the latter, as soon as his Work was done, should retire to the Desart of *Koalisnacoan*, and there wait, till *either* the Pannel *sent* him a Supply of *Money* to carry him off, or caused the Money to be *furnished* by his Friend and Correspondent, *William Stewart*, Merchant in *Maryburgh*.

It is true, that for some Hours of this *Monday* the 11th, the Pannel went from his own House, upon a Message from Mr. *Campbell* of *Airds*; but he returned Home in the Evening; and in the *Disposition* that both *he* and *Breck Stewart* had long been in towards *Glenure*, which was now more *inflamed* by this *fresh Intelligence* they had received, that *Glenure* had got the better of them at Law, and was about to proceed in the Removings, a very short Consultation betwixt them might serve to make all *this Concert*; the Evidence of which arises from the *ensuing Facts*, joined with those *preceding* this 11th of *May*.

For it hath been proved, that on the Morning of *Tuesday* the 12th, *Allan Breck* set out from the Pannel's House, dressed in his short Cloaths, and went directly to the House belonging to *Stewart* of *Ballachelish*, adjoining to the Ferry of that Name, upon the Road by which *Glenure* was to come from *Fort-William* into *Appin*; and there *Breck* met his Friend *Stewart* the younger of *Fasnacloich*, who hath deposed, " That he took
" Notice to *Allan Breck*, that he had *changed his Dress*; who answered,
" That he did it because the *Day was warm*:" And adds, " That the
" Deponent was informed at *Ballachelish*, in Company with *Allan Breck*,
" that *Glenure* was gone to *Fort-William*."

The same Day *Allan Breck* went, accompanied by *Fasnacloich* the younger, to the House of *Macdonald* of *Glenco*, where his Mother-in-Law, the Pannel, and *Ardshiel*'s Sister, also lived; and from thence, after staying about an Hour, went a-cross the Ferry to the House of *Cameron* of *Callart*, where another Sister of the Pannel and of *Ardshiel* lives, and where he lodged all that Night; and next Day, being *Wednesday* the 13th, came back, after calling again by the Way at *Glenco*'s House of *Carnoch* to *Ballachelish*, where he remained the Night following.

And now, Gentlemen, we are come to the fatal Day, which was *Thursday* the 14th of *May* last, of which, and the Days immediately following, the various Events and Incidents that have been proved before you, merit your particular Attention, as I endeavour to put you in mind of them, as nearly as possible in their Order.

On the Morning of this *Thursday* the 14th, about Seven or Eight, as *John Beg Maccoll*, the Pannel's Servant, hath deposed, " The Pannel sent
" him off with a Letter to *Charles Stewart*, Notary Public at *Maryburgh*,
" and told the Deponent, that the Letter was to make, or cause the said
" *Charles Stewart* come to the Country of *Appin*, to protest against *Glenure*,
" in case he had not a sufficient Warrant to remove the Tenants of *Ard-*
" *shiel*;—and also told the Deponent, he was to get some Money from
" *William Stewart*, Merchant at *Maryburgh*, to pay four Milk Cows that
" were bought for him in the Country; and that if the Money was not
" sent, he would not get the Cows; and that the Pannel desired the De-
" ponent *to make all possible Dispatch*:—That accordingly he made all the
" Dispatch he could to *Fort-William*, where he arrived about Twelve
" o'Clock, delivered the Pannel's Letter to *William Stewart*, Merchant;
" who told him, that *Charles Stewart*, the Notary, was not at Home;
" but that there was a Notary along with *Glenure*, who would serve the
" Pannel as well as *Glenure*; and further told the Deponent, that he, the
" said *William*, had wrote to the Pannel in the Morning; that the said
" *William* did not give him any Money, but said, he would send Servants
" for the Cattle."

The Reason why he got no Money at this Time, is explained by *William Stewart* himself, who deposes, " That he gave no Answer in Writ-
" ing, and thinks he did not give any verbal Answer, if it was not, that
" he bid him tell his Master, that he was not in Cash, which (he says)
" was the Case."

The Letter itself, sent from the Pannel by this Witness, hath been produced, and proved before you; and the Postscript of it is in these Words, which I will now repeat, though they are inserted in the Libel: " As I have no Time to write to *William*, let him *send down immediately*
" 8 *l. Sterling*, to pay four Milk Cows I bought for his Use at *Ardshiel*."
——The Pannel must have had a very pressing Use for Money, when he was thus urging the Payment of the Price before the Buyer received the Cattle; and let it be observed, that *this first Express* sent with this *Demand of Money* from *William Stewart*, was dispatched by the Pannel on the *Morning* of the Day on which the Murder happened in the *Evening*.

Again, you are here to observe the *Connexion* betwixt the Pannel and this *William Stewart* at *Maryburgh*, who appears, by the *Letter* which he mentioned to the Messenger as having been sent by him that Morning to the Pannel, to have entered with great Zeal into the Pannel's Scheme for opposing the Removing of the Tenants; for that Letter also hath been proved before you, and contains these Words: " I find *Glenure* has a
" mind to eject the Tenants; but they ought to be deaf to it, and, at
" all Risques, keep Possession, as they are in good Hands, and it must
" end in Exchequer; so that I beg they keep Possession: as there will be
" no *Troops*, they ought to *repel Force by Force*, and take their Hazard
" of the Consequence, as it can be no more than violent Profits."

About *Noon* on this *Thursday* the 14th, as *Ballachelish* elder hath deposed, " His Guest *Allan Breck* went out with a Fishing-rod in his Hand,
" and was fishing in a Burn near the Deponent's House; but he did not
" see him take any: That he did not take Leave of the Deponent, and
" did not return, and he knows nothing of him since."

Archibald Macinnish, the Ferry-man at *Ballachelish*, deposes, " That,
" *after Mid-day* upon *Thursday* the 14th of *May* last, as the Deponent was
" sitting near the said Ferry with another Man, *Allan Breck* came be-
" hind him, and hoasted (or hemmed), and, upon the Deponent's looking
" about, desired him to come to him; which the Deponent did, and the
" said *Allan* enquired of him, *if* Glenure *had crossed the Ferry* from *Loch-*
" *aber* to *Appin?* The Deponent told him he was *sure he had not*: That
" upon this *Allan Breck* went away towards the High Road, had on a
" dun-coloured big Coat, and had no Fishing-rod. And further deposes,
" That *Glenure* was expected back upon the *Wednesday*, and the Depo-
" nent was sure he must be back the *Thursday*, as it was currently reported
" in the Country, he was to have a Meeting with some Gentlemen at
" *Kintalline* (on the *Ardshiel* Estate) *Thursday* Night."

These Ferry-men have Opportunity to learn all the News in the Country; and that his Intelligence upon this last Article was just concerning the Motions of *Glenure*; and that the same were well known, is further proved by *John Maccombich*, Change-keeper at *Kintalline*, who hath deposed, " That upon *Tuesday* the 12th of *May*, *Glenure* sent Notice to the
" Deponent, that he and some other Company were to be at his House
" upon *Thursday* then next, and desired that he might be prepared for en-
" tertaining them: That he accordingly made Provision for them; that
" he told that *Glenure* was to be at his House that Night, and that the
" whole Neighbourhood knew of it."

And accordingly it hath been proved by the Persons who were in Company with *Glenure*, *Mungo Campbell* who attended him as a Clerk or Writer, *John Mackenzie* his Servant, *Donald Kennedy* one of the Sheriff's Officers, that *Glenure* and they crossed the Ferry of *Ballachelish* betwixt Four and Five in the Afternoon of this Day; that, after crossing the Ferry, *Ballachelish* elder walked along with *Glenure* about half a Mile, till they came to the Skirts of the Wood of *Lettermore*, where *Glenure*, pursuing his Journey through the Wood, which stood on the Ascent of the Hill on his left Hand, was suddenly shot through the Body with two Balls, that entered behind his Back, and came out at his Belly; of which Wounds he died upon the Spot about Six o'Clock that same Evening.

It is unnecessary for me to repeat the several moving Circumstances related by his Attendants; but if this base and cruel Murder was truly perpetrated by *Allan Breck Stewart*, who had expressed his Wishes to meet *Glenure at a convenient Place*, it must be confessed with Regret, that he here met him, or rather, in a base and cowardly Manner, *lay in wait* for him, at a Place *convenient* indeed for that wicked Purpose, for *concealing* himself whilst he went about it, and not far distant from a proper Place of *Retreat*, after it should be over, until he should be put in a Condition to leave the Country; for which a Supply of Money was necessary.

The News of the Murder was quickly brought to the House of the Pannel, by *John Mackenzie*, the Servant of the Deceased, who went there to get Intelligence of Mr. *Campbell* of *Ballieveolan*; " Where the Pannel see-
" ing him weeping, asked what the Matter was? And the Servant having
" told him his Master was killed, the Pannel wrung his Hands, expressed
" great Concern at what had happened, as what might bring innocent
" People to Trouble, and prayed that might not happen."

And *John Beg Maccoll*, the Pannel's Servant, who had been sent Express that Morning to *Fort-William*, and who was present at this Circumstance, relates it in these Words: " That he was hardly an Hour re-
" turned Home, when *Glenure*'s Servant came to the Door, calling for
" the Pannel; that the Pannel went immediately to the Door, and asked
" the Servant what was the Matter? and what News he had? To which
" the Servant replied, The worst I ever had; my Master is murdered in
" the Wood of *Lettermore*: Upon which the Pannel said, Lord bless me!
" was he shot? To which the Servant answered, That he was shot, and
" said, the Pannel ought to go and take care of his Corpse: That the
" Servant immediately went off; but neither the Pannel, nor any of his
" Family, went near the Corpse; and the Pannel said, that as he and
" *Glenure* were *not in good Terms*, and some of the People that were to
" meet *Glenure* had *Arms*, he did not care to go near them, not knowing
" what might happen. And further said, that this was a dreadful Acci-
" dent, and he was afraid would bring Trouble on the Country; and
" appeared to be sorry for what had happened."

Here it is evident, that as soon as the *Deed* was *over*, the Pannel's first Reflection, from whatever Cause that sprung, was an *Apprehension*, that it might bring himself into Trouble or Danger.

That same Night, at the Pannel's House, Orders were given to the Servants by his Wife, to *hide all the Arms* about the House; and accordingly *John Beg Maccoll* and *Dugald Maccoll* hid a large *Spanish* Gun, that used to stand in the Brew-house, and four Swords.

But

But here it is remarkable, that none of the Servants saw that Night the *other shorter Gun*, but of a *larger Bore*, as you have seen, both having been produced, and proved before you; concerning which *Dugald Maccoll* deposes, "That *Allan Stewart*, Son to the Pannel, told "him and his Fellow-Servant, that he himself had concealed the lesser "(or shorter) Gun, that used to stand at the End of the Girnel in the "Barn, under the said Girnel, where he thought it would be safe."

That same Night, and after the Murder was over, two Witnesses have deposed, That they saw *Allan Breck Stewart* on the *Hill* above the House of *Ballachelish*, where he had lodged the Night before, and not far from the *Spot* where the Murder happened. These were *Katharine Mackinnish*, Servant to *Ballachelish*, a Witness called by the Pannel, who says, "That "in the Evening of the 14th of *May*, she saw *Allan Breck Stewart* at a "*Goat-house* in the *Moor* of *Ballachelish*, after *Glenure* was killed; and "that *Allan Breck* then asked her, what was the Occasion of the Stir in "the Town? and that she told him, *Glenure* was murdered: And fur-"ther asked her, who might have committed the Murder? and she told "him, she did not know: And farther says, that she told *Donald Stew-*"*art*, (who is Nephew and Son-in-law to *Ballachelish*) where she saw "*Allan Breck*; but that she did not tell him to go to the said *Allan*, nor did "he desire her."

And this *Donald Stewart* deposes, "That upon the Evening of *Thurs-*"*day* the 14th of *May*, about Night-fall, *Katharine Mackinnish* called "him out of *Ballachelish*'s House, and informed him, that *Allan Breck* "wanted him, and that he was a little above the House on the Brae (or "Hill): That the Deponent went up the Brae, and met *Allan Breck*, "who was then dressed in a great Coat, and a dark short Coat under it, "with white metal Buttons: The Deponent told him of the Murder, and "said, *It could not be but that he*, Allan Breck, *was about it:* To which "*Allan Breck* answered, That he *heard* of the Murder, but had no hand in "it: To which the Deponent replied, *he did not believe him:*—That the "said *Allan Breck* further said, he believed he would be suspected of the Mur-"der; and upon that Account, and as he was a Deserter formerly from "the Army, it was necessary for him to leave the Kingdom."

The Events of *Friday* the 15th of *May* last, immediately following the Murder committed on the Evening of *Thursday*, do no less merit your Attention, and these begin very early on that Day; for *John Macdonald* of *Glenco* deposes, "That on *Friday* the 15th of *May* last, the said *Allan* "*Breck Stewart* came again to the Deponent's House at *Carneck*, at Three "or Four o'Clock in the Morning, and knocked at a Window when the "Family were all in Bed; that the Deponent went to the Door of his "House, and there saw *Allan Breck*, who gave him the first Notice he "had of *Glenure*'s being murdered the Evening before in the Wood of "*Lettermore*; and told him, that he was to *leave the Country*, and to go "the *Moor-road* leading to *Rannoch*; and came to take Leave of the De-"ponent and his Step-mother, who is a Sister of *Ardshiel*'s; and that the "Deponent did not ask *Allan Breck* any Questions about the said Murder."

And with *Glenco* concurs *Isobel Stewart* his Step-mother, who also got up, and went out with her Step-son, to receive *Allan Breck*'s nocturnal Visit at the Door: And she says, "That she asked him, what News up "the Country? To which he answered, A good deal of News; that *Glen-*"*ure* was killed, or shot the Evening before, in the Wood of *Lettermore*: "That he was come to take Farewel of the Deponent; for he was to "leave the Country; and that she asked him *no more Questions* about the "Murder, though she asked him to come into the House; but he an-"swered, he would not stay."

Upon this Incident it is an obvious Reflection, that neither the Pannel's Sister, the Lady *Glenco*, nor her Son, judged it necessary to ask any Question of *Allan Breck* about the Murder, which he now related to them, as what had happened a few Hours before he came thus unseasonably and abruptly to take Leave: These Circumstances superseded the Question *as superfluous*, who it was that did it?

About *Ten o'Clock* in the *Forenoon* of this same *Friday* the 15th, *Donald Stewart*, the Nephew and Son-in-law of *Ballachelish*, deposes, "That "he met *James Stewart*, the Pannel, in *Duror*, not far from his own "House; and that, upon the Deponent's regretting that such an Acci-"dent, as *Glenure*'s Murder, should happen in the Country; the Pannel "joined with him, and said, that he was informed, that one Serjeant "*More, alias John Cameron*, had been threatening Harm to *Glenure* in "*France*; but did not inform the Deponent who told him so: And fur-"ther deposes, That, to his Knowledge, Serjeant *More* has not been in "*Appin* these ten Years past."

Now this very *Donald Stewart*, who is a Friend and Neighbour of the Pannel's, had, as you have heard, the Night before said to *Allan Breck* himself, *that he was surely the Murderer*, which was the Sense and Opinion of the whole Country; and yet here it is very remarkable, that, when the Thing was *recent*, and as somebody must have done it who was likely to be capable of such an Enormity, this Pannel, for want of a bet-ter Shift, is endeavouring to start a very improbable Hypothesis, and to throw the Suspicion on this Serjeant *More Cameron*, which, as it was destitute of any Foundation in Truth, gained no Sort of Credit or Belief; and you are to consider, Gentlemen, if it could be started by the Pannel, at this Time, for any other Purpose than to *divert* the Attention and the Suspicions of Mankind from his Friend *Allan Breck*.

The same Day about *Twelve o'Clock*, *Alexander Stewart*, travelling Packman in *Appin*, and *first Cousin* to *Allan Breck*, deposes, "That the "Pannel desired him to go to *Fort-William* to *William Stewart*, Merchant "there, and get from him *five Pounds, or five Guineas*; and told the De-"ponent, that *his Friend* Allan Breck *was about to leave the Country*, as "there were Troops coming into it, and that he *might be suspected of* "Glenure's *Murder*; and that it *was incumbent* upon him, the Pannel, "to *supply* the said *Allan Breck* with Money; and the Pannel desired the "Deponent to tell the said *William Stewart*, that he *must find him Money*, "though he should *borrow it from twenty Purses*; and also to tell him to "*give Credit in five Pounds Sterling to* John Breck Maccoll, *Bouman to* "Appin *at* Koalisnacoan, in case he came to demand such a Sum: That, "in Consequence of this *Message*, he went to *Fort-William*, where he "arrived early in the Evening, met *William Stewart*, delivered his Mes-"sage; that *William Stewart* told him, he had not Money, but that next "Morning he would give him his Errand."

William Stewart himself, who received this Message, deposes; "That "it was about Ten o'Clock Forenoon, or betwixt Ten and Twelve, that "he saw the Packman at *Fort-William*; and his Wife swears it was "about Mid-day;" and, if they are both in the right, the Packman himself must have been mistaken, when he says, that he was dispatched by the Pannel from *Aucharn*, so late as about Noon that Day; of which Circumstance I shall hereafter have Occasion to take some Notice.

William Stewart further deposes, "That, at this Time, he asked the "Packman, if he had come by the Road where that unlucky Murder "of *Glenure* had happened? and the Packman told him he did; but the "Deponent did not ask him who was suspected for it, nor had any other "Conversation on that Subject, there being a great many People present "in the Shop at the Time." But this Apology notwithstanding, (for all the People in the Shop at *Maryburgh* would have been ready to listen to News about such an uncommon Event) this *William Stewart*, who was so well acquainted with the *Cause of Difference* betwixt the *Pannel* and *Glenure*, being so *little inquisitive* on this Occasion of receiving a Message from the Pannel the Day after the Murder happened, seems to be no otherwise accountable, than by the Supposition that he knew so well who were *Glenure*'s *Enemies* at that Time, that it was improper or unne-cessary for him to be inquisitive about the Authors of his Murder.

Dugald Maccoll, the Pannel's Servant, deposes, "That, about Four "o'Clock in the Afternoon of this *Friday* the 15th of *May* last, the "Pannel desired the Deponent to carry the Arms from the Houses (at "*Aucharn*), and hide them in the Moor; that accordingly the Deponent, "and *John Beg Maccoll*, took the foresaid large Gun from the Back of "the Sheep-house under the Thatch, and the said four Swords from "under the Thatch of the Barn, and found the Gun that used to stand "in the Barn under the Girnel, where the said *Allan Stewart*, the Pan-"nel's Son, *said he hid it*, and carried them to the Moor, and hid them "in the Hole of a Rock above the Peat-moss: That the large or *Spanish* "Gun, that stood in the Brew-house, was charged with Powder and small "Drops; and that there was *no Shot* in the small or lesser Gun, that used "to stand at the End of the Girnel in the Barn: That they overtook "*Katharine Maccoll*, Servant to the Pannel, in the Brae above the House "of *Aucharn*, with a Pock or Sack, and something in it, under her Arm. "The Deponent asked her, what she had got in the Sack? to which she "answered, That it was *Allan Breck*'s *Cloaths*, and that she was going to "*hide them*; and the Deponent, and the said *John Beg Maccoll*, saw her "hide the Sack in which the said Cloaths were."

This is confirmed by the Oath of *John Beg Maccoll*, the other Servant, who says, "They were desired by the Pannel's Wife *to hide the Arms better*" (*i. e.* than they had done the Night before); and by the Oath of *Katha-rine Maccoll*, who says, "That, upon the Evening of this *Friday*, her "Mistress, the Pannel's Wife, put up a blue Coat and red Waistcoat, "with something else, into a Sack, and delivered them to the Deponent, "desiring her to hide them some way without: That her Mistress did not "tell the Deponent to whom the Cloaths belonged, but that the Depo-"nent thought the said Coat and Waistcoat were *Allan Breck*'s: And she "adds, That, some Time in Summer last, after the above Period, *Solomon* "*Bane Maccoll*, Servant to the Pannel, told the Deponent, that the said "Mrs. *Stewart*, Spouse to the Pannel, desired her to *conceal* what she "knew about the above Cloaths, in case she should be asked or examined "about them."

On *Saturday* the 16th of *May*, as *William Stewart*'s Wife hath deposed, "She being solicitous to have the Cows, bought for her Husband's Use "by the Pannel, towards stocking a Farm they had taken, gave the Pack-"man, his Messenger, Three Guineas out of her Purse: And the Pack-"man deposes, That he got the Money from Mrs. *Stewart*, after he had "seen *William Stewart* himself, on this *Saturday* the 16th, who told him "he would let him go immediately; and that, having got the three "Guineas, he forthwith returned to *Aucharn*, and arrived there in the "Evening, near to which Place he found the Pannel a Prisoner; but the "Pannel's Wife, and the Deponent, having had Access to converse with "the Pannel apart, the Pannel asked the Deponent, what Money he had "brought from *Fort-William?* and, upon the Deponent's telling him "that he had brought three Guineas, the Pannel pulled a green Purse out "of his Pocket, out of which he took two Guineas, and gave them to "his Wife, who delivered them immediately to the Deponent; and the "Pannel desired that the five Guineas should be sent to that unhappy "Man, meaning *Allan Breck, to see if he could make his Escape*; and pitched "upon the Deponent, as a Person that should go with the Money.—"That soon after the Pannel was carried off by a Party to *Fort-William*; "and Mrs. *Stewart* told the Deponent, that he would find *Allan Breck* in "*Koalisnacoan*; and, some Time after Night-fall, the Deponent got his "Supper at *Aucharn*, and then the Pannel's Wife carried the Deponent "to the Back of the Brew-house, where there lay a Sack, out of which "the said Mrs. *Stewart* took a blue Coat, red Waistcoat, black Breeches, "a Hat and some Shirts, all which she delivered to the Deponent, order-"ing him to go with the Cloaths and Money to *Koalisnacoan* immediately, "and deliver them to *John Breck Maccoll*, Bouman to *Appin*, if he did "not meet *Allan Breck* himself; but directed the Deponent not to carry "the Cloaths to the Bouman's House, lest any Body should see them; "that the Deponent accordingly set out, that same Night, for *Koalis-*"*nacoan.*"

In the mean while, as *John Breck Maccoll*, Bouman to *Appin*, hath deposed, "Upon the Afternoon of this *Saturday* the 16th of *May*, as "the Deponent was in a Fir-bush (or Thicket) near *Aldavoim*, at the "Foot of the Heugh (or deep hollow Place) of *Corrynakeigh* in *Koa-*"*lisnacoan*, he heard a *Whistle*, and, upon looking up, saw *Allan Breck* at a "little Distance, *beckoning* to the Deponent to come towards him; "which he did: That, after Salutations, the Deponent told him, *he* "*was afraid it was no good Action* that occasioned his being in such a "remote Place, and at such a Distance from any common Road; that "*Allan Breck* answered, The Place was not very far from a Road: "That the Deponent, having heard the Day before of *Glenure*'s Mur-

"ders,

" der, *charged* Allan Breck *with being guilty of it:* That *Allan Breck* aſked " the Deponent, what he had heard about the Murder? That the De- " ponent anſwered, That he had ſeen no Perſon from the Strath (or Vale) " of *Appin*; but that two poor Women, that had come up *Glenco*, were " telling that *Glenure* was murdered *Thurſday* Evening in the Wood of " *Lettermore*; and that *two People* were ſeen going from the Place where " he was murdered; and that he, *Allan Breck*, was ſaid to be one of " them.

" That *Allan Breck* anſwered, he had no Concern in it; and that, if " *his* Information was right, there was but *one Perſon* about the Murder; " and that, as he was idle in the Country, he was ſure he would be ſuſ- " pected of it; but that would give him little Concern, if he had not " been a *Deſerter*, which would bear harder upon him, in caſe he was " apprehended, than any thing that could be *proved* againſt him about " the Murder.

" That the Deponent did not believe him, when he ſaid he had no " Hand in the Murder of *Glenure*; and, not caring to *preſs* it much upon " him, told him, that, as he was already ſuſpected, it was *dangerous* to " have any Intercourſe with him; and preſſed him to leave the Place, " leſt he ſhould bring the Deponent and his Family to Trouble.

" That *Allan Breck* ſaid, he did not doubt but that the *Family of Ard-* " *ſhiel* would be ſuſpected of the Murder, and it was probable the *Pannel*, " and *Allan Stewart* his Son, might be taken into Cuſtody about it; and " that he, *Allan Breck*, was afraid *Allan Stewart* the Pannel's Son's " *Tongue* was not ſo good as his Father's; by which Words the Deponent " underſtood, that *Allan* was eaſier intrapped than the Pannel.

" And, the Deponent ſtill inſiſting upon *Allan Breck*'s leaving that " Neighbourhood, the ſaid *Allan Breck* told him, he would not leave the " Town (as the Witneſs expreſſes it, or the Place) for eight Days, unleſs " *ſome Neceſſaries he expected* came to him; and told the Deponent, unleſs " ſome *Money* came for him before next Morning, he, the Deponent, " *muſt go to* Fort-William *with a Letter*; that, though the Deponent " refuſed to go, *Allan Breck* looked about among the *Trees*, and finding " *a Wood-pigeon's Quill*, made a *Pen* of it, and having made *Ink* of ſome " *Powder* he took out of a Powder-horn that was in his Pocket, he wrote " a *Letter*, which he told the Deponent he muſt deliver to *William Stewart*, " Merchant at *Maryburgh*.

" And, upon the Deponent's telling him, that he would by no Means " undertake that, as he was informed that every body that went to *Fort-* " *William* was ſearched, *Allan Breck* ſaid, it was an eaſy Matter to hide " a Letter; the Deponent anſwered, If he was catched upon the Streets, " what would he do with it? *Allan Breck* told him, that the Letter muſt " not be found upon him by any Means, and, if he was catched with the " Letter, he muſt *eat it* before it was found; that the Deponent then told " the ſaid *Allan Breck*, that he did not know but he would be obliged to " go for ſome Beer next Day to *Fort-William*, in which Caſe he might " poſſibly carry the Letter; but at the ſame Time told the ſaid *Allan* " *Breck*, that, if he ſhould be taken up, he would tell all he knew about " him.

" That the ſaid *Allan Breck* deſired the Deponent to go to *Callart*, or " *Glenco*'s Houſe, for a Peck of Meal to him; which the Deponent " refuſed; and, at parting, the ſaid *Allan Breck* told the Deponent, he " would ſee him next Day."

The Bouman further depoſes to the Dreſs in which he met *Allan Breck* at this Time, being the black ſhort Coat and Trowſers lying upon the Table, and produced to him, and proved to have been the Property of the Pannel.

Early upon *Sunday Morning*, the 17th of *May* laſt, as both the *Pack-* *man* and the *Bouman* have depoſed, they met near to the Bouman's Houſe, whereof the latter at firſt denied to the Packman, that he had ſeen *Allan Breck*; and, upon the other's being ſurprized at this, and ſaying, he was informed he would meet *Allan Breck* there, and had brought *ſome Neceſ-* *ſaries* for him; and the Bouman inquiring *what* he had brought? the Pack- man anſwered, *five Guineas* and *ſome Cloaths*; and told, that he had a great deal of Trouble in getting the Money; that he had been ſent by the Pan- nel to *William Stewart* at *Fort-William*, from whoſe Wife he got *three Guineas*, and that the Pannel or his Wife gave him the other *two Guineas*; and that the Pannel's Wife gave him the *Cloaths*, and informed him, that *Allan Breck* was to meet him at that Place; *whereupon the Bouman owned* to the *Packman*, that he had ſeen *Breck* the Day before, and that *he expected* *theſe Things*, and directed the Packman how he might find *Breck*, if he would go to a Hill he pointed out to him, near to the Heugh of *Cerryna-* *keigh*, and whiſtle once or twice, he believed *Breck* would come to him: But this the Packman declined, telling, that he had ſlept none for two Nights, and was very much fatigued; and upon this delivered to the Bou- man the five Guineas, and told, he had left the Cloaths at ſome Diſtance, and would ſhew them to the Bouman when he was going away; and then went to ſleep in the Bouman's Houſe.

After the Packman had ſlept ſome Hours here, he dined with the Bou- man his Landlord, and told him, " That the Pannel, and *Allan* his Son, " were made Priſoners the Evening before, and ſent to *Fort-William*; " and, upon the Bouman's inquiring who was ſuſpected of *Glenure*'s " Murder? the Packman anſwered, That it was *Allan Breck*; and that it " was likely *the Pannel*, and *Allan* his Son, *would ſtand the firſt Trial* for " it." And about Noon this *Sunday* the Packman went away, without ſeeing his Couſin *Breck*, after having pointed out to the Bouman a Fir-tree, at the Root of which he had hid *Allan Breck*'s Cloaths.

The *Bouman* further depoſes, (and indeed every Word of his Teſtimony merits your Attention, and was given in a moſt lively, natural, and cre- dible Manner) " That, after he had gone to Bed upon the ſame *Sunday* " *Evening*, he heard one knocking at the Window; and, imagining it " might be *Allan Breck*, he got up, and went out in his Shirt, and ſaw " *Allan Breck* at a little Diſtance from the Houſe; and upon the Depo- " nent's coming up to him, *Breck* aſked him, If any Meſſage had come " for him? The Deponent told him, that his *Uncle's Son* had come with " *five Guineas* and *ſome Cloaths*: That *Allan Breck* complained there was " but little Money, but hoped it would do his Buſineſs: That the De- " ponent told the ſaid *Allan Breck*, he was afraid he would ſtarve among " the Heather, and that he was not able to help him: That *Allan Breck* " anſwered, He had no occaſion for Victuals, but wanted a *Drink* very " much; upon which the Deponent went back to his Houſe, and carried " out ſome Whey, or ſome Milk and Water in a Noggin, and the *five* " *Guineas*, and gave both to *Allan Breck*: That the Deponent then went " for the *Cloaths*, which he alſo gave the ſaid *Allan Breck*, which conſiſted " of a blue long Coat, red Waiſtcoat, black Breeches, a Hat, ſome " Stockings and Shirts.

" That the Deponent told the ſaid *Allan Breck*, that the Pannel and " his Son *Allan* were apprehended on Account of *Glenure*'s Murder: To " which *Allan Breck* anſwered, That that was no more than *he expected*; " but it would not ſignify much, as there could be *no Proof* againſt him; " but expreſſed ſome Apprehenſion, leſt *Allan Stewart*, *Son* to the Pan- " nel, might be *betrayed by his own Tongue*.

" That the Deponent deſired the ſaid *Allan*, *now* that he had got all " the *Neceſſaries* he expected, to go about his Buſineſs; and the ſaid *Allan* " *Breck* promiſed to do ſo, but told the Deponent, that he muſt meet " him, the ſaid *Allan Breck*, next Morning; that he muſt deliver the " Deponent the *Cloaths* he, the ſaid *Allan Breck*, had then on, to wit, " the black ſhort Coat and Trowſers ſhewn to the Deponent in the " Clerk's Hands, in order to be kept by the Deponent, till he delivered " them *to the Pannel's Wife*: That the Deponent promiſed to meet the " ſaid *Allan Breck* next Morning, but did not ſee him; and when the " Deponent went out next Morning, he found the ſaid ſhort black Coat, " Trowſers, and the Noggin in which he had carried the Drink to *Allan* " *Breck*, lying together in the Place where the Deponent parted with " *Allan Breck* the Night before; and that he hath not ſeen the ſaid *Allan* " *Breck* ſince."

On *Monday* the 18th of *May*, *Allan Breck* withdrew, as he had pro- poſed, by a very unfrequented Road, through the Moors, and over the Mountains, to *Rannoch*; and came that ſame Day to the Houſe of *Allan* *Oig Cameron* in *Rannoch*, his Uncle, with whom he remained till *Wedneſ-* *day* following. The Uncle hath ſaid, " He preſſed him earneſtly to make " a clean Breaſt, and tell him all he knew of *Glenure*'s Murder. To " which *Breck* anſwered with an Oath, That he had never ſeen *Glenure*, " dead or alive; the Uncle however frequently repeated his Inſtances, till " *Breck* became angry, and the Uncle deſiſted further Inquiry."

Four Days after *Breck* left his Uncle's Houſe, that is, on the 24th of *May*, " the Uncle having Occaſion to be fourteen Miles from his own " Houſe, (further down the Country) and paſſing by the Side of a Wood, " he heard a *Whiſtle* from the Wood, and, looking about, ſaw *Allan* " *Breck*, who then told his Uncle, that his only Fear was to be appre- " hended by the Military, as he had been a Deſerter. The Uncle an- " ſwered, He was very ſure the Friends of the Deceas'd would procure " him his Diſcharge, if he could diſcover the Murderer. And *Breck* re- " plied, That they were at this Time in ſuch Fury and Rage, that he was " very ſure, were he apprehended, he would be hanged."

It is unneceſſary that I ſhould reſume minutely what the other Witneſſes ſaid, who ſaw *Breck Stewart* in *Rannoch* or *Athole*, when he paſſed thro' that Country at this Time; his Appearances beſpoke the Situation he was truly in, that of a Malefactor ſtudying to conceal himſelf, and making his Eſcape.

It is however material, that you ſhould further obſerve, that after *Breck Stewart* had thus *diſappeared* from the Country of *Appin*, where this Murder was committed, every body in that Country, and in that of *Ran-* *noch*, through which he retired, and in both which he was well known, and had Relations, imputed to him the actual Murder, and to no other Perſon. You have already heard, that *Donald Stewart*, the Nephew of *Ballacheliſh*, charged him with it to his Face, on the Night of *Thurſday* the 14th, when the Blood of the Deceas'd was hardly yet cold, as the Bouman did on the *Saturday* following; and, on the *Monday* following, *Cameron* his Uncle diſcovered the ſame Belief. And I have now to add upon this Head of the Voice of the Country, or the *fama vicinæ*, that *Ballacheliſh* elder, who had been his Landlord the Night before the Mur- der, ſays, " That, the Morning after the Murder was committed, the " Deponent really thought, that *Allan Breck Stewart* might be the Actor " in this Murder, becauſe he did not return to the Deponent again." And *Macinnes*, the Ferry-man at *Ballacheliſh*, ſays, " That he heard no " Body ſuſpected for the Murder of *Glenure*, but the ſaid *Allan Breck*." And *James Mann*, Change-keeper in *Rannoch*, ſays, " That, before *Allan* " *Breck* came to his Houſe in *May* laſt, it was reported in that Country, " that he was concerned in *Glenure*'s Murder; and that he himſelf ſuſ- " pected him at the Time, as he came unſeaſonably, and was wanting " Proviſions."

There are yet other *Circumſtances ſubſequent* to the *Murder*, and to the *Pannel's Commitment* at *Fort-William*, that deſerve your Conſideration with the reſt of the Evidence; one of theſe is depoſed by *Hugh Maclean*, Bar- ber in *Maryburgh*, who ſays, " That one Day being called by the Pannel " to ſhave him, he thinks upon a *Saturday*, the Pannel aſked him, what " News he heard in the Town? The Deponent anſwered, That he, the " Pannel, was to be carried to *Edinburgh* on the *Monday* following; where- " upon the Pannel ſaid, that was a Matter that gave him no Concern, " and wiſhed it had happened ſooner; and was afraid of nothing but " that his Servants might be inticed to take Money, and turn againſt him; " and deſired the Deponent, as from him, to tell his Servants to ſay no- " thing but Truth, *to keep their Minds to themſelves*, and he would take " Care of them; and accordingly the Deponent delivered the Pannel's " Meſſage, in his own Words, to two of his Servants, who were then " in ſeparate Cuſtody in the ſame Priſon; and that they were both of the " Name of *Maccoll*."

Again, Gentlemen, you have heard read, and, I dare ſay, with much Regret, the Examination of the Pannel's Wife and Daughter, taken before the Sheriff upon Oath, wherein they ſay, " That *Allan Breck* " *Stewart* came to the Pannel's Houſe on *Monday* the 11th, in his " *French* Dreſs (that has been often deſcribed), and that he went away next " Morning, after taking Leave of them, dreſſed in the ſame Habit;" and you have heard by what a Cloud of Witneſſes it was proved, that, from the Evening of *Monday* the 11th, till the Morning of *Monday* the 18th, *Allan Breck* was ſeen in no other Dreſs, than the ſhort Coat and Trowſers belonging to the Pannel, now lying in Court; and,

and, by the Pannel's own Servants and the Packman, it has been prov'd, that *Breck*'s *French* Cloaths were, by Mrs. *Stewart*'s Order, put into a Sack, and hid in the Moor near the Pannel's Houſe, from thence brought back by the ſame Servant-Maid, by Order of Mrs. *Stewart*, and by her delivered to the Packman, by him to be carried to *Breck* at *Koaliſnacoan*; and that the Maid-Servant, who was employed by her Miſtreſs to hide theſe *French* Cloaths, and to fetch them back again, was, by a Meſſage from her, deſired to *conceal* what ſhe knew about the Cloaths, in caſe ſhe ſhould be aſked or examined about them.

Theſe, I think, Gentlemen, are the moſt material Facts and Circumſtances that have been proved before you, which I have *reſumed* in the Order of Time as they happened, with Intent to give you a juſt View of the Caſe of the Pannel, whom you are now trying; and I am perſuaded, that the Reflections which naturally ariſe from theſe Facts, in reſpect of the Queſtion before you, muſt have occurred to yourſelves, when you heard the Evidence given, and when I have again reſumed it; and therefore my Obſervations to you upon the Whole ſhall be as few and as ſhort as poſſible.

I have admitted, that it is incumbent upon me in this Trial, as againſt *James Stewart*, the Pannel, to make out, that *Allan Breck Stewart* was guilty of the actual Murder in Queſtion; and I apprehend, that is done to full Conviction, upon theſe Conſiderations.

And, firſt of all, Gentlemen, here has been a very extraordinary and ſhocking Murder, committed within the County or Diſtrict of *Appin*, in the moſt Northern Part of this County, of a Gentleman who had an Eſtate and Relations in that Neighbourhood; a Man of a fair Character, who was going about the Duty of his Office, in the King's and the Public Service, intending no Injuſtice to others, and apprehending no Harm to himſelf; for he and all his Attendants were unarmed; and yet he is bereaved of his Life, not by an open Enemy, upon a declared or a ſudden Quarrel, but baſely aſſaſſinated and ſhot behind his Back, by a Perſon *lying in wait* and lurking among Trees for that Purpoſe.

This, Gentlemen, is a very ſtrange and ſhocking Event; and, as for every Event there muſt be a *Cauſe*, ſomebody muſt have done it, and upon *ſome Reaſon* or Temptation, ſuch as it was: And this is not like a Murder committed on the Streets, or on the High-ways leading to a populous City, but in the Corner of a County, where the Deceas'd was himſelf a Gentleman of Note, and where every body of any Note is known to every body: The Deceas'd, therefore, muſt have had one or more Enemies fit or capable, or likely to have deviſed or perpetrated ſuch an Action; and who theſe are, you have been now for many Hours inquiring.

And, upon the *Reſult* of that Inquiry, what Doubt can there be, in the firſt Place, that *Breck Stewart* was the Actor? His Character, and his Situation as a Deſerter from the King's Service, and now actually liſted in the *French* Service, and in this Country only as a *Sojourner* for a Viſit to his Friends, rendered him the *moſt likely* Perſon then reſident in that Country, for being guilty of ſuch a Thing; nay, ſo much the *only* Perſon likely, that the Pannel himſelf, when he caſt about for ſome other Man on whom the Suſpicion of this Guilt might be thrown, mentioned only one Serjeant *More Cameron*, who is of a Character and Situation *very ſimilar* to that of *Allan Breck*, but with this very material *Difference* indeed, which rendered it impoſſible for that Solution of the Queſtion to paſs, that Serjeant *More* had not been ſeen in *Appin* for ſeveral Years paſt; and ſurely the abſent Wanderer could not do it.

But next, and more cloſely, the only *known Quarrel* that any body had with the Deceas'd, was that of this Pannel *James Stewart*, about his *own Removing* the *laſt Year*, and the Removing of *other Tenants* of *Ardſhiel this Year*; into which Quarrel his former Pupil or Ward, and his intimate Friend *Breck Stewart*, had moſt vehemently entered, and diſcovered that on ſeveral Occaſions; and that he conſidered it as a Cauſe for *deadly* or *mortal Hatred*, inſomuch that the Pannel himſelf hath declared, "That, "if *Allan* was guilty of the Murder, he believes it behoved to be on Ac- "count of the Diſturbance given to the Tenants on the Eſtate of *Ard-* "*ſhiel*; and knows no other Cauſe."

And more cloſely ſtill, you have heard the Evidence of what paſſed *immediately before*, and *after this Murder*, of the Behaviour and Actions of this *Breck Stewart*, who had formerly diſplayed his Hatred to the Deceas'd, for this very Cauſe, frivolous and unjuſt as it was. On the 10th of *May*, at *Faſnacloich*, within a Mile of *Glenure*'s Houſe, he gets Intelligence of *Glenure*'s Motions, and Deſigns to proceed in removing the Tenants of *Ardſhiel*, when he ſhould return from *Fort-William*. On *Monday* the 11th he comes to the Pannel's Houſe, and there lays aſide his *French* Dreſs, and puts on a Country Dreſs belonging to the Pannel; and in the ſame Habit, next Day, ſets out to *Ballacheliſh*, hard by the Ferry over which the Deceas'd was to return; from thence he goes to viſit two Siſters of the Pannel's in the Neighbourhood; he returns to *Ballacheliſh* on *Wedneſday*; remains there that Night, and till about Noon next Day, when he takes a Fiſhing-rod in his Hand, a fit Pretext for going out alone, and for ſtaying ſome Time; but, ſoon after, the Fiſhing-rod was laid aſide, and he goes in purſuit of his real Game; he calls aſide the Ferry-man, and enquires if *Glenure* had yet croſſed the Ferry, and being aſſured he was not, he walks off, and was never again ſeen about that Ferry, or the Houſe of *Ballacheliſh*; but a few Hours after, that ſame Night, and when the Murder had been committed, he is ſeen by *Katharine Mackinniſh*, the Maid-Servant of *Ballacheliſh*, at the *Goat-houſe* in the Moor of *Ballacheliſh*: And if *Donald Stewart* ſpeaks true, there alſo he ſaw him, and charged him with the Murder. Here was then the Deſerter, now a foreign Soldier, and *one declared mortal Enemy* of the Deceas'd, enquiring for the Deceas'd a little before he paſſed the Ferry; and, ſoon after the Murder, found in the Hill, near to the Spot where it happened, and adjoining to the Houſe where he had lodged the Night before; but to which he never returned; but, inſtead of that, wanders in the Fields; beats up *Glenco* and his Mother betwixt Three and Four in the Morning; tells them *Glenure* was murdered, and he was going abroad; takes Leave of them at the Door; retires from thence to a *Den* in a *Deſart*, the *Heugh of* Corrynakeigh *in* Koaliſnacoan, where he was to *wait* for his *Baggage* and his *promiſed Viaticum*; and where he durſt not even venture to approach the Bouman's

Houſe, except to come to the Door or the Window in the Night; and when he had got theſe Neceſſaries he waited for, withdraws, as he propoſed, a-croſs the Kingdom, over a Tract of Moors and Mountains uninhabited, till he came to his Uncle's Houſe, and is by him, as well as every body elſe who knew him, *reputed and believed* to be the *Murderer*. And I have no Doubt, Gentlemen, but, after the Proof of all theſe Things which you have heard, you muſt be entirely ſatisfied, that he was *truly ſuch*; and, upon that Perſuaſion, will proceed to the *main Queſtion* that is *directly* before you, namely, the *Evidence* of the *Acceſſion* of *this Pannel* to *that Murder*, which may be ſummed up in the Articles following:

Firſt of all, That it was *the Quarrel* of *this Pannel* againſt *Glenure*, that had been only taken up and *eſpouſed* by *Breck Stewart*, *for which Breck* committed *the Murder* itſelf, as the immediate Actor; the Quarrel, as you have heard, or *the Cauſe of Offence* ſo highly reſented, was, That this Pannel was himſelf removed from his Poſſeſſion laſt Year by *Glenure*, who at the ſame Time withdrew from the Pannel, or forbore to employ him in the Office of an Aſſiſtant or Sub-factor, which had given him Intereſt and Influence with the Tenants of *Ardſhiel*; and that this Year he was inſiſting to remove three or four Tenants, whom the Pannel had lately placed there; in all which *Allan Breck* had no perſonal Intereſt or Concern: A ſtrange Cauſe of Offence, I admit, to be ſo highly taken up, and ſo deeply reſented! But every Provocation works, according to the Temper or Turn of Mind of the Perſon who receives it; and what thoſe of the Pannel were in this Reſpect, you have heard from the Evidence, and have ſeen in his Conduct before you, when he himſelf objected to *Stewart* in *Lagnabay*, as an incompetent Witneſs againſt him; for that the Witneſs bore him capital Enmity, becauſe he, the Pannel, had been inſtrumental in cauſing the Witneſs to be removed from the Poſſeſſion at *Aucharn*, in which the Pannel ſucceeded him; nay, the Pannel carries this Madneſs ſo far, as to have threatened *Ewan Macintyre* and his Relations, or Poſterity (a poor Herd who had never ſerved the Pannel himſelf), for no other Offence, than that he engaged to be Herd to *Campbell of Ballieveolan*, the Tenant who ſucceeded the Pannel in the Farm of *Glendurer*, from which he was removed laſt Year.

The ſecond Article in Proof is, that, in conſequence of the deep Reſentment conceived by the Pannel for this ſuppoſed Injury of the Removings, he diſcovered, upon ſeveral Occaſions previous to this Murder, an Intention or Deſire to take away the Life of *Glenure*: This he expreſſed to *Appin*'s Bouman in a moſt inveterate Manner, that he would be willing to crawl upon his Knees to a Window to ſhoot *Glenure*: But thereafter he proceeds farther than Expreſſions; his Converſation with the *Maccells*, his own Servants, in the Brew-houſe, about *Chriſtmas* laſt, could be intended for nothing but to inſtigate them, either by themſelves, or by finding out proper Inſtruments among the common People of *Appin*, to cut off *Glenure*: And, when the late Removings came to be in Agitation laſt Spring, which the Pannel ſet himſelf to oppoſe with all his Might, it appears that his Malice and Fury againſt *Glenure* was increaſed; witneſs his Converſation with his two Landlords on his Way to *Edinburgh*, and with Mr. *Maclaren* of *Stirling*, his Fellow-Traveller Part of the Way; in which, among other Things, the Pannel told them, that he had actually ſent *Glenure* a Challenge to fight him with Piſtols; and told *Maclaren*, (who ſays he found the Removing was much at the Pannel's Heart) that, if he ſhould get Relief neither at *Edinburgh* nor at the *Britiſh* Parliament, he would take the only Remedy that remained. Now, to a Man that laboured under this Diſtemper of Mind, it was natural or incident, that, after he had returned from *Edinburgh* in the End of *April*, with ſuch Degree of Succeſs as to obtain a Siſt on his Bill of Suſpenſion; and had ſome Hopes given him at *Edinburgh*, that when the Barons of Exchequer ſhould meet they would countermand theſe Removings; when he had called the Tenants together, and acquainted them with theſe Operations of his on their Behalf, and ſent them with a Notary on the 1ſt of *May*, to intimate the Siſt to *Glenure*; and when, after this, he learned, on the 11th of *May*, that *Glenure* had gone to *Edinburgh* in his Turn, got the Siſt removed, was come back to the Country, and to proceed in the Removings; that, from this freſh Diſappointment and Affront, that muſt leſſen him in the Eyes of thoſe Tenants whereof he had aſſumed to be Protector, the Reſentment and Hatred which he formerly bore *Glenure* ſhould be yet higher inflamed, and drive him on to ſend out *Breck*, his Emiſſary, to cut off the Gentleman whom they both looked on as their Enemy, in Hopes of Safety to *Breck*, the Actor, by his getting abroad, where he was to go however; and to himſelf, the *Mandator* and Accomplice, by his remaining in Appearance quiet at his own Houſe.

And the Evidence, that in Fact this was the Caſe, conſiſts of theſe further Circumſtances, of which you have heard the Proof; that the actual Murderer of *Glenure*, in the Quarrel of this Pannel, and in Reſentment of which this Pannel had diſcovered Deſigns or Intentions againſt his Life, when the Quarrel itſelf was wrought up to the higheſt Pitch, ſets out from the Pannel's Houſe, leaving his own Cloaths and Baggage there, dreſſed in a Suit of the Pannel's Cloaths fitter for the Purpoſe, as being leſs remarkable or diſtinguiſhed than his own; goes directly and puts himſelf in the Way of *Glenure*; paſſes his Time, whilſt he waited for him, viſiting the Siſters of this Pannel in that Neighbourhood; and with *Stewart Ballacheliſh*, who was alſo in the general Intereſt of the Pannel in reſpect of the Removings; retires, when the bloody Deed was done, to a deep Retreat that was not far off; where he remains till this Pannel cauſed to ſend him his Baggage and a *Viaticum* of Money, ſuch as he could afford or ſcrape together, to enable the Aſſaſſin to get off.

And that this Aid and Succour was ſent in conſequence of a *Concert* betwixt them, previous to the Murder itſelf, appears from theſe Circumſtances; that on the Morning of *Thurſday*, on the Evening whereof the Murder was committed, the Pannel ſent an Expreſs to *William Stewart* at *Maryburgh*, earneſtly preſſing him to ſend him eight Pounds, as the Price of Cows not yet delivered; and it hath not been explained, and far leſs proved, on the Part of the Pannel, who is a Man of ſome Credit and Subſtance, tho' he had then but little Caſh in Hand, what other preſſing Exigency he then had for an immediate Supply of Money, when he was living upon his own Farm at *Aucharn*; he has not ſhewed you, that he had accepted a Bill payable on *Friday* the 15th of *May*, or

the Term of *Whitſunday* this Year, or that he was under Diſtreſs of any kind, that required ſuch immediate Supply.

Again, as the Meſſenger of *Thurſday* brought back no Caſh, there is another ſent on *Friday*, being the *Packman*, the *Couſin-german* of *Breck Stewart* himſelf, who carried *two Commiſſions* from the Pannel: *Firſt*, That by all Means he ſhould ſend him *five Guineas*, and this, tho' *William Stewart* ſhould *borrow it from twenty Purſes*; and, *2dly*, To tell *William Stewart* to *give Credit* in *five Pounds Sterling to* John Maccoll, *Bouman to* Appin *at* Koaliſnacoan, *in caſe he came to demand ſuch a Sum*; the *Pannel* at the ſame Time *telling the Packman*, when he gave him this Meſſage, that *Allan Breck* was about to *leave the Country*; that he *might be ſuſpected of* Glenure's *Murder*; and that it *was incumbent upon him*, the Pannel, *to ſupply* Allan Breck *in Money*.

Now, Gentlemen, to this Meſſage from the Pannel to his Friend *William Stewart*, by the Couſin of *Breck Stewart*, you are to *join another correſponding Circumſtance* depoſed by the *Bouman*, to which I muſt call for your particular Attention; for, in relating what paſſed betwixt him and *Allan Breck* on the Afternoon of *Saturday* the 16th, he ſwears, "That "*Allan Breck* then told him, he muſt remain there, till ſome Neceſſaries "he expected came to him; and that, unleſs ſome Money came for him "before next Morning, he, the Bouman, muſt go to *Fort-William* with "a Letter, which *Allan Breck* then wrote to *William Stewart*, Merchant "at *Maryburgh*." Does not this as plainly ſpeak out, *rebus ipſis et factis*, the *Concert* betwixt the Pannel and *Allan Breck*, before they parted, as if you had heard it from Witneſſes preſent at their Conference? *Breck* was ſetting out upon an Exploit, which, if performed, it would require a little Money, of which he, it appears, was then deſtitute, or very ſcarce, to carry him off the Country; the Pannel himſelf was not then in Caſh; but the Aſſurances he gave to *Breck* muſt have been, that, without Loſs of Time, he, the Pannel, would ſend the Money directly to *Breck* at *Koaliſnacoan*, or otherwiſe ſend him Credit upon his, the Pannel's, Friend and Correſpondent, *William Stewart*, Merchant in *Maryburgh*. *Their reſpective Actions* correſpond exactly with *this Contert*, and are unaccountable without ſuppoſing it. *On Friday* the Pannel ſends to *William Stewart* for *five Guineas* in Caſh, and an Order to give Credit to *Appin*'s Bouman for *five Pounds* more, in caſe he ſhould call for it. *On Saturday Allan Breck* being with this Bouman, at a Place diſtant from the Pannel, tells the Bouman, that unleſs Money came for him before *next Morning*, he, the Bouman, *muſt* go *to Fort-William* with a *Letter*, which *Breck then* wrote to *the ſaid William Stewart*, Merchant at *Maryburgh*; and *ſuch a Letter*, that *Breck* tells the Bouman, if he was catched with it, he muſt *eat it* before it was found upon him.

Theſe Circumſtances are ſo pinching againſt the Pannel, upon the capital Point now in Iſſue, that he has made an Attempt to prove an Anſwer or Solution of this Difficulty, and that by bringing *Katharine Macinniſh*, then Servant to *Ballacheliſh*, to depoſe, That when ſhe met *Allan Breck* at the Goat-houſe upon *Thurſday* Night, "the ſaid *Allan* deſired her "to tell *Donald Stewart* in *Ballacheliſh* to go to the Pannel, and deſire him "to ſend the ſaid *Allan* Money;" and that ſhe delivered this Meſſage to *Donald Stewart* that ſame Night.

Again, this *Donald Stewart* hath depoſed, not that *Katharine Macinniſh* delivered him any ſuch Meſſage from *Allan*, but, "That ſhe called him "out, and told him that *Allan Breck* wanted him, and was a little above "the Houſe in the Brae or Hill, where the Deponent went and met *Al*-"*lan Breck*, who then told the Deponent, he was going immediately to "leave the Kingdom, and was going then for *Koaliſnacoan*; and deſired "the Deponent to acquaint the Pannel that he was gone to that Place, "and deſired him, if poſſible, to ſend him Money there; and the Depo-"nent then promiſed to acquaint *James Stewart* of the above Meſſage." And this *Donald Stewart* further depoſes, "That, after his Converſation "with the Pannel about Serjeant *More*, he delivered the above Meſſage "from *Allan Breck* to the Pannel; and that the Pannel did not ſay whe-"ther he was to ſend the Money or not: That this Converſation happen-"ed about Ten o'Clock in the Forenoon of *Friday* the 15th of *May* laſt; "and that there was Nobody preſent."

And, as I think the only plauſible Thing proved for Defence of the Pannel conſiſts of theſe two Teſtimonies I have juſt repeated, I muſt beg your Attention, Gentlemen, to the Remarks I have to offer upon them, that you may be the better able to diſcern what Degree of Credit or Effect they deſerve, or whether they deſerve any at all.

And, firſt of all, this *Donald Stewart* is Nephew and Son-in-law to *Ballacheliſh*, and lives in Family with him; and it appears the whole Family are in the general Intereſt of the Pannel; for *John Stewart* the younger of *Ballacheliſh*, the Brother-in-law of this *Donald*, hath depoſed, "That, in the Time of the Spring-Circuit in this Place in *May* laſt, he "was ſummoned to be of the Jury; but that, at the earneſt Requeſt of the "Pannel, that he ſhould be preſent with a Notary at the Removing of the "Tenants from the Eſtate of *Ardſhiel*, he was going on that Errand to "the Pannel's Houſe, but returned to *Appin*, upon hearing of the Mur-"der committed that Day;" and has further depoſed, "That he was in "*Edinburgh* in *Auguſt* laſt, and was preſent at Conſultations of the Pan-"nel's Lawyers and Agents touching his Defence:" You are therefore to weigh the Credit due to a ſingle Witneſs of that Family, ſwearing to a Fact or Converſation betwixt the Pannel and him when there was Nobody preſent, that they have judged material to be proved for the Pannel.

2dly, I have already obſerved to you, in reſuming the Evidence of theſe two Witneſſes, the Son-in-law and the Servant-Maid of *Ballacheliſh*, that there is a *manifeſt Diſcrepancy* between them, tho' it is not a long Time ſince the Fact they depoſe to happened, and it hath ever ſince been the Subject of Attention and Converſation in the Country where they live; for the Maid ſays, "She received the full Meſſage from *Allan Breck*, and "delivered it to *Donald Stewart*; and that *ſhe did not deſire Donald* to go up "to *Allan* in the Hill, nor did *Allan Breck* deſire her to ſend *Donald* to "him there:" And yet *Donald* ſwears, "That the Maid informed him, "that *Allan Breck* wanted him, and told him where *Breck* was; and that "*Breck* himſelf gave him the Meſſage to be delivered to the Pannel; which "he delivered accordingly about Ten o'Clock next Day to the Pannel, "whom he met alone in the Fields." So that the Whole of *this Tale*, attempted to be proved by theſe two Witneſſes, appears extremely ſuſpicious, and their Accounts hang not well together.

3dly, *Donald Stewart*'s *Tale*, if it be true, and if it be alſo true, that the Packman was not ſent away by the Pannel to *Fort-William*, till about Twelve o'Clock on *Friday*, might ſerve to account for, or to have given riſe to the Packman's *Meſſage* on *that Day*: But how will it ſerve to account for the *former Expreſs* ſent upon the *Morning* of *Thurſday* by the Pannel, to the ſame *William Stewart* at *Maryburgh*, *to ſend him down immediately eight Pounds Sterling by the Bearer?*

4thly, If it be true, which both *William Stewart* and his Wife depoſe, that the Packman came to them at *Fort-William*, upon *Friday* betwixt *Ten and Twelve*, as the *Huſband ſays*, or *about Mid-day*, as the Wife ſays, then the Packman muſt have been miſtaken in the *Hour* that he was diſpatched by the Pannel from his Houſe, when he ſays, it was about *Twelve o'Clock* that Day; and if *Stewart* and his Wife are rather to be believed, that he got to *Fort-William* by Noon, he muſt have been diſpatched by the Pannel long before Ten o'Clock, when, *Donald Stewart* ſays, he delivered *Breck*'s Meſſage to the Pannel.

And, *laſtly*, That which affords a ſolid and ſatisfying *Reply* to the Defence founded on theſe two Teſtimonies, of the Son-in-law and Servant-maid of *Ballacheliſh*, is this Conſideration, That ſuppoſing it true, for Argument's ſake, which they have ſworn as to the Subſtance, that *Breck* ſent Notice by *Donald* to the Pannel, that he was going to *Koaliſnacoan*, and wanted Money, how will that account for what was obſerved a little while ago, "of the Pannel's writing a Letter upon *Saturday* Afternoon, "to be ſent by the Bouman to *William Stewart* at *Maryburgh?*" For though here be a *Tale*, I am afraid lately invented by the Pannel, of *a Meſſage from* Breck *to him after the Murder*, to tell the *Place* of his Retreat, and that he wanted *Money*, he hath forgot to provide Witneſſes for proving another Thing, and that is *a Meſſage in Return from the Pannel to Breck*, to give *Breck Notice how* the Money was to be *found* or furniſhed, namely, by the *Pannel's giving Credit to him*, *or the Bouman*, *upon* William Stewart *at* Maryburgh; for, without ſuch Notice, how could *Breck*, from the Bottom of his *Heugh in Koaliſnacoan*, ſo *exactly co-operate* with what the *Pannel* was doing from his *own Houſe at Aucharn*, as to write a Letter on *Saturday* to the *ſame William Stewart*, Merchant in *Maryburgh*, to be ſent by *Appin's Bouman*, to which *William Stewart*, on *Friday*, the Pannel ſends *Breck*'s Couſin, to bid him give Credit *to Appin's Bouman* for five Pounds, if he ſhould call for it?

This Circumſtance, therefore, which is quite unanſwered, as well as *the Expreſs on* Thurſday *Morning* for *Money*, before the Murder happened, makes the Evidence before-mentioned remain in full Force, the *Tales* of the Meſſage to the Pannel, mentioned by theſe two Witneſſes, notwithſtanding.

There hath been hardly any Thing elſe proved for the Pannel's Defence, that merits a Reply: It is of no Moment, that this was not the firſt Time that *Breck Stewart* made Uſe of the Pannel's Habit or Cloaths above-mentioned; he had uſed them once before in the Month of *April*, when he went to *Rannoch*, whilſt the Pannel was at *Edinburgh*; but it was not the leſs true, that this Habit was far more commodious for the murderous Purpoſe he went about, when he left the Pannel's Houſe on *Tueſday* Morning the 12th of *May*, than his own *French* Cloaths would have been.

Again, it is true, that, on the Morning of *Thurſday*, he writes a Letter for a Notary, to take Proteſts againſt the Removings, at the ſame Time that he writes for the eight Pounds; and his Counſel have ſaid, that this was purſuing quite another Scheme: But this is by no Means concluſive, to prove his Innocence; he was galled and incenſed by theſe Removings, and his Proteſt by a Notary, after his Bill of Suſpenſion was refuſed, would be of very little Avail; and yet he writes for one to attend, to be provided for all Events, as it was a poſſible Caſe, that the intended Murder of *Glenure* might have been prevented, by his going another Road than the common one, or other Accidents.

And as little can it avail the Pannel, that, after he was in Cuſtody, he wrote a Letter to Mr. *Macfarlane* at *Edinburgh*, deſcribing *Allan Breck*, and expreſſing a Deſire that he might be apprehended; for this was a Letter ſhewn to Colonel *Crawfurd*, the commanding Officer, and now appears to have been a manifeſt Diſſimulation, when, by the ſhewing of the Pannel's own Defences, he ſent Money to *Allan Breck* in order to help him to eſcape, on Account, as he ſays, of his Relation, and having been formerly his Ward or Pupil.

When therefore, Gentlemen, you ſhall conſider and duly weigh the whole Facts and Circumſtances proved before you, and which I have now reſumed; and when to theſe I have laſt mentioned you ſhall add, that, beſides the *Cloaths* and the *Money* furniſhed to *Breck*, there is a ſtrong preſumptive Evidence, that the very leſſer or ſhorter Gun produced before you, and proved to have been the Pannel's, and which is of the wider Bore of the two, was the very Inſtrument with which the Murder was committed; for none of the Servants ſaw it upon *Thurſday* Night, when they hid the Arms; and when they ſaw it on *Friday* Night, when the Arms were carried up to the Hill, it was empty; and Captain *Chapeau* and others have depoſed, it appeared to them to have been lately fired, when he found it on the 23d of *May*.

That the Pannel, on the firſt Notice he received of the Murder being over, diſcovered an *Apprehenſion* that he himſelf might be brought to Trouble on that Account.

That he made an Attempt, though a very unavailing one, to throw the Suſpicion of the Murder upon *Serjeant More Cameron*, who had not been in that Country for many Years.

That the Pannel, being in Cuſtody, ſent a Meſſage by his Barber to his Servants *to keep their Minds to themſelves*, and he would take Care of them.

That his *Wife* and one of his Children have too ſtrongly diſcovered their Senſe of the Importance of the Article of the *Cloaths* furniſhed by the Pannel to *Breck*, by *ſwearing*, that *Breck* left their Houſe in his own *French* Cloaths, though the Wife, at leaſt, moſt certainly knew the contrary.

I ſay, Gentlemen, when you put all theſe Things together, you will form your Opinion, and pronounce accordingly, whether this Pannel is, or is not, guilty of Acceſſion to this horrid Murder? In all circumſtantial Evidence, there is a Poſſibility of Innocence, even without ſuppoſing any of the Witneſſes perjured: For Example, in the Caſe of *Stewart Abercrombie*, which you heard mentioned in the Debate on the Relevancy in this Trial;

it was urged for him, and very truly, that ſome other Man without a Hat, as well as he, might have been the Murderer of the Deceaſed; for there was no Witneſs who could ſwear he ſaw him do it: And in the other Caſe of *Maccowan* you heard mentioned, who was convicted principally upon a Shirt and Stockings being found in his Poſſeſſion, which the poor Woman had carried with her from Home; it was poſſible that *Maccowan* might have got theſe Garments immediately, or by Progreſs, from ſome other Perſon who had robbed or murdered the poor Woman. But, in both theſe Caſes, the Pannels were convicted, and ſuffered accordingly.

And, in the preſent Caſe, if, notwithſtanding what you have heard, you can believe, that *Allan Breck Stewart* committed this Murder purely of his own Accord, and without any Privity or previous Concert with this Pannel; and the Aid given by the Pannel to carry him off, was out of mere Compaſſion, and a Reſolution firſt taken after the Pannel had heard of the Murder itſelf; then ſurely it will be your Duty to acquit the Pannel; for, better that this Murder, atrocious and ſcandalous as it is, ſhould remain unavenged by human Juſtice, than that one innocent Man ſhould ſuffer.

But, on the other Hand, if, upon the whole Evidence, you cannot believe the Pannel innocent, but are convinced in your own Minds, that he has been knowingly acceſſary to this Murder; then, doubtleſs, your Duty to God and your Country requires of you to pronounce him guilty.

Mr. Brown for the Pannel.

Gentlemen of the Jury,

I Appear for the Pannel; and, as this Trial has already taken up a great deal of Time, I ſhall not follow the honourable and learned Gentleman on the other Side, in ſome Things which I conceive to be extrancous to the Matter in Iſſue; but ſhall endeavour to ſum up what I have to ſay, in as few Words as the Importance of the Caſe, and Variety of Matters to be conſidered, will admit of.

As I am at all Times under no ſmall Degree of Concern, as often as I appear in any Caſe of this Nature; ſo I muſt acknowledge I am at preſent under greater Concern than ever I was in any former Caſe, when I conſider the many Diſavadntages which this unfortunate Pannel labours under.

In the firſt Place, I am under the Neceſſity of entering the Liſts with a learned Gentleman of great Abilities, and of much more Experience in theſe Matters than I can pretend to.

But, Gentlemen, if I have undertaken what I am not ſufficient for, the Fault lies at the Door of the private Proſecutor, who, before the Proſecution was commenced, begun early with pre-engaging the whole Counſel at the Bar, who had moſt Experience in theſe Matters, not with an Intention that they ſhould aſſiſt in carrying on the Proſecution, (for many of the Gentlemen who were engaged have not appeared at the Trial) but with an Intention that they might not have it in their Power to appear on the Side of the Pannel.

A juſt Proſecution ſcarcely ſtands in need of an Advocate to ſupport it. What then ſhall be ſaid of a Proſecution, where the Proſecutor deſpairs of prevailing otherwiſe than by depriving the Pannel of thoſe who were moſt able to defend him?

For my own Part, I choſe rather to have it ſaid of me, that I had imprudently undertaken what I was not ſufficient for, than that I had uncharitably refuſed to give any poor Aſſiſtance in my Power to a Gentleman, who imagines that I can be in the ſmalleſt Degree uſeful to him.

I might alſo take Notice of many other Hardſhips which the Pannel has ſuffered from cloſe Confinement, during more than four Months, contrary to the great Charter of Liberty in this Part of the Kingdom,—from the unwarrantable Seizure of his Papers without any legal Authority—and from the Shortneſs of the Time allowed him for making his Defence: But theſe Things have been ſo fully inſiſted on by the Gentlemen who have ſpoke on the ſame Side, that it is unneceſſary for me to repeat what has been already ſaid. The Facts have not been denied by the Proſecutor; and as every Man muſt ſee, at firſt Sight, what a prodigious Loſs it is to a Pannel, to have Acceſs, for ſo long a Time, denied to every Perſon who was capable of aſſiſting him in making his Defence, ſo I muſt be forgiven to ſay, that if this Trial was at all proper for a Circuit-Court, (which may be doubted) it ought to have been brought on in the ordinary Form, by Way of Preſentment, and not ſummarily in the Form of Criminal Letters. By the former Method, the Pannel would have had upwards of three Months to prepare for his Defence, inſtead of fifteen Days, which is all the Time the Pannel has had, ſince the Criminal Letters were executed againſt him.

But, Gentlemen, there is yet another Diſadvantage, which this Pannel labours under, which gives me more Uneaſineſs than all thoſe I have already mentioned, and which, I muſt beg Leave to ſay, I dread more than all the Proof which has been brought againſt him.

What I mean is an Impreſſion, which has been *induſtriouſly* raiſed, and artfully propagated, as if it were ſome-how *neceſſary* that the Pannel ſhould be found *guilty*; and as if his being *acquitted* might bring a Reflection on this Part of the Kingdom.

Gentlemen, I do not expect, nor do I deſire, that you ſhould return a Verdict contrary to Evidence: But it is my Duty to put you on your Guard, not to allow yourſelves to be carried off by *Paſſion* or *Prejudice*: And though I have no Doubt of the Integrity or Honour of any of the Gentlemen to whom I now addreſs myſelf; yet, upon this Occaſion, it is my Duty to ſay, That if you find the Pannel *guilty*, either *without Evidence*, or upon *doubtful Evidence*, you will thereby bring the Blood of an *innocent* Perſon upon your own Heads:—I ſay, an *innocent Perſon*; for every Man is held to be *innocent*, till ſuch Time as he is convicted, not by *doubtful*, but by *legal* and *complete Evidence*.

And if the Evidence is *inſufficient*, which I am hopeful I ſhall be able to ſhew, I am under no Apprehenſion, that your acquitting the Pannel can ever bring any Reflection either upon yourſelves or upon your Country. It is the peculiar Happineſs of this Part of the Iſland, that, in capital Caſes, the Law makes it neceſſary, that the whole of the Evidence ſhould be taken down in Writing; and as that has been fairly done in the preſent Caſe, the authentic Record will ſatisfy every *reaſonable* and *thinking* Perſon, that the Grounds upon which you have proceeded were ſolid; and if you have the Approbation of *ſuch*, you ought to diſregard what others may ſay of you.

Having ſaid ſo much in the general, I ſhall now proceed to conſider the Crime which has been charged againſt the Pannel, and the Evidence which has been brought in Support of that Charge. As to the Crime itſelf, I readily agree with every one of the Gentlemen who have ſpoke before me, that it is of ſo *atrocious a Nature*, that Words can hardly be found ſtrong enough to expreſs, in proper Colours, its Enormity; and I ſhall alſo admit, that it is highly aggravated from the particular Circumſtances which have been very properly mentioned by the honourable Gentleman on the other Side. But then, the Proſecutor would do well to obſerve, that the *more atrocious* the Crime is, the *more natural* it is to *preſume*, that the Pannel was *not guilty* of it. And it is my Duty to put you on your Guard, that a juſt Indignation at the Heinouſneſs of the Crime may not lead you to condemn without *proper Evidence*: For, however *foul* the Crime may be, it is much better that it ſhould eſcape unpuniſhed, than that an *innocent* Perſon ſhould ſuffer for it.

The Crime charged againſt the Pannel is, *That he entered into a Conſpiracy with* Allan Breck Stewart *to murder* Colin Campbell *of* Glenure *by the Hands of the ſaid* Allan, *and that the Murder was accordingly ſo committed.* And therefore, before the Proſecutor can prevail, it behoves him to prove, not only that the Murder was committed by the Hands of *Allan Breck*, but alſo, that the Pannel and he were previouſly in a Conſpiracy to commit the Murder in that Manner.

The Proſecutor pretends not to have brought any direct Evidence of either of theſe Facts; but the Guilt of both Pannels is inferred from a Variety of Circumſtances, which it now belongs to us to conſider, ſo far as is neceſſary for the Defence of this Pannel.

And here I ſhall not diſpute the general Propoſition laid down by my Lord Advocate, "That Crimes may be proved by *Circumſtances*." I admit that any Crime may be ſo proved; but then I humbly contend, that the Circumſtances ought to be ſuch, as *neceſſarily infer* the Guilt of the Pannel.

In order that this Matter may appear in its proper Light, I muſt beg Leave to lay down one general Rule, which admits of *no Exception*, and ought to be ſtrictly followed in judging of all circumſtantiate Evidence; which is, That where any Fact proved againſt the Pannel, is in its own Nature ſuch, that it will naturally admit either of a good or a bad Conſtruction, that Conſtruction ought always to be received which is *favourable* for the Pannel.

This is founded upon the firſt Principle of natural Juſtice, which directs us, "To do to others, as we would have them do to us:" And as every one of you would think yourſelf hardly uſed, if a bad Conſtruction were put upon any Action of yours, which would naturally bear a good one, the Pannel aſks no more, than that you ſhould judge of his Actions by the ſame Rule.

And here, Gentlemen, I do not mean, that, in a circumſtantiate Evidence, it is neceſſary, that every Circumſtance taken ſeparately ſhould be concluſive: If that were neceſſary, few Crimes could ever be proved. But what I intend is, that, in all Crimes whatever, it is neceſſary that the Proof ſhould be certain and concluſive; and as the Law juſtly rejects all Arguments drawn from *Conjectures* and *forced* Conſequences, it is not ſufficient to convict a Pannel, *that he might have been guilty* of the Crime charged; but the Proof ought to be ſuch as to leave no Room to *doubt* that he *was* ſo: And though it is not neceſſary, in a circumſtantiate Evidence, that every Circumſtance, conſidered apart, ſhould be concluſive; yet I conceive I may lay it down as a certain Principle, that where the whole of the Circumſtances are ſuch, that they might *naturally* have happened *without inferring the Guilt* of the Pannel, ſuch Circumſtances, however numerous, ought to have no Authority againſt him.

To apply this Rule to the preſent Caſe, I am hopeful I ſhall be able to ſatisfy you, Gentlemen of the Jury, that the Facts charged againſt the Pannel are either *not proved*, or they are ſuch, that *all* of them might have *naturally* happened; and at the ſame Time the Pannel be *entirely innocent* of the Crime of which he is accuſed.

But before I proceed to conſider particularly the ſeveral Articles of the Proof brought againſt the Pannel, it will be neceſſary to put you in mind of ſome Things which happened previous to the Murder, as theſe may tend to explain many Things which occur in the Proof, and which ſhall be afterwards particularly taken Notice of.

You have already heard, from the Gentleman who ſpoke firſt on the ſame Side with me, that, in the Month of *February* 1749, the deceaſed *Colin Campbell* of *Glenure* was appointed Factor by the Barons of Exchequer, upon the forfeited Eſtates of *Lochiel*, *Callart*, and *Ardſhiel*; and, as the Pannel, who was then Tenant of Part of the Eſtate of *Ardſhiel*, had always lived in great Friendſhip with *Glenure*, and had as fair a Character as any Gentleman in that Part of the Country, the Management of the whole Eſtate of *Ardſhiel* was committed to him by *Glenure*, and his Bill was taken for that yearly Rent at which the Eſtate had been rated after Survey by the Barons of Exchequer, leaving it to the Pannel to apply the Surplus to the Uſe of *Ardſhiel*'s Children. This is proved by ſeveral Letters and Receipts produced, and in particular from *Glenure*'s Letter to the Pannel, dated the 11th *December* 1749, in which he writes as follows: "This Moment I had your's by your Servant, with 20 *l.* "18 *s.* 5 *d. Sterling*, and the Warrant I formerly gave you. Receive in- "cloſed your Note. Your Payments are very good, for which I am "obliged to you. I intend, God willing, to be at *Edinburgh* on, or a "Day or two before, the 25th current; that is, I intend to ſet out from "this Place this Day, or To-morrow eight Days; and will go by *Glaſ-* "*gow*, and make no Stop by the Way. Remember Lady *Ardſhiel*'s Diſ- "charges, and all your other Tackling. I heartily wiſh you a good "Journey."

About the Month of *April* 1751, *Glenure* applied to the Pannel to give up the Farm of *Glenduror*, which he then poſſeſſed, to Mr. *Campbell* of *Balliveolan*, *Glenure*'s particular Friend, who, it appears, had offered an additional Rent; and though the Pannel had not been legally warned, and ſo was not obliged to remove for that Year; yet he readily agreed with *Glenure*'s Propoſal, removed from the Poſſeſſion, and took from Mr. *Campbell* of *Airds* the Farm of *Auchairn*, where his Family now reſides; but he ſtill continued to uplift the Rents as formerly from the Tenants of *Ardſhiel*, and likewiſe to poſſeſs a ſmall Farm called *Lettermore*, which he had ſubſet at about 6 *l. Sterling per Annum.*

In the Month of *April* laſt, *Glenure* executed a Warning, and obtained a Decreet

a Decreet of Removing againſt no leſs than five or ſix Tenants of the Eſtate of *Ardſhiel*, and alſo againſt as many Tenants of the neighbouring Eſtates of *Lochiel* and *Callart*, decerning them to remove from their reſpective Poſſeſſions as at the Term of *Whitſunday* laſt; and, among the reſt, the Pannel's two Sub-tenants in the Farm of *Lettermore* were alſo decerned to remove.

This was complained of as a very great Hardſhip in that Part of the Country, more eſpecially as the Tenants in Poſſeſſion paid their Rents regularly, and were willing to take the Oaths to the Government; and altho' the Pannel's private Intereſt in the Matter was not great, yet, as he foreſaw that a Procedure ſo ſevere might be attended with diſagreeable Conſequences, he went and often expoſtulated with *Glenure* upon the Subject; but he having perſiſted in his Reſolution, the Tenants upon all the three Eſtates tranſmitted Memorials of their Caſe to be laid before the Barons of Exchequer; and, as the Pannel was then occaſionally at *Edinburgh*, about ſome private Affairs of his own, he preſented the Memorials to one of the Barons, who diſapproved greatly of *Glenure*'s Conduct, but could do nothing towards putting a Stop to the Removings, as a Quorum of the Barons could not be held till the next Exchequer Term; though at the ſame time, he undertook to repreſent the Caſe to the whole Barons, adding, that he mad eno doubt but they would give an Order to the Factor to continue the Tenants in Poſſeſſion; which in Part appears from a Letter wrote by the Pannel to *Charles Stewart*, Writer, dated 27th *April* 1752, and referred to in the Inventory ſubjoined to the Libel, in the following Words: "Yeſternight I arrived here, after a very "troubleſome Jaunt; and as the Barons could not be got together, put "it out of my Power to procure an Order for our Factor; but "Baron *Kennedy*, who I found very kind, and ſeemed to ſympathize "much with the Tenants Caſe, gave it as his private Opinion, that "they ſhould ſit their Poſſeſſions for this Year, and that all Juſtice "would be done them; and thought they ſhould take a Proteſt againſt "the Factor's Proceeding in a Body, I mean the *Mamore* and *Appin* "Tenants. The ſame Advice I had from all I adviſed with, who were "not a few, and all were of the ſame Mind, that the Tenants had a "good Chance, once their Affair came before the Barons."

Upon this the Pannel adviſed with Counſel, how the Tenants might be kept in Poſſeſſion till the Exchequer Term, and by their Advice applied to the Court of Seſſion for a Suſpenſion of the Removing; and, a Bill of Suſpenſion having been accordingly preſented, a Siſt was obtained, and the Bill ordained to be anſwered; which Siſt was intimated to *Glenure*, upon the Pannel's Return to the Country: but, Anſwers having been thereafter made to the Bill by *Glenure*, who had gone to *Edinburgh* for that Purpoſe, as the Pannel had, through Ignorance of the Forms, carried off with him the principal Bill with the Siſt upon it, the Anſwers were adviſed without the Bill, and the Bill refuſed by an Interlocutor the 5th of *May* laſt.

Upon *Saturday* the 9th of *May*, *Glenure* returned to his own Houſe in the Country; and ſo ſoon as it came to be publickly known, that the Bill of Suſpenſion was refuſed, and that upon *Friday* the 15th of *May*, being the Term-day, *Glenure* was to execute the Warrant of Ejection againſt the Tenants of *Ardſhiel*, it was reſolved, in conſequence of the Advice the Pannel had got from *Edinburgh*, that the Tenants ſhould take a Proteſt againſt *Glenure*, in caſe he ſhould attempt to put his Warrant of Ejection in Execution; and that they ſhould continue in Poſſeſſion notwithſtanding thereof, till ſuch Time as their Caſe ſhould be fully heard before the Barons, and that their Directions ſhould be known.

Accordingly, in Proſecution of this Plan, upon *Tueſday* the 12th of *May*, the Pannel wrote a Letter to *Alexander Stewart*, Writer in *Glenettie*, deſiring him to come and act as Notary to the Proteſt intended to be taken againſt *Glenure*; and at the ſame Time he prevailed upon two Gentlemen of Character in the Neighbourhood, *viz. John Stewart* younger of *Ballachelish*, and *James Stewart* younger of *Faſnacloich*, to undertake to attend as Witneſſes, and aſſiſt at taking the Proteſt; but the ſaid *Alexander Stewart*, the Notary, having happened to be out of the Way, when the Pannel's Servant went to his Houſe, and this having been notified to the Pannel upon the Morning of *Thurſday* the 14th of *May* laſt, (the Day on which *Glenure* was murdered) he diſpatched a Servant of his own very early, with a Letter to *Charles Stewart*, Writer at *Auchintour*, informing him of the Diſappointment he had met with by the Abſence of the Notary to whom he had firſt wrote, and deſiring him (the ſaid *Charles*) to come to his Houſe with all poſſible Expedition that Night, in order to act as Notary to the Proteſt intended to be taken againſt *Glenure* next Day.

In this Situation Matters ſtood upon *Thurſday* the 14th of *May* laſt, being the Day upon which this moſt execrable Murder was committed; and therefore, the Facts previous to the Murder being adjuſted, I ſhall now proceed to conſider the Evidence which has been brought for proving both Branches of the Libel; 1*ſt*, That the Murder was committed by the Hands of *Allan Breck*; and, 2*dly*, That it was committed in conſequence of a previous Conſpiracy betwixt him and the Pannel.

And here it is highly neceſſary that you ſhould be greatly on your Guard, to diſtinguiſh accurately between the Facts charged againſt *the Pannel*, and thoſe charged againſt *Allan Breck*; which is the more neceſſary, as in the Libel the Facts are ſo intermixed, that it is no eaſy Matter to diſtinguiſh the one from the other. And though I muſt admit, that the learned Gentleman on the other Side has been very candid in ſumming up the Evidence; yet I could have wiſhed he had been more careful to diſtinguiſh the Proof, ſo far as it relates to the different Pannels charged in the Libel.

With regard to the firſt Queſtion, concerning the Guilt of *Allan Breck*, I ſhall not take up much of your Time; for, though it is incumbent upon the Proſecutor to prove that the Murder was committed by the Hands of *Allan Breck*, yet it is not abſolutely neceſſary for the Pannel to maintain the Innocence of that Perſon; as it is of no Importance for the Proſecutor to prove that the Murder was committed by *Allan Breck*, unleſs he ſhall alſo prove that the Pannel was acceſſary to it.

And therefore I ſhall very ſhortly ſtate the Objections againſt this Part of the Evidence, leaving it to your own Conſciences to determine you, how far the Evidence brought by the Proſecutor is ſufficient.

And the firſt Circumſtance charged in the Libel is, "That, upon "*Monday* the 11th of *May*, *Allan Breck* having been informed that *Glenure* "had gone that Day to *Lochaber*, and was to return by the Ferry of "*Ballachelish* upon the *Thurſday* after, he had laid aſide his *French* "Cloaths, which were remarkable, and had diſguiſed himſelf in a black "Coat and Trowſers belonging to the Pannel, with an Intention to "commit the Murder."

But, in the firſt Place, it is not proved, that, upon *Monday* the 11th of *May*, *Allan Breck* had been particularly informed of *Glenure*'s Motions; for though it does indeed appear, from the Depoſitions of ſome of the Witneſſes referred to by the Proſecutor, that *Allan Breck* had heard of *Glenure*'s having ſet out that Day for *Lochaber*, yet it does not appear that he had got any Information what Road he was to take, or at what Time he was to return: None of the Witneſſes have ſaid ſo, and, in Caſes of this Nature, no Fact ought to be preſumed without proper Evidence.

2*dly*, Though it is proved that *Allan Breck* did change his Cloaths upon the Day libelled, yet it is not natural from thence to preſume, that this was done with an Intention to commit the Murder. It clearly appears, from the Depoſitions of the Witneſſes relative to this Article, "That, "upon former Occaſions, *Allan Breck* had been in uſe of laying aſide his "*French* Cloaths, and putting on the Dreſs of the Country." And, in particular, it is proved by the Depoſitions of the three *Macells*, (who cannot be ſaid to have been *partial for the Pannel*) "That he had on "theſe very Cloaths belonging to the Pannel, when he went to *Rannoch* "in the Month of *April* laſt:" And therefore, as it was no *new* Thing, but a *common Practice* of *Allan Breck*'s to lay aſide his *French* Cloaths, and put on the Dreſs of the Country, it is wrong in the Proſecutor to lay hold of this Circumſtance, which is in itſelf *innocent*, and to wreſt it into an Argument againſt the Pannel; eſpecially as it appears from the Depoſitions of the ſame three Witneſſes, "That *Allan Breck* wrought "with them in the Potatoe-field the greateſt Part of that Afternoon "upon which he came to the Pannel's Houſe," which was a very natural Reaſon for laying aſide his *French Cloaths*, as not being proper for that Purpoſe.

The next Circumſtance charged againſt *Allan Breck* is, "That, for "ſome Days before the Murder happened, he had hovered near to the "Ferry of *Ballachelish*, at which it was known *Glenure* was to paſs; "that, during that Period, he had been twice at the Houſe of *Ballachelish*, twice at the Houſe of *Glenco*, and once at the Houſe of *Callart*."

But, in the firſt Place, it is not proved, that *Allan Breck knew* that *Glenure* was to paſs at the Ferry of *Ballachelish*; and therefore it is ridiculous to talk of hovering or lying in wait, when it was not known at what Ferry *Glenure* was to paſs.

2*dly*, If *Allan Breck* had *known* that the Defunct was to paſs at *Ballachelish*, and had *intended to lie in wait*, he would have kept cloſe at *Ballachelish*, and would not have gone either to *Callart* or *Glenco*, which are each of them at three Miles Diſtance, the firſt on the North Side, and the other on the South Side of the Ferry. It is much more natural to preſume, that *Allan Breck* went to theſe Places with an Intention to viſit his Friends who lived there. And this is another Inſtance where the Proſecutor *wreſts* a Circumſtance, which is in itſelf *innocent*, into an Argument againſt the Pannel.

The third and ſtrongeſt Circumſtance againſt *Allan Breck* is, "That "he abſconded that very Night upon which the Murder happened, and "left the Country ſoon thereafter."

But this Circumſtance has been in like Manner obviated by the Proof brought in Behalf of the Pannel. It is clearly proved, that, in the Year 1745, *Breck* was a Soldier in the Regiment commanded by Col. *Lee*; that, immediately after the Battle of *Preſton*, he deſerted to the Rebels; that he remained with them till they were happily defeated at the Battle of *Culloden*; and that, ſince that Time, he had been in the *French* Service: And therefore, as *Breck* muſt have foreſeen, that, upon the Murder of *Glenure*, a very ſtrict Search would be made, it was very natural for him, *though innocent*, to abſcond and leave the Country, and accordingly it appears from the Proof, that he gave this Account of the Matter to every Perſon whom he had Occaſion to converſe with upon that Subject; and therefore, as this Circumſtance, as well as all the reſt, may naturally bear a Conſtruction *favourable* for the Pannel, it is wrong in the Proſecutor to put a *bad* Conſtruction upon an Action which will *naturally* bear a *good one*.

The only other material Circumſtance from which the Guilt of *Allan Breck* is inferred, is, that, before the Murder, he had, upon different Occaſions, uſed threatening or reſentful Expreſſions againſt the Defunct: But, as it ſeemed to be admitted by the learned Gentleman on the other Side, that Expreſſions alone were not ſufficient to infer the Crime, I ſhall have Occaſion to conſider more particularly the Effect of ſuch Expreſſions, under the ſecond Branch of my Argument, which properly relates to *this Pannel*.

And whatever may be your Opinion with regard to *Allan Breck*, I muſt humbly contend, that there is no Sort of *Evidence* that the Pannel, now at the Bar, was in any previous Conſpiracy to commit this heinous Murder; and, as far as the Nature of the Thing could admit of it, the Pannel has proved the Improbability of his being any Way acceſſary to it.

In the firſt Place, the *Character* of the Pannel goes far to protect him from any Suſpicion of this Kind. Though that Part of the Evidence was not taken down in Writing, yet he has proved by Witneſſes, *beyond all Exception*, and can appeal to your own Conſciences for the Truth of it, that his *Character* in private Life was never *ſtained* by any *diſhonourable* Action. Is it poſſible then to believe, that one of ſuch a Character can at once plunge himſelf into the deepeſt Guilt, by committing the Crime of *Aſſaſſination*, which is of all others the moſt ſhocking to human Nature?

2*dly*, The Pannel's Guilt is ſtill the more *improbable*, as he could not poſſibly propoſe any Benefit by it. He was a Man of *too good Underſtanding*, not to ſee that *Glenure*'s Place as Factor would ſoon be ſupplied; that the ſtricteſt Search would be made for the Authors of this enormous Crime; and that his Family, as being nearly connected with the *forfeited Perſon*, would be firſt ſuſpected: Is it poſſible, that, in ſuch Circumſtances, it could enter into the Imagination of the Pannel, to commit a Crime of ſo black a Nature, when he could not only reap no Benefit by it, but when it behoved neceſſarily to involve his own Family in inevitable Diſtreſs and Ruin?

But,

But, 3*dly*, There is another Circumstance which renders it *incredible* that the Pannel could have been in any *previous Conspiracy* to commit this Murder; for it is clearly proved, that at that very Time he was pursuing quite contrary Measures; that he had provided himself, and was endeavouring to provide the other Tenants, in other Possessions; and it is further proved, not only by verbal, but also by written Evidence, *which cannot lie*, That his Intention was to proceed in a legal Way, by taking a Protest against *Glenure* upon the Term-day, in case he should attempt to put his Removing in Execution. This is clearly proved by the Pannel's Letter to *Charles Stewart*, the Notary, dated the 14th of *May*, being that very Day on which *Glenure* was murdered: Which Letter ought to have the greater Weight, as it is not produced by the Pannel, but by the Prosecutors, the same having been recovered by them out of *Charles Stewart*'s Hands.

In this Letter (which greatly deserves your Attention) the Pannel writes to *Charles Stewart*, That, by the Negligence of his Servant, he had been disappointed of the Notary he first intended, "which he reckons "a very great Misfortune." And then the Letter concludes in these Words: "The next best Thing I can think of is, that you be here this "Night, without fail, if you should hire a Horse; as every Thing must "go wrong, without a Person can act, and that I can trust. This is such "a Tie upon all the Members of our Family, that I'll press you no fur"ther, but do depend on seeing you once this Night."

It is indeed true, that this Letter does not particularly mention that the Pannel's Intention was to take a *Protest* against *Glenure*; but then, this is fully explained by the Depositions of the Witnesses, particularly by the Oath of *Charles Stewart*, who deposes, "That he received a second "Letter from the Pannel, of Date the 14th of *May*, desiring him to at"tend the next Day at the Ejection; but he declined the same, because "he did not care to disoblige *Glenure*."

This is further confirmed by the Oath of *John Beg Maccoll*, the Person who carried the Letter, who deposes, "That, upon *Thursday* the 14th of "*May* last, the Pannel gave a Letter to the Deponent, to be delivered "to *Charles Stewart*, Notary Public at *Maryburgh*; and told the Depo"nent, that the Letter was to make or cause *Charles Stewart* come to "the Country of *Appin* to protest against *Glenure*, in case he had not a "sufficient Warrant to remove the Tenants of *Ardshiel*: That the Pan"nel desired the Deponent to make all possible Dispatch, and desire *John* "*Breck Maccombie* at *Kintalline*, and *John More Maccoll*, Servant to the "Pannel, who was then at *Kintalline*, to ferry the Deponent from *Kin*"*talline* to *Onich*, being much shorter than the Ferry of *Ballachelish*: "That he set out from *Aucharn* about Seven or Eight o'Clock in the "Morning, and made all the Dispatch he could to *Fort-William*, where "he arrived about Twelve o'Clock. Deposes, That, when he came to "*Fort-William*, he delivered the Letter he got from the Pannel to *Wil*"*liam Stewart*, Merchant in *Maryburgh*, who told him that *Charles Stew*"*art*, the Notary, was not at Home, he having gone to the Braes of "*Lochaber* in the Morning; and told the Deponent, that he, the said "*William*, had wrote to the Pannel in the Morning, and that there was "a Notary along with *Glenure*, who would serve the Pannel, as well as "*Glenure*."

And it is further proved, that the Pannel had gone so far as to provide proper Witnesses to be present at taking that Protest, as appears from the Deposition of *John Stewart* younger of *Ballachelish*, who deposes, "That, "in the Time of the Spring Circuit in this Place, in *May* last, he was "summoned to be of the Jury; but, at the earnest Request of the Pannel, "that he, the Deponent, should be present with a Notary at the Remov"ing of the Tenants from the Estate of *Ardshiel*, he was going, on that "Errand, to the Pannel's House; but returned to *Appin*, upon hearing "of the Murder of *Glenure* committed that Day."

And this Observation, that the Pannel had at this Time no Thoughts of the execrable Murder of which he is *now* accused, is further confirmed from *William Stewart*'s Letter to the Pannel, dated the same 14th of *May*, recovered by the Prosecutors from out of the Pannel's Repositories, which concludes in the following Words: "I find *Glenure* has a mind to eject "the Tenants; but they ought to be deaf to it, and, at all Risques, keep "Possession, as they are in good Hands, as it must end in the Exchequer; "so that I beg they keep Possession: As there will be no Troops, they "ought to repel Force by Force, and take their Hazard of the Conse"quences; as it can be no more than violent Profits, which is often modi"fied in inferior Courts, besides the Exchequer, who will insist for no "such; their chief Design being to have a Sett of peaceable Tenantry, "and a well-paid Rent: So that the People ought to be assured they will "be supported as far as Law will, which, no doubt, must determine in "their Favours."

From the Depositions of these Witnesses, joined with the Letters which have been read in your Presence, it is incontestably proved, That the Plan concerted between the Pannel and his Friends went no further, than to take a Protest against *Glenure*, in case he should attempt to execute his Warrant of Ejection against the Tenants; or, at furthest, that the Tenants should continue in Possession notwithstanding the Warrant, and run the Risque of violent Profits. And it is of great Importance in the present Argument, that these two Letters are dated upon the Morning of *that very Day* on which the Murder happened; a Circumstance utterly *inconsistent* with the Libel, which has no other Footing to stand upon than this, That the Pannel and *Allan Breck* had *concerted* the Murder *previous to the Time when* Allan Breck *changed his Cloaths*, which, as has been already observed, was *four Days* before the Murder.

Amidst such glaring Improbabilities, it would require the strongest Evidence to convict the Pannel. And this leads me to consider the several Facts, according to the Order in which they are laid in the Indictment.

And the first Thing charged in the Libel is, that the Pannel had conceived an unjust Resentment against the Defunct, for three different Reasons: 1*st*, Because he had accepted the Factory of the Estate of *Ardshiel*; 2*dly*, Because he had removed him from the Farm of *Glenduror*; and 3*dly*, Because that, in the Month of *April* 1752, he had taken Measures for removing certain other Persons, who were Tenants and Possessors of that Estate.

The first is clearly disproved by Letters and Discharges under the Hand of the Deceased, which have been read in your Presence; and from which it appears, that, for several Years after the Date of the Factory, the Deceased and the Pannel were in perfect good Terms; and that *Glenure* had such Confidence in the Pannel, that he had employed him to uplift the Rents from the other Tenants.

The second Ground for Resentment is disproved by the Oath of *Alexander Stewart* of *Innernahyle*, who deposes, "That the Time when the "Pannel removed from *Glenduror*, he told the Deponent, that he had "had a Meeting with *Ballieveolan*, and that there was a Compromise "betwixt them: That he did not hear of any Warning, but that he re"moved voluntarily."

And therefore the only Ground of Resentment which remains, is, That the Defunct had taken Measures for removing some of the other Tenants of the Estate, as at the Term of *Whitsunday* last: And tho' it may be true, that the Pannel has, upon different Occasions, complained, in strong Terms, of the Hardship of removing these Tenants; yet it is impossible to believe, that so trifling a Cause of Resentment could have so strong an Effect, as to push on the Pannel to the barbarous Murder of which he is now accused; more especially, when it is considered, that he is noways related to any of these Tenants, and that none of them are so much as of the same Name.

The Prosecutor has been pleased to lay great Stress upon certain foolish Expressions alledged to have been used by the Pannel upon the Subject of these Removings.

It must occur to every Man, how extremely dangerous a Proof of this Kind is: There are very few Witnesses who can repeat exactly the Particulars of any Conversation, and still fewer who can recollect these Particulars at any Distance of Time. In such Cases, much may depend upon the Tone of Voice, or Gesture of the Person who speaks; and the Variation of a Circumstance may alter the Meaning of the whole Expression.

Besides, there is an obvious Disadvantage which this Pannel labours under, and of which, in the present Case, he has no small Reason to complain; which is, That the particular Expressions charged against him are not taken into the Libel, neither are the Circumstances of Time and Place mentioned; by which the Pannel is deprived of the Opportunity he ought to have had of bringing a contrary Proof. If the particular Expressions were known to the Prosecutor, it was but just that they should have been taken into the Libel; and, on the other hand, if they were not known, no such Thing ought to have been at all mentioned.

And indeed, with regard to some of the Expressions, it is impossible to believe, that the Pannel used the Words deposed to by the Witnesses. Thus, in particular, the strongest Expression is that deposed to by *John Maccoll* the Bouman, who deposes, "That, about two Years ago, he "heard the Pannel say, That he would spend a Shot on *Glenure*, though "he went on his Knees to the Window to fire it." But as this Expression is only deposed to by one Witness, who seems to have been abundantly forward in deposing against the Pannel; so it is utterly *incredible*, that, at the Time deposed to by this Witness, the Pannel would have used this Expression; as it is clearly proved, by the Depositions of the other Witnesses, that the Deceased and the Pannel were then in strict Friendship together; and that at that Time the Deceased had such Confidence in the Pannel, that he was then employing him as Sub-factor upon this Estate.

It would be very tedious, and is unnecessary, for me to make particular Observations upon the other Expressions deposed to by the several Witnesses; at the same Time it is scarcely possible for me to recollect them, as I had no Opportunity to know them, till they were deposed to by the Witnesses themselves. It is sufficient for me, in general, to observe, that some of them may bear an innocent Meaning; that others of them appear to have been uttered when the Pannel was in Drink; and that none of them are so strong, as that deposed to by the Bouman, which has been already answered.

And though it should be admitted, that the Pannel had, upon different Occasions, expressed himself foolishly in Terms which implied Resentment against the Defunct; yet this, by itself, is by no Means sufficient to prove, that the Pannel was accessary to the Murder which afterwards happened.

And here I have only to appeal to your own Hearts, and ask, how often you have heard resentful Expressions thrown out in Conversation, where you were yourselves conscious, that nothing was seriously intended: And though it may be true, that such Expressions may serve as a Weight in the Scale, with other Circumstances, to convict the Pannel; yet this holds only where these other Circumstances cannot naturally admit of an innocent Construction, but can never apply to the present Case, where, I am hopeful, I shall be able to shew, that the other Circumstances proved against the Pannel, have no Shadow of Relevancy in them.

At the same Time, it is a Circumstance of some Weight, in the present Case, to take off the Effect of these Expressions, that it is not pretended, that the Murder was committed by the Pannel; on the contrary, the Libel sets forth, that the Murder was committed by the Hands of *Allan Breck*: And however it may be true, that Expressions importing Resentment, proved against the Pannel, may go far to presume Guilt, where none other is condescended on as the Actor and Perpetrator of the Murder; yet that will noways apply to the present Case, where the very Libel, upon which the Pannel is accused, sets forth, that the Murder was not committed by the Pannel, but by another.

The second Fact charged in the Libel, is founded on a Concert supposed to have been entered into betwixt the Pannel and *Allan Breck*, upon *Monday* the 11th of *May*; in consequence of which Concert, it is alledged, the Murder happened. But as the Prosecutor has brought no Evidence of any such Concert, or that *Allan Breck* and the Pannel had any Conference whatever upon the Subject that Day; so it is proved, as strongly as the Nature of the Thing can admit of, *by the Prosecutors own Witnesses*, that no such Thing could possibly have been concerted that Day. The Sum of the Evidence relative to this Matter, is, That *Allan Breck* came to the Pannel upon *Monday* the 11th about Mid-day, the Pannel being then sitting in a Field of Potatoes, in Company with three of his Servants: That, after they had sit for a Quarter of an Hour together, a Message came from Mr. *Campbell* of *Airds*, desiring the Pannel to come to him at *Keil*, which is about two Miles distant from the Pannel's House: That, in consequence of this Message, he immediately went to *Keil*, leaving *Allan Breck* with his Servants: That he remained with *Airds* all that Afternoon, and did not return to his own House till late at Night,

Night, the Family being then at Supper, and ſeveral Strangers along with them: That the Pannel and *Allan Breck* had no Converſation together in private that Night: That they ſlept in ſeparate Places, and that the Pannel had left his Houſe next Morning, before *Allan Breck* got out of Bed.

As this is a very material Circumſtance, in reſpect it is admitted upon all Hands, that this was the *only* Occaſion the Pannel and *Allan Breck* had of converſing together, between *Glenure*'s Return from *Edinburgh*, upon *Saturday* the 9th, and the Murder, which happened upon the *Thurſday* thereafter, I muſt beg leave to reſume, particularly, the Evidence on this Head.

John More Maccoll, depoſes, "That, upon *Monday* the 11th of *May* laſt, "he ſaw *Allan Breck* come to *Aucharn*, dreſſed in his long Cloaths, and "came directly where the Pannel, *Allan* his Son, *John Beg Maccoll*, and the "Deponent were covering Potatoes: That, when *Allan* came up, they "were reſting themſelves, and ſitting by one another: That *Allan Breck* "ſat with them; and all the Converſation the Deponent obſerved, conſiſted "in ſome Queſtions about the Welfare of the People of *Glencrearan*; and "that he did not obſerve the Pannel have any private Converſation with "the ſaid *Allan Breck*; for that, a very little Time after *Allan Breck*'s "Arrival, the Pannel had a Meſſage to meet Mr. *Campbell* of *Airds* at "*Keil*; and that this happened after Mid-day: That the Pannel imme-"diately, upon receiving the above Meſſage, went away, in order to "meet *Airds*; and that nobody went along with the Pannel, *Allan Breck* "having ſtaid with them."

John Beg Maccoll depoſes, "That, when *Allan Breck* came, upon the "11th of *May* laſt, to *Aucharn*, the Pannel was ſeeing the Deponent, *John* "*More Maccoll*, and *Dougal Maccoll*, working at Potatoes; and that "*Allan Stewart*, the Pannel's Son, was likewiſe there: That, when *Allan* "*Breck* came, they were all ſitting together; and that he ſeated himſelf "by the Pannel, and had ſome Converſation in *Engliſh*, which the De-"ponent does not underſtand. Depoſes, That *Charles Stewart*, Son to "the Pannel, and *Stewart*, Daughter to *Foſnacloich*, came to *Aucharn* "from *Foſnacloich* a little after the ſaid *Allan Breck*." And further depoſes, "That when *Allan Breck* came back, upon *Monday* the 11th of "*May* laſt, to the Place where the Pannel, Deponent, and others, were "covering Potatoes, as above, they had ſit together but for about a Quar-"ter of an Hour, when the Deponent went to work at Potatoes at a greater "Diſtance; and before he went away, heard a Meſſage had come for his "Maſter to meet *Airds* at *Keil*, and heard his Maſter ſpeak of going there; "but when he went, or who went along with him, the Deponent does "not know: That the Deponent continued working at the Potatoes till the "Evening, and the Pannel was not come Home when he came from his "Work: That the Pannel came Home at Bed-time, accompanied with "*John More Macilichuttan*, who lay with the Deponent that Night."

Dougal Maccoll depones, "That when the Deponent came Home from "the Wood, upon *Monday* the 11th of *May* laſt, the Pannel was not at "Home, and the Deponent was told, he was gone to *Keil*, to meet the "Laird of *Airds*; and that the Deponent had gone to Bed before the Pan-"nel came Home that Night; and that early upon *Tueſday* Morning, "when the Deponent got up, he ſaw the Pannel without, who told him, "that he was going to *Appin*'s Houſe; and that, to the Deponent's Know-"ledge, *Allan Breck*, or the Pannel's Sons, were not then up: That he "ſaw the Pannel go towards *Letterſhuna*, where *Appin* lives. Depoſes, "That *Allan Breck* left *Aucharn* before the Pannel returned from *Letter-*"*ſhuna*."

Katharine Maccoll depoſes, "That the Pannel went in the Afternoon "of the Day (*viz.* 11th *May*) to *Keils*, to meet Mr. *Campbell* of *Airds*; "and that it was late at Night before he came Home; but that the Fa-"mily had not ſupped when the Pannel came Home; and that the Pan-"nel ſupped in Company with *Allan Breck Stewart*, *Foſnacloich*'s Daugh-"ter, and *Archibald Cameron*, Nephew to *Foſnacloich*, and the Pannel's "Family."

Archibald Cameron, depoſes, "That, upon *Monday* the 11th of *May* "laſt, the Deponent came from *Foſnacloich*'s Houſe to the Pannel's Houſe, "after Mid-day: That, ſome little Time after he came there, he ſaw "*Allan Breck Stewart*: That the Pannel was not at Home when the De-"ponent came firſt there, but came Home before Night-fall: That the "Deponent, Pannel, *Allan Breck*, and the Family, ſat in one Room, "and ſupped together: That he did not obſerve *Allan Breck* and the Pan-"nel ſpeak in private that Night: That the Deponent and *Allan Stewart*, "the Pannel's Son, lay in one Bed, and *Allan Breck* and *Charles Stewart*, "Son to the Pannel, in another Bed in the ſame Barn: That, to the "beſt of his Remembrance, they all went to Bed much about one Time, "and got up together next Morning: That the Deponent did not ob-"ſerve the Pannel about the Houſe next Morning when he got up."

And the Depoſitions of theſe Witneſſes are corroborated by *Donald Campbell* of *Airds*, who depoſes, "That, upon *Monday* the 11th of *May* "laſt, the Deponent ſent to the Pannel, deſiring him to come to him at "*Keils*, a Farm belonging to the Deponent, at about a Mile's Diſtance "from the Pannel's Houſe: That the Pannel accordingly came there to "him that Afternoon, as ſoon as he expected him: That the Deponent's "Buſineſs with him was for his Aſſiſtance in ſetting that Farm: That "the Farm was accordingly ſet, and the Pannel himſelf took Part of it, "and conducted the Deponent a Part of his Way Home, and then they "parted: That, before parting, he deſired the Pannel to go next Morn-"ing to *Appin*'s Houſe: That the Pannel accordingly did ſo, and the "Deponent had a Letter from him from that Place."

From what has been ſaid, therefore, it appears, that the Proſecutor has not only *not proved*, that upon the 11th of *May* there was any thing concerted with regard to the Murder betwixt the Pannel and *Allan Breck*, but, on the contrary, *it is proved*, as ſtrongly as the Nature of the Thing can admit of, that no ſuch Thing was or could be concerted betwixt them at that Time; and if this is once eſtabliſhed, it ſaps the Foundation upon which the whole Libel ſtands; as it is not pretended, that the Pannel and *Allan Breck* had ever any other Opportunity of converſing together, betwixt *Glenure*'s Return from *Edinburgh* and the Time of the Murder.

The third Article charged in the Indictment is, That, in purſuance of the Concert entered into upon the 11th of *May*, the Pannel had furniſhed *Allan Breck* with a Suit of his own Cloaths, in order to ſerve as a Diſguiſe, that he might be enabled to commit the Crime with the greater Safety.

But, in the *firſt* Place, it muſt occur to every Man who hears me, that this is a moſt improbable Tale; for, if it had been intended that *Allan Breck* ſhould be diſguiſed at the Time of committing the Crime, it is impoſſible it could be ſeriouſly intended, that he ſhould be diſguiſed in a Coat belonging to the Pannel; for, however this might have ſerved for a Diſguiſe to *Allan Breck*, it might ſerve equally for a Point of Evidence againſt the Pannel: And therefore this improbable Poſition can gain Credit with no Mortal, unleſs it ſhall firſt be ſuppoſed, that the Pannel is not only the moſt wicked, but alſo the moſt fooliſh among Men; which will not be eaſily credited by you, who have been Witneſſes to the decent Appearance he has made at this Trial.

2*dly*, As the Story is improbable, ſo it is equally deſtitute of all Foundation in Truth; for it is not proved by any of the Witneſſes, that the Pannel *furniſhed* or *gave* the Cloaths to *Allan Breck*: And though it is proved, that he laid aſide his *French* Cloaths, and put on a Suit of Cloaths belonging to the Pannel, or his own Son, upon the *Monday* before the Murder; yet it would be ridiculous to ſay, that a Party could be convicted as acceſſary to a Murder, becauſe that the Murderer had on his Cloaths at the Time when the Crime was committed.

And, laſtly upon this Head, the Circumſtance of changing the Cloaths has been fully acounted for in the former Part of the Argument; and as it has been clearly proved, that *Allan Breck* had been formerly in uſe of wearing theſe very Cloaths, the Accident of his having them on at the Time when the Murder was committed, can have no Weight againſt the Pannel.

The fourth Article charged in the Libel is, That, upon the Morning of that Day upon which the Murder happened, the Pannel had ſent *John Beg Maccoll*, a Servant of his own, to *Fort-William*, in order to watch, and give Intelligence concerning the Motions of the Deceaſed; and great Pains have been taken to prove this Article.

But, unluckily for the Proſecutor, this Fact happens to be contradicted by every Part of the Evidence.

In the *firſt* Place, it appears, from the Oath of *John Beg Maccombich*, "That it was known over the whole Country, that *Glenure* was to have "been that Evening at *Kintalline*, which lies on this Side the Ferry of "*Ballachelish*:" And therefore, if the Pannel's Intention had been to watch *Glenure*'s Motions, it is natural to aſk, what good Reaſon there could be to order his Servant to croſs the Ferry, and go on to *Fort-William*, when, by waiting at the Ferry, he was ſure to get Intelligence of *Glenure*'s Motions?

2*dly*, The Fact is contradicted by the Depoſitions of *Fergus Kennedy* and *John Mackenzie*, two Witneſſes alſo adduced for the Proſecutor, who concur in depoſing, "That *John Maccoll* met *Glenure* and his Company "in their Way Southward, about three Miles from *Fort-William*."—If his Errand had been to watch and give Intelligence concerning *Glenure*'s Motions, he would have certainly returned immediately, and have given Intelligence accordingly. But, inſtead of this, it appears, from the Depoſitions of theſe Witneſſes, compared with the Oaths of *William Stewart* and his Wife, that *John Maccoll* did not return, but went on to *Fort-William*; which is utterly *inconſiſtent* with what the Proſecutor ſuppoſes.

And, laſtly, this Circumſtance is flatly contradicted by the Oath of *John Beg Maccoll* himſelf, who expreſsly depoſes, "That, when he went to "*Fort-William* with the above Letter to *Charles Stewart*, the Notary, he "had no Orders from his Maſter to enquire after the Motions of *Glenure*, "or to acquaint any body thereof;" but had been ſent to *Fort-William*, in order to bring a Notary from thence, to take a Proteſt againſt *Glenure* upon the Day following: And as that Part of his Evidence is confirmed by the Pannel's Letter to *Charles Stewart*, produced by the Proſecutor; ſo the remarkable Haſte with which *John Beg Maccoll* went to and returned from *Fort William*, clearly ſhews, that it was no ſham Errand, but that the Pannel's real Intention was to proceed in a legal Way, by taking a Proteſt againſt *Glenure*, in caſe he ſhould attempt to execute the Ejection.

The next Circumſtance charged in the Libel is, that when *John Mackenzie* informed the Pannel of the Murder, he appeared no ways concerned nor ſurprized; and that neither he, nor his Family, went to look after the dead Body.

But as this Circumſtance is extremely trifling, ſo the firſt Part of it is clearly diſproved by the Oath of *John Mackenzie*, *Glenure*'s Servant, who depoſes, "That, immediately after the Murder, he went to *James Stewart*'s "Houſe in *Duror*; and *James* ſeeing him weeping, aſked what the Matter "was? and the Deponent told him, his Maſter was killed: Whereupon "*James Stewart* aſked him, by whom, and how it was done? To which "he, the Deponent, anſwered, That he did not know by whom; and be-"lieved it to be a Shot from a Gun or Piſtol." And further depoſes, "That, when he ſaw the Pannel at his Houſe in *Aucharn*, as aforeſaid, "*the Pannel wrung his Hands, expreſſed great Concern at what had happened*, "as what might bring innocent People to Trouble, and prayed that inno-"cent People might not be brought to Trouble." And, to the ſame Purpoſe, the ſaid *John Beg Maccoll* depoſes, "That, when *John Mac-*"*kenzie* informed the Pannel of the Murder, he ſaid, *It was a dreadful* "*Accident, and he was afraid it might bring Trouble on the Country*; and "appeared *ſorry* for what had happened."

It is indeed true, that the ſame Witneſs has depoſed, "That neither "the Pannel, nor any of his Family, went near the dead Body:" But as this is a Circumſtance of no Manner of Weight; ſo the Witneſs has accounted for it in a very natural Way, *viz.* That as the Deceaſed and the Pannel had not been in good Terms together, the Pannel did not chuſe to go to the Place where the Body lay; and more eſpecially as he knew that ſome of thoſe who were to meet *Glenure* had Arms, and it was impoſſible to know what unreaſonable Lengths their Reſentment might carry them: At any Rate, it ſhews how much the Proſecutors are pinched in point of Argument, when they are obliged to found upon it, as a Circumſtance againſt the Pannel, that he did not go from his own Houſe, which is about two Miles diſtant from the Place where the Murder was committed, merely to aſſiſt at the Funeral of a Perſon to whom he was no-way related.

The

The fifth Article charged in the Libel is, That, upon the second Day after the Murder, the Pannel had sent five Guineas by the Packman to *Allan Breck*, in order to enable him to make his Escape. As to which, Gentlemen, I do admit, that, if at this Time the Pannel had been in the Knowledge that *Allan Breck* was the Murderer of *Glenure*, his furnishing him with Money, in order to enable him to make his Escape, might have been considered as an Offence deserving Punishment. At the same Time, however wrong this would have been, it might have admitted of an Excuse, from the Connexion and Relation which the Pannel had to *Allan Breck*. And it is now proved, by the concurring Testimonies of two Witnesses, that the Pannel had been left his Tutor; and therefore it is much doubted, how far the Pannel's sending Money to *Allan Breck*, tho' he had known him to be the Murderer, would have been punishable.

But however the Law might have stood upon that Supposition, it will not apply to the present Case. The Pannel denies he knew any thing of *Breck*'s being the Murderer: And as he was well acquainted with his particular Circumstances, of which he has now brought full Evidence, by the concurring Testimonies of many Witnesses, that he had been first a Deserter, next a Rebel, and was then in the *French* Service; I conceive it was noways criminal in the Pannel to advance this trifling Sum, in order to enable him to make his Escape; it was doing no more than what any good-natured Man would have done to his Friend in the like Circumstances: And hard will be the Case of the Pannel, if he should be condemned merely for doing a good-natured Deed, which had nothing criminal in it; more especially as he had Reason to believe the Message which was sent him from *Allan Breck*, importing, that he had no Accession to the Murder, but judged it prudent for him to leave the Country, in respect of his particular Circumstances, explained as above.

And indeed his Majesty's Advocate does not seem to lay much Stress upon this Circumstance by itself; but then has attempted to rear up certain Arguments, tending to shew that the sending of this Money must have been in consequence of a previous Concert with *Breck*. And, in the first Place, it has been said, that the Pannel could not have known to have sent the Money to *Koalisnacoan*, if it had not been in consequence of such previous Concert.

But, with Submission, there is a very satisfying Answer to this Objection, *viz.* That, upon the Day after the Murder, the Pannel had received a Message from *Allan Breck*, informing him where he was, and desiring him to send what Money he could spare, to enable him to make his Escape. This is distinctly proved by the concurring Testimonies of no less than four Witnesses, whose Depositions, as they connect with one another, fall now to be attentively considered.

Katharine Macinnes deposes, "That, in the Evening of the 14th of "*May* last, the Deponent saw *Allan Breck Stewart* at a Goat-House in "the Moor of *Ballachelish*, after *Glenure* was killed: That *Allan Breck* "then asked her, what was the Occasion of the Stir in the Town? and "that she told him, *Glenure* was murdered: And further asked her, who "might have committed the Murder? and that she told him, she did not "know: And that the said *Allan* further desired the Deponent to tell "*Donald Stewart* in *Ballachelish* to go to the Pannel, and desire him to "send the said *Allan* Money; and that she delivered this Message to "*Donald Stewart* that same Night; and that she told the said *Donald* "*Stewart* where she saw *Allan Breck*."

And *Donald Stewart*, the next Witness, deposes, "That, upon the "Evening of *Thursday* the 14th of *May* last, about Night-fall, *Katha-* "*rine Macinnes* came to the Deponent, and told him, that one without "wanted to speak to him: That this Message came to him in *Balla-* "*chelish*'s own House: That, when he went out, the said *Katharine* "*Macinnes* told him, that it was *Allan Breck* that wanted him, and that "he was a little above the House in the Brae: That the Deponent went "up to the Brae, and met *Allan Breck*, who was then dressed in a great "Coat, and a dark short Coat under it, with white metal Buttons: "The Deponent told him of the Murder, and said, it could not be but "that he, *Allan Breck*, was about it: To which *Allan Breck* answered, "That he had heard of the Murder, but had no Hand in it: To which "the Deponent replied, He did not believe him: That the said *Allan* "*Breck Stewart* told the Deponent, he was going immediately to leave "the Kingdom, was very scarce of Money, and was going then for "*Koalisnacoan*, and desired the Deponent to acquaint the Pannel, that "he was gone to *Koalisnacoan*, and desired him, if possible, to send him "Money there; and the Deponent then promised to acquaint *James* "*Stewart* of the above Message: That *Allan Breck* said, he believed he "would be suspected of the Murder; and upon that Account, *and as he* "*was a Deserter* formerly from the Army, it was necessary for him to "leave the Kingdom: That, after the Conversation with the Pannel about "Serjeant *More*, he delivered the above Message from *Allan Breck* to the "Pannel; and that the Pannel did not say whether or not he was to send "the Money; and this Conversation happened about Ten o'Clock in "the Forenoon of *Friday* the 15th of *May* last; and that there was no- "body present." And further deposes, "That, upon the Deponent's "delivering the above Message from *Allan Breck* to the Pannel, the "Pannel asked why *Allan Breck* himself did not come for Money, if he "wanted it? To which the Deponent, to the best of his Remembrance, "replied, That *Allan Breck* told him, he would be suspected for the Mur- "der, and was a Deserter: To which the Pannel answered, That he "hoped in God *Allan Breck* was not guilty of the Murder: That, during "the above Conversation with the Pannel, *Alexander Stewart*, *Duncan* "*Maccombich*, and several other Possessors of *Auchindarroch*, were in the "adjoining Field delving, but at such a Distance, that the Deponent "cannot think they could hear the above Conversation."

From the Depositions of these two Witnesses, which connect exactly together, it is distinctly proved in what Manner the Pannel came to the Knowledge of the Place where *Allan Breck* was: And their Depositions are further supported by the Deposition of *John Stewart* younger of *Balla-* *chelish*, who deposes, "That, the Day after the Murder, the Deponent "was at the Pannel's House, who, after Twelve o'Clock of the Day, "told the Deponent, that he had a Message that Morning from *Allan* "*Breck* by *Donald Stewart*, to send him Money; but does not remem- "ber whether the Pannel told him the Place where he was directed to "send it; and the Pannel told the Deponent, that he was resolved to "send him Money."

And also by the Deposition of *Alexander Stewart* in *Auchindarroch*, who deposes, "That, to the best of his Knowledge, he saw *Donald Stewart* in "*Ballachelish* and the Pannel together, upon the Marches between *Au-* "*charn* and *Auchindarroch*, in the Morning of the 15th of *May*; and "that he himself was at the Time digging Ground with the other Te- "nants of the Town."

The learned Gentleman on the other Side has been pleased to except against this Part of the Evidence; that the two material Witnesses are both connected with the Family of *Ballachelish*; that, as to some of the Facts, they are single Witnesses; and that they do not entirely agree as to the Import of the Message sent to *Donald Stewart* by *Allan Breck*.

I must acknowledge, I am under no small Difficulty to find out any Foundation for the first Part of the Objection. It is neither pretended nor proved, that *Ballachelish* is at all related to the Pannel; and as it cannot be said that any valid Objection could have been made against *Ballachelish* himself, if he had been produced as a Witness for the Pannel, far less does any Objection lie against the Son-in-law or Servant of *Balla-* *chelish*, upon Account of his being in the Interest of the Pannel, of which, however, no Sort of Evidence has been brought. And as to the second Part of the Objection, that there are not two Witnesses concurring as to the whole of the Facts relative to the Message sent by *Allan Breck* to *Do-* *nald Stewart*;—the learned Gentleman would do well to observe, how much of his own Proof is founded only upon single Testimony; and then let him shew Cause, why his *Packman* and *Bauman*, though *single* Witnesses, should be credited, and the like Indulgence should not be given to the Pannel.

At the same Time it must be observed, that the two Witnesses who have deposed with regard to this Message, are not single; they concur as to the material Part, that *Allan Breck* had sent a Message to the Pannel, desiring him to send him a present Supply: And though the two Witnesses differ with regard to the precise Words used by the Maid in delivering *Allan Breck*'s Message to *Donald Stewart*; yet, as they agree in every material Circumstance, no Regard ought to be had to trifling Variations; and it is believed the Gentleman on the other Side will admit, that the Objection would have been full as strong (if not stronger), if the two Witnesses had both used the same Words.

And lastly, As to the Observation that the Witnesses differ among themselves, as to the precise Hour when the Packman arrived at *Fort-* *William*, and demanded the Money from *William Stewart*, it is noways surprising, that, at so great a Distance of Time, Witnesses should not be altogether exact as to Hours and Minutes. What appears most probable is, that *William Stewart* and his Wife have both mistaken the Hour, as, from their Oaths, neither of them seem to be positive with regard to that Matter: And *Stewart* the Packman seems to have been more attentive to this Particular, since he not only swears as to the Time when he received his Message from the Pannel, which he says was about Twelve at Noon, but also as to the Time when he delivered it to *William Stewart*, which, as the Packman says, was early in the Evening: And as this agrees entirely with the Account which *Donald Stewart* gives of the Matter, when he says, "That he delivered *Allan Breck*'s Message to the Pannel about Ten o'Clock Forenoon;" so it is plain there could be no Concert betwixt these two, not only as *Donald Stewart* is above all Suspicion of that Kind, but also as the Packman has been kept under close Confinement by the Prosecutor, and had no Opportunity of conversing with *Donald Stewart* from the Time of the Murder till he was produced as a Witness: And I cannot help thinking, that it would sound strangely to say, that the Prosecutors should be allowed to give Credit to this Packman where he swears for them, and, at the same Time, to reject his Testimony where it happens to make against them.

The Prosecutor has been pleased to lay great Stress upon the Oath of *John Breck Maccoll*, Bouman; and in particular upon that Part of it, where he says, that *Allan Breck* had desired him to go into *Fort-William* with a Letter to *William Stewart*, in case some Money did not come to him before next Morning; and this, it has been said, agrees exactly with the Message sent by the Pannel to *William Stewart*, desiring him to give Credit in five Pounds *Sterling* to *John Breck Maccoll*, Bouman in *Koalisna-* *coan*, in case he came to demand it; and it is pretended, that this is a clear Proof of a private Concert betwixt the Pannel and *Allan Breck*, settling the Manner in which he was to be supplied with Money.

But as the whole of this Argument is founded upon the Oath of the Bouman, deposing to a long romantic Story, in which he is altogether unsupported, I am intitled in Law to plead, that his Oath is not to be held as legal Evidence against the Pannel; more especially as it appears, from what has been already said, that his Evidence is disproved in one very material Article, in which he deposes to a very strong Expression, as applied by the Pannel against *Glenure*, at a Time when it is proved they were in perfect Friendship together.

2*dly*, The Oath of the Packman, relative to this Article, is as little to be relied on; for, though he has now deposed, That the Pannel had desired him to tell *William Stewart*, not only to send him five Pounds, but also to give Credit for the like Sum to *John Breck Maccoll* in *Koalisnacoan*, in case he came to demand it; yet it is remarkable, that, in the Libel, which it must be presumed was taken from his own Mouth, no Mention is made of the five Pounds, for which Credit was to be given to the Bouman; and therefore this must have been a new Discovery made by the Packman since printing the Libel. And it is further remarkable, that this Part of the Packman's Evidence is contradicted by the Oath of *William Stewart*, who expressly deposes, That, at the Time when the Packman delivered his Message from the Pannel, no Mention was made of the Name of *Allan Breck*; and therefore no Argument can be drawn from any Thing either the Packman or Bouman have said upon this Matter.

But, 3*tio*, supposing all the Bouman has said to be true, *viz.* That *Allan Breck* had desired him to carry a Letter to *William Stewart*, it will not follow, that he and the Pannel were under any previous Concert relative to that Matter; for as *Allan Breck* was acquainted with *William Stewart*, and as nearly related to him as he was to the Pannel, it was natural for him to have Recourse to *William Stewart* to supply him in his Necessity; and

and therefore his doing ſo, will not prove that it was done upon any previous Concert with the Pannel. From the Commiſſion *Allan Breck* had given to *Donald Stewart* upon the *Thurſday* Evening, he had Reaſon to expect that the Pannel would have ſent him a Supply with the firſt Opportunity; and as that had not happened, it was natural for him to apply to *William Stewart*, who was his Acquaintance, and as nearly related to him as the Pannel.

The learned Gentleman has been pleaſed alſo to found upon the Poſtſcript ſubjoined to the Pannel's Letter of the 14th of *May*, to *Charles Stewart*; in which he deſires, "That *William* may ſend immediately "eight Pounds *Sterling*, to pay for four Milk Cows he had bought for "his Uſe at *Ardſhiel*:" From which it is inferred, that, before the Murder, the Pannel was preparing Money to give *Allan Breck*, in order to enable him to make his Eſcape. But as that *Letter* and *Poſtſcript* do not mention the Name of *Allan Breck*, nor to what Purpoſe the Money was intended to be applied, the Obſervation does not deſerve any Anſwer; tho' at the ſame Time it clearly proves, that the moſt innocent Circumſtances have been laid hold of, and reared up into Arguments againſt the Pannel.

Thus it appears, that no Argument can be drawn from the Circumſtance of the Pannel's ſending Money to *Allan Breck*; as it is not proved, that the Pannel then knew that the Murder had been committed by him; and far leſs is it proved, that there had been any *previous Concert* betwixt them concerning the ſending of that Money before the Murder was committed. And indeed, Gentlemen, it appears to me, that the Circumſtances which attended the ſending of this Money, and in particular the *Difficulty* there was in obtaining it, cannot fail to convince every unprejudiced Perſon, that this horrid Murder had not been committed in conſequence of any *previous Concert* betwixt the *Pannel* and *Allan Breck*; for, if that had been the Caſe, it is impoſſible to believe, that the Money would not have been more early provided. It behoved to occur to both Parties, that Money would be neceſſary to enable the Murderer to make his Eſcape; and as it clearly appears, that neither the one nor the other was in Caſh upon *Monday* the 11th, when the Time and Manner of committing the Murder is ſuppoſed to have been *concerted*, it is impoſſible, that this important Matter of providing the Money would not have been inſtantly ſet about, or that it would have been delayed till the Hour when the execrable Act was to be committed.

The learned Gentleman has been pleaſed alſo to lay Weight upon another Circumſtance, *viz.* That, ſome Days after the Murder, two *Guns* were found concealed near the Pannel's Houſe, one of them *loaded*, and the other *unloaded*; and it has been inſinuated, as if the *unloaded Gun* was that, with which *Allan Breck* committed the Murder. But this Circumſtance is really ſo trifling, that it ſcarcely deſerves a ſerious Anſwer. It is well known, that the Part of the Country where the Pannel lives, fell under the *diſarming Act*; and therefore it was noways ſurpriſing, that the Guns were found *hid*, and that Orders were given to *hide* them at a Time when it was foreſeen, that a ſtrict Search was to be made by the *Military*; and, though one of the Guns was *unloaded*, it is a ſtrange Flight of Imagination, from thence to infer, *without Evidence*, that this was the Gun with which the Murder was committed.

Beſides, it appears from the Oaths of *John Beg* and *Dougal Maccolls*, both Witneſſes produced for the *Proſecutor*, that the *little Gun*, which was found *unloaded*, was in ſuch miſerable bad Order at the Time when the Murder happened, that it is impoſſible it could have entered into the Head of any Mortal to uſe it for the Purpoſe ſuppoſed by the Proſecutor. *Dougal Maccoll* depoſes, "That he, the Deponent, has no Skill about "Guns; but heard *Allan Breck*, and *Allan Stewart* the Pannel's Son, "complain more than once, that the Guns were in bad Order."

John Beg Maccoll depoſes, "That neither of the Guns were in good "Order; that the *large* or loaded *Gun* was in uſe, when going to be "*ſnapped*, to ſtand at *Half-cock*; and that the *little Gun* was in uſe to "*ſnap* or *misfire*: That the little Gun had an old wore Flint in it, and "that he obſerved this Flint in the ſaid Gun, when he was in uſe to ſee "it ſtand at the End of the *Girnel* as above; but did not obſerve whether "it had a Flint or not, when he took it from under the Girnel: That "he knows no Fault the *Lock* of the *little* Gun had, but its being in uſe "to misfire; and that the Lock was on the ſaid Gun when he hid it "on the *Friday* Evening: That *Allan Breck* carried it out one Morning, "and told that it *miſgave* with him thrice at a black Cock, and ſhot with "it the fourth Time, without killing the Cock."

And, in like Manner, Captain *David Chapeau* and *Patrick Campbell* concur in depoſing, That this *little Gun*, at the Time when it was found, was in ſuch bad Order, that, for want of a *Screw-nail*, the *Lock* was tied to the *Stock* by a *String*:—And therefore, upon the whole, I leave it to you to judge, how far it is poſſible that a Gun in ſuch Order would have been uſed for the Purpoſe ſuppoſed by the Proſecutor; or that it would have been carried back ſo quickly, as it muſt have been, to the Pannel's Houſe, at a Time when every Perſon was on the Watch inquiring about the Murder.

And it is of no Importance, that neither *John Beg* nor *Dougal Maccoll* ſaw this Gun, at the Time when the other Arms were hid upon the *Thurſday* Evening; for as neither of theſe two Witneſſes ſay that they looked for it, ſo they have both depoſed, "That *Allan Stewart*, the Pan-"nel's Son, had then told them, that he had hid it below the *Girnel*;" and as they accordingly found it ſo hid upon the Day following, it removes all Ground of *Suſpicion*, which might otherwiſe ariſe from the Circumſtance, that this Gun was not hid with the reſt of the Arms on the *Thurſday Evening*. At the ſame Time, the Pannel muſt beg leave to ſay, that it would require ſome Explanation how it has happened, that the *Lock* of this little *Gun* comes to be now miſſing, when ſuch Care has been taken to preſerve every other Particular, which could poſſibly furniſh any Handle for an Argument againſt the Pannel. A good deal of Weight has been alſo laid upon another Circumſtance of the like Nature with the former, *viz.* That, upon the Day after the Murder, *Allan Breck's Cloaths* were hid, in conſequence of an Order by the *Pannel's Wife*: But as it is not eaſy to figure how an Order given by the Pannel's *Wife* ſhould have any Effect againſt the *Pannel*; ſo it is humbly thought that this Circumſtance may be eaſily accounted for.—It was foreſeen, that, as *Allan Breck* was about to leave the Country, he would be immediately ſuſpected as *guilty* of the Murder; and, as there was great Reaſon to believe that a *Search* would be forthwith made in every Place where *Breck* was in uſe to viſit, it was natural for the Pannel's *Wife* to put his Cloaths out of the Way, that they might not be the Occaſion of *Suſpicion* againſt the *Pannel* or his Family.

His Majeſty's Advocate was pleaſed to found upon the Oath of *John Maccoll*, Bouman, who depoſes, "That *Allan Breck* had ſaid to him, "that the apprehending of the Pannel and his Son would not ſignify "much; but expreſſed ſome Concern, leſt *Allan Stewart*, Son to the "Pannel, might be betrayed by his own Tongue." But, as the *Bouman* is only *here depoſing* to an Expreſſion of *Allan Breck*'s, when he was endeavouring to free himſelf from Suſpicion; as the *Bouman* is at beſt only a ſingle Witneſs; and as the Expreſſion ſuppoſed to have been uſed by *Allan Breck* does not imply, that either the *Pannel*, or his Son, had been guilty of the Murder; this Circumſtance, ſuppoſing it true, ought not to be regarded.

And here I cannot omit putting you in mind of one Circumſtance depoſed by *Alexander Stewart*, the Packman, which ſhews pretty clearly, that no Regard ought to be had to the Oath of the Bouman; and beſides it is ſingle, and not ſupported by other Evidence. The Packman depoſes, "That the Bouman had deſired him to conceal his carrying "the Cloaths and Money to *Koaliſnacoan*; told him that he could not "prove it againſt him; *and that he could ſafely depoſe he did not deliver the "Cloaths to him, ſince he only pointed out where they were.*" I leave to you, Gentlemen, to judge, what Credit can be given to a Witneſs whoſe Principles were ſuch, as to ſuppoſe that Perjury might be avoided by ſo poor an Evaſion.

It has been alſo ſaid, "That the Pannel's Wife, his two Sons, and "his Daughter, have, in ſome Things, contradicted each other, in the "Declarations made by them ſeverally at *Fort-William*."

The Pannel cannot help thinking it hard, that *extrajudicial Declarations* made by his own *Family* ſhould have been received as Evidence againſt him; more eſpecially as it has been hitherto held to be an *eſtabliſhed Principle* in our Law, not only that *extrajudicial Declarations* by third Parties cannot be taken, or received as Evidence againſt any Pannel, but alſo that thoſe who ſtand in the Relation of *Wife* or *Children* to the *Pannel*, cannot be received as Witneſſes againſt him.

However, as theſe Declarations have been allowed to be read in Court, though objected to by the Counſel for the Pannel, he muſt acquieſce in the Judgment given; but, at the ſame time, I am fully perſuaded, that, upon peruſing theſe Declarations, the Jury will be of Opinion, that the *Differences* (if there are any) are ſo *trifling*, that they can have no Weight againſt the Pannel: And though it ſhould be ſuppoſed that the *Wife* or *Daughter* of the Pannel, from a miſtaken Notion of *Duty* to a *Parent* and *Huſband*, who had been always *indulgent* to them, have endeavoured to conceal that *Allan Breck* went from the Pannel's Houſe on *Tueſday* Morning, dreſſed in a *Coat* belonging to the *Pannel*; yet, as it has been demonſtrated, it is hoped to your Conviction, that there is no ſort of *Relevancy* in this Circumſtance, it can have no other Effect, but to ſhew how extremely improper it is, that ſo *near* Relations ſhould be examined againſt any Man upon Trial; but can never be uſed as an Argument againſt the Pannel. On the contrary, Gentlemen, I cannot help thinking, that theſe Declarations afford a very ſtrong Argument for the Pannel; for as no leſs than ſixteen different *Declarations* appear to have been taken from the Pannel himſelf, his Wife, and Children, (one of his Sons having been examined no leſs than five different Times) it is really *ſurpriſing* that ſo great a Number of *Declarations*, ſigned by different Parties, all relative to the ſame Matter, ſhould agree ſo *exactly* together; and, as all the *Attention* of the *Proſecutor* has not been able to draw from theſe *Declarations* any thing which can fix the moſt diſtant *Suſpicion* of Guilt againſt the *Pannel*, it tends ſtrongly to fortify the legal Preſumption of his Innocence.

As to the Letter wrote by the Pannel to *John Macfarlane*, referred to in the Libel, I am ſtill at a Loſs to diſcover what Argument can be drawn from it; for as that Letter (which was wrote ſoon after the Murder, and before any Advertiſement had been publiſhed by the Friends of the Deceaſed for apprehending *Allan Breck*) contains an exact Deſcription of *Breck*'s Perſon and Dreſs, and alſo of the Place where he was moſt likely to be found, it rather proves for, than againſt the Pannel; and it was but natural, at this Period, for the Pannel to expreſs an Anxiety to have *Allan Breck* apprehended; as it appears from the Proof, that before this Time it was the *common Report* of the Country, that the Murder had been committed by *Allan Breck*; and therefore it behoved *naturally* to occur to the Pannel, that the eaſieſt and ſhorteſt Way to obtain his own *Liberty*, was to find out and ſecure the Perſon by whom the Murder was ſuppoſed to have been committed.

The learned Gentleman on the other Side ſtill inſiſts, that it is not proved, that any other Perſon, beſides the Pannel, had any Quarrel or Reſentment againſt the Deceaſed; and it has been further ſaid, "That "if *Allan Breck* was the *Actor* in the Murder, he was only revenging "the Quarrel of the *Pannel*."

But the Weight of this Obſervation is fully taken off by the Evidence produced for the Pannel. It is clearly proved by the Depoſitions of *Angus Macdonald*, *Duncan Campbell*, *Robert Stewart*, and *Charles Stewart*, "That "*Allan Breck* had ſworn Revenge againſt *Glenure*, upon a Belief, that he "had given Information againſt him as a Deſerter:" And though *Colonel Crawfurd* has depoſed, "That the Deceaſed had never given him "any ſuch Information;" yet this does not at all vary the Argument, as it is undeniably proved, that *Allan Breck* ſtill believed, that ſuch *Information* had been given, and upon that Account bore deep Reſentment againſt the Deceaſed: And therefore, ſuppoſing that the Murder had been committed by *Allan Breck*, (which is not admitted) it will not follow, that it was done with a View to reſent any *Quarrel* the *Pannel* might have had with the Deceaſed; ſince it might have been done with a wicked Purpoſe of avenging his own *private Quarrel*: And, at the ſame Time, it is very proper to be here obſerved, that the Deceaſed had executed a *Warning*, and obtained a Decreet of *Removing*, againſt a great many of the Tenants of *Ardſhiel* and *Lochiel*; and if it is true, that in that Part of the Country a Step of this Sort is conſidered as a Cauſe of *mortal Hatred*, it was, at leaſt, as much ſo to the *Tenants* removed, as it could poſſibly be to the *Pannel*: And therefore it is wrong in the Proſecutor

to say, that there was no other Person who had any Cause of *Resentment* against the Deceased, but only the *Pannel*; whereas it is plain, that every one of the *Tenants* who had been decerned to *remove* from their respective Possessions, had at least as strong a *Cause* of *Resentment* against the *Deceased*, as that which is libelled against the *Pannel*; and besides, I might also observe, that it is proved, by the Depositions of the two last Witnesses produced for the *Pannel*, that one *Serjeant More Cameron* (who in that Part of the Country is known to be of a most *abandoned* Character) had threatened to *shoot Glenure*, or *to be upsides with him*, in case he should happen to meet him.

Upon the whole, Gentlemen, I flatter myself, I have shewn to your Conviction, that all and each of the Circumstances proved against the Pannel are such, that they can easily bear a *good Construction*, and might have happened *naturally*, though he had been innocent of the Crime laid to his Charge: And when to this it is added, that the *Character* of the Pannel in *private Life*, renders it highly improbable that he could have been accessary to so *vile* a Crime; that he could not possibly reap any Benefit by it; and that it is proved by *inconteſtable* Evidence, that, at the very Time when the Murder was committed, he was *anxiously* pursuing *another* Measure, which was utterly *inconsistent* with the Supposition of his being any way *accessary* to the *Murder*; I persuade myself that you will be careful to divest yourselves of any *Impressions* you may have received *without Doors*; that you will judge upon the Evidence *impartially* as it lies before you; and that, upon the whole, you will find the Pannel *not guilty* of the Crime laid to his Charge.

At the same Time, in case you shall have any Difficulty in finding the Pannel *not guilty*, or in case you shall be of Opinion, that there is a Shadow of *Relevancy* in any of the Circumstances proved against the Pannel, it is your Duty to return a *special Verdict* upon the Facts proved for and against the Pannel; and in that Case you ought to be particularly careful to omit no Circumstance which may have any Tendency to *exculpate* the Pannel.

Sunday, 24 September 1752, *betwixt Seven and Eight o'Clock in the Morning.*

" The Lords ordain the Assize instantly to inclose in this Place, and " to return their Verdict upon *Monday* next, the 25th current, at Eleven " o'Clock before Noon; and adjourn the Court, and hail Diets thereof, " till that Time; and ordain the hail fifteen Assizers there to attend, and " the Pannel to be carried back to Prison."

Curia itineris Justiciarii, S. D. N. Regis, tenta apud burgum de Inverarii, vicesimo quinto die mensis Septembris, anno Domini millesimo, septingentesimo quinquagesimo secundo, N. S. per nobilem et præpotentem Principem Archibaldum ducem de Argyll, Dominum Justiciarium Generalem, et Patricium Grant de Elchies, armigerum, et Dominum Jacobum Ferguson de Kilkerran, Dominos Commissionarios Justiciarii dicti, S. D. N. Regis.

Curia legitimè affirmata.

Intrat. The above *James Stewart*, Pannel.

The Persons, who passed upon the Assize of the said *James Stewart*, returned the following Verdict:

" *At* Inverary, *the 24th Day of* September, 1752 *Years, New Style*, The " above Assize, having inclosed, did make Choice of the said *Colin Camp-* " *bell* of *Skipnish* to be their Chancellor, and *James Campbell*, late Bailie of " *Inverary*, to be their Clerk; and, having considered the criminal Let- " ters pursued at the Instance of *William Grant* of *Prestongrange*, Esq. his " Majesty's Advocate, for his Majesty's Interest, and also at the Instance " of *Janet Mackay*, Daughter to the Honourable *Hugh Mackay* of *Bighouse*, " Esq. and Relict of the deceased *Colin Campbell* of *Glenure*, for herself, " and on behalf of *Elizabeth* and *Lucy Campbells*, her infant Children, with " Concourse of his Majesty's Advocate, for his Majesty's Interest; against " *James Stewart*, Pannel; the Lord Justice-General, and Lords Commis- " sioners of Justiciary their Interlocutor thereupon, with the Depositions " of the Witnesses adduced for proving thereof, and Depositions of the " Witnesses adduced for the Pannel, together with the Writings, and " other Particulars contained in the Inventory subjoined to the Libel, and " the Writings produced for the Pannel; find unanimously the Pannel " *James Stewart* GUILTY, Art and Part, of the Murder of *Colin Campbell* " of *Glenure*. In Witness whereof, our said Chancellor and Clerk have " subscribed these Presents in our Names, and in our Presence, Place and " Date above-written."

(Signed) COLIN CAMPBELL, Chancellor.
JA. CAMPBELL, Clerk.

After reading this Verdict the Court proceeded to give Judgment; which, being written down in the Book, and signed by the whole Judges, was read by the Clerk, and, in the usual Manner, repeated pronounced by the Dempster to the Pannel, as follows:

" The Lord Justice-General, and Lords Commissioners of Justiciary, " having considered the Verdict of Assize, of Date the 24th current, ac- " cording to the present Style, returned this Day against *James Stewart*, " Pannel, whereby he is found Guilty, Art and Part, of the Murder of " *Colin Campbell* of *Glenure*; they, in respect thereof, by the Mouth of " *John Mackenzie*, Dempster of Court, decern and adjudge the said *James* " *Stewart* to be carried back to the Prison of *Inverary*, and therein to re- " main till the 5th Day of *October* next, according to the present Style; " and then to be delivered over by the Magistrates of *Inverary*, and Keeper " of the said Prison, to the Sheriff-depute of *Argyllshire*, or his Substitutes; " and to be by them transported to the Shire of *Inverness*, and delivered " over to the Sheriff-depute of *Inverness*, or his Substitutes; and to be by " them transported to *Fort-William*, and delivered over to the Governor, " Deputy-Governor, or Commander in Chief, for the Time, of the said " Garrison, to be by them committed to Prison in the said Fort, therein " to remain till the 7th Day of *November* next, according to the present " Style; and then again to be delivered over to the Sheriff-depute of *In-* " *vernessshire*, or his Substitutes; and to be by them transported over the " Ferry of *Ballachelish*; and delivered over to the Sheriff-depute of *Ar-* " *gyllshire*, or his Substitutes, to be by them carried to a Gibbet to be " erected by the said Sheriff on a conspicuous Eminence upon the South " Side of, and near to the said Ferry: And decern and adjudge the said " *James Stewart*, upon *Wednesday* the 8th Day of *November* next, accord- " ing to the present Style, betwixt the Hours of Twelve at Noon and " Two Afternoon, to be hanged by the Neck upon the said Gibbet, by " the Hands of an Executioner, until he be dead; and thereafter to be " hung in Chains upon the said Gibbet; and ordain all his moveable " Goods and Gear to be escheat and inbrought to his Majesty's Use; " which is pronounced for Doom."

(Signed) ARGYLL.
P. GRANT.
JA. FERGUSON.

After which the Lord Justice-General spoke to the Pannel to the following Effect:

JAMES STEWART, you have had a very long and most impartial Trial: You have been prosecuted with all the Moderation consistent with the Crime you stood accused of; and your Counsel have defended you with great Ability, and with Decency. The Jury have unanimously found you guilty of having been accessary to this horrid Murder, which, upon due Consideration of all Circumstances, seems to be according to the Evidence.

My Brethren, in delivering their Opinions, have endeavoured to make you sensible, how heinous the Crime is of which you stand convicted; a base and most infamous Murder and Assassination, in Defiance of the Laws of God and Man, and the common Principles of Humanity! I must add one Circumstance more, which aggravates your Guilt; and that is, your Ingratitude to that Gentleman, who, by your Means, is now no more. You had, by your Artifices, got into his Confidence, before he had Time to be well informed of the Circumstances of the Estate of which he was appointed Steward. This Confidence you abused so much, as to raise Sums of Money from the Tenants for your own Purposes: But when, in Obedience to the Orders of his Superiors, he was removing you and others from the Farms they did possess, then, according to the Malice always prevailing in uncivilized Parts of the Highlands, your inveterate Hatred began: So that it may be said of you, That you first eat his Bread, and then shed his Blood.

To trace your Crime from its true original Source, I will use the Words of our Statute-Book, *Those barbarous Cruelties and lawless Oppressions* practised in the Highlands during several Centuries, against which the Laws made so long ago as the Year 1587, and inforced in 1690, were so severe, that the Clans were bound to deliver Hostages, as Securities for the Peace, who were even to be put to Death, if no Redress was made. To this I must add that obstinate and almost incurable Disaffection and Aversion to the Government in several Highland Clans, and in particular your own, ever since the happy Revolution, and the Establishment of the Crown in the Protestant Line.

In the Year 1715, there broke out a most unnatural and unprovoked Rebellion, soon after the Accession of his late Majesty to the Throne; in which the Part your Clan acted is well known, so many being here present that were Witnesses of their composing Part of the Rebel Army, which besieged this Town. This I myself have Reason to know. A Royal Indemnity soon followed after those Treasons then committed: But, in the Year 1719, your Clan, unmindful of their Lives and Fortunes having been granted them only two Years before, did again rise in Rebellion, and assisted a foreign Enemy in an Invasion: In this you are said to have acted a Part, though at that Time very young.

In the Year 1745, the restless Spirits of the disaffected Highlanders again prompted them to raise a third Rebellion, in which you and your Clan formed a Regiment in that impious Service, and in which you persevered to the last. The Divine Providence at first permitted you to obtain some Advantages, which has possibly been to give you Time to repent of your Crimes. But who can dive into the Secrets of the Almighty! At last Heaven raised up a great Prince, the Son of our gracious King, who, with Courage equal to that of his Ancestors, and with Conduct superior to his Years, did, at one Blow, put an End to all your wicked Attempts.

If you had been successful in that Rebellion, you had been now triumphant with your Confederates, trampling upon the Laws of your Country, the Liberties of your Fellow-Subjects, and on the Protestant Religion: You might have been giving the Law, where you now have received the Judgment of it; and we, who are this Day your Judges, might have been tried before one of your mock Courts of Judicature, and then you might have been satiated with the Blood of any Name or Clan to which you had an Aversion.

I have thought it my Duty to put you in mind of these Facts, only to mark out those wicked Paths which have led you to Destruction: And though you don't now stand accused as a Rebel, nor am I permitted to call you a Traitor, because his Majesty's undeserved Mercy to you did several Years ago restore you to the State of an innocent Man; yet I may say, with great Force of Truth, that this Murder has been visibly the Effect and Consequence of the late Rebellion.

You may yet, during the short Time you have to live, be of great Service to your Friends and Neighbours, by warning them against those Principles and Practices which have brought you to this untimely End; and may the Lord have Mercy upon your Soul!

Immediately after Sentence of Death had passed upon *James Stewart*, and the Lord Justice-General had ended his Speech, the Pannel said,

MY Lords, I tamely submit to my hard Sentence. I forgive the Jury, and the Witnesses, who have sworn several Things falsely against me: And I declare, before the great God, and this Auditory, that I had no previous Knowledge of the Murder of Colin Campbell *of* Glenure, *and am as innocent of it as a Child unborn. I am not afraid to die; but what grieves me, is my Character, that After-ages should think me capable of such a horrid and barbarous Murder.*

Thereafter the Pannel was ordered back to Prison, and executed according to his Sentence; and the Morning before he went to Execution, he declared to the Sheriff his Innocence of the Fact for which he was convicted; and did the same at the Gallows, with many Protestations of his Innocence, calling God to witness the Truth of what he declared.

N. B. When the Sentence was pronounced against *James Stewart* at *Inverary*, the Gentlemen who attended the Trial the preceding Days, having been all tired with it, did not take Notes the last Day: But, as far as they can recollect, the Substance of what the Lord Justice-General then said to the Pannel, was as is above set down.

XLIX. *The* TRIAL *of* JOHN BARBOT, *Attorney at Law, for the Murder of* Matthew Mills*, *Esq. at a Court of Oyer and Terminer and General Gaol-Delivery, held at the Town of* Basseterre, *in and for the Island of* St. Christopher, *on* Friday *the* 5*th Day of* January, 1753, *before the Honourable* William Matthew Burt, *Esq. President of his Majesty's Council of the said Island, and others, his Majesty's Justices of Gaol-Delivery.*

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ON *Thursday* the 4th of *January*, 1753, a Bill of Indictment was found by the Grand Inquest for the Island of *St. Christopher*, against *John Barbot*, Gentleman, for the Murder of *Matthew Mills*, late of the said Island, Esq.

On *Friday* the 5th of *January*, 1753, the Court being met, the Prisoner *John Barbot* was set to the Bar, when the Court proceeded thus:

Clerk of Arraigns. John Barbot, hold up thy Hand. (*Which he did.*) You stand indicted by the Name of *John Barbot*, late of the Parish of *St. George Basseterre*, in the Island of *St. Christopher*, Gentleman; for that you, not having the Fear of God before your Eyes, but being moved and seduced by the Instigation of the Devil, on the 19th Day of *November*, in the 26th Year of the Reign of our Sovereign Lord the King that now is, about the Hour of Five of the Clock in the Morning of the said Day, with Force and Arms, at a certain Place called *Frigate-Bay*, in the Parish of *St. George Basseterre* aforesaid, in the Island aforesaid, in and upon one *Matthew Mills*, Esq. in the Peace of God, and of our Sovereign Lord the King that now is, then and there being, feloniously, voluntarily, and of your Malice aforethought, did make an Assault; and that you the said *John Barbot*, with a Pistol of the Value of five Shillings, then and there charged and loaded with Gunpowder and leaden Bullets, which said Pistol you the said *John Barbot* in your right Hand then and there had and held, into and against the aforesaid *Matthew Mills*, then and there feloniously, wilfully, and of your Malice aforethought, did shoot off and discharge; and that you the said *John Barbot*, with leaden Bullets aforesaid, issuing and shot off out of the Pistol aforesaid, then and there, by the Force of the said Gunpowder, the said *Matthew Mills*, in and upon the right Side of the Body of the said *Matthew Mills*, and between the two last false Ribs, and near the Back of the said *Matthew Mills*, then and there feloniously, voluntarily, and of your Malice aforethought, struck, penetrated, and wounded; and that you the said *John Barbot*, then and there feloniously, voluntarily, and of your Malice aforethought, gave to the said *Matthew Mills*, with the leaden Bullets aforesaid, out of the said Pistol, then and there, by Force of the said Gunpowder, shot off and discharged, in and upon the right Side of the Body of the said *Matthew Mills*, and between the two last false Ribs, and near the Back of the said *Matthew Mills*, then and there one mortal Wound of the Breadth of one Inch, and the Depth of nine Inches; of which said mortal Wound the said *Matthew Mills* at *Frigate-Bay* aforesaid, in the Parish aforesaid, in the Island aforesaid, instantly died: And so you the said *John Barbot*, the said *Matthew Mills*, in Manner and Form aforesaid, at *Frigate-Bay* aforesaid, in the Parish and Island aforesaid, feloniously, voluntarily, and of your Malice aforethought, did kill and murder, against the Peace of our said Lord the King, his Crown and Dignity.

Clerk. of Arr. How sayest thou, *John Barbot*, art thou guilty of the Felony and Murder whereof thou standest indicted, or not guilty?

Prisoner. Not guilty.

Cl. of Arr. Culprit, how wilt thou be tried?

Pris. By God and my Country.

Cl. of Arr. God send thee a good Deliverance.

Pris. May it please your Honours, I have a Motion to make, which is, That I may be allowed Counsel on my Defence, not only to Matters of Law, but also to Matters of Fact, and to make my Defence in the fullest Manner. What I ask is no new Thing, it being, as I am informed, usual in *England*, and having been granted several Times to Prisoners in Cases of Life and Death in the King's-Bench of this Island: Which Mr. *Sollicitor-General* knows to be so; having been himself concerned in those Cases on behalf of the Crown.

Mr. Sollicitor-General. (John Baker, *Esq.*) May it please your Honours, I was indeed aware that this Motion would be made by the Prisoner, and in the Manner it has been; and therefore beg Leave to offer to the Court what has occurred to me on the Matter.

It is certain that the Practice in *England*, 'till a very few Years ago, was, that a Person indicted for a capital Offence was never allowed Counsel on a Plea of Not Guilty, unless to Matter of Law only; and that to be started by the Prisoner himself. And to this, besides the known Practice, the Authorities in Law are so full and plain, that you can look into no Book, which at all treats of this Matter, where this Doctrine does not at once stare you in the Face.

It is very true, that, by the more modern Practice, the Rigour of this Rule hath been something relaxed; but then it is proper to see how far it has been so: And I can venture to affirm, that it has gone no farther than to permit Counsel to examine and cross-examine Witnesses; and never to the giving them Leave to make Observations on the Evidence; or to draw Arguments or Inferences from it to the Point in Issue; or to do any Thing else in the Way of a formal or full Defence. And this, tho' at first a pure Indulgence, yet now seems to be so far grown into a Right, that I believe it would be thought hard to deny it to the Prisoner in the present Case; and I should readily consent to the granting it on behalf of the Crown. But as to the allowing Counsel in the full Extent the Prisoner has moved for it, I am confident no Instance was ever yet seen of the Kind in *England*; and I fear, for that Reason, your Honours can hardly be thought at Liberty to allow it here.

This is a Trial of great Expectation, and your Honours will be very careful to do what is exactly right; and to leave no Part of your Conduct liable to Censure hereafter.

Whether it be a Hardship to deny full Counsel to Prisoners in capital Cases, I shall not pretend to say: But this is certain, that if it be one, it is of the Law's making, and not of your Honours; and therefore you cannot be blamed for it; tho' perhaps you might be so, for allowing an Indulgence which the Law and the Practice of *England* do not warrant.

For the Instances alledged by the Prisoner, in the Court of King's-Bench in this Island, they have been but two or three, and of very late Years only. It was no longer ago than the Year 1744, that I myself was refused by that Court to be of Counsel for one *James Dixon*, who stood indicted for the same Crime that the Prisoner at the Bar now does: So that any Instances to the contrary must have been since that Time; and none in the Case of Murder; tho' I think one or two of other Felonies. But these are too recent to govern the Determination of the Court in the present Case; which must therefore turn on this Question only, how far the permitting Counsel for the Prisoner is in itself right, and agreeable to Law.

I shall but just add, that in Proof of what I have affirmed as to the present Practice in *England*, I have here two printed Trials of Persons indicted for Murder, the one so late as in the Year 1741, and the other so very late as about ten Months ago: The former is of Captain *Goodyer*, Commander of one of his Majesty's Ships of War, for the Murder of his Brother Sir *John Dinely Goodyer*, Bart. and the latter of Miss *Blandy*, for the Murder of her own Father, tried at *Oxford* Assizes no longer ago than the Month of *March* last. The Prisoners were both Persons of some Rank and Fortune in Life, and such as both could well afford the Expence, and would not have wanted Advisers to move for full Counsel, had it been a Thing proper to have been asked or granted. And yet in neither Case is there the least Pretence on the Part of the Prisoner, of being intitled to it, or any Thing like a Motion for it; but (what is yet a stronger Confirmation of what I have alledged, than a mere Silence on the Matter) it is only asked in the Case of Captain *Goodyer*, to allow Counsel for the Prisoner to examine and cross-examine Witnesses; and even that is insisted on by the Counsel for the Crown, to be a Favour, and not a Right; and it is there granted as such.

The President then put it to the Court for their Opinion, whether or how far the Prisoner ought to be allowed Counsel to make his Defence; when the Court unanimously declared it as their Opinion, that he should be allowed Counsel to speak to Points of Law to be started by himself, and also to examine his own, and cross-examine the Witnesses for the Crown, but no further.

Pris. Then I pray your Honours will please to allow Mr. *Frye* to be of Counsel for me.

The Court accordingly assigned Mr. Frye *of Counsel for the Prisoner.*

Cl. of Arr. Cryer, make Proclamation for Silence.

Cryer. Oyez, Oyez, Oyez! His Majesty's Justices do strictly charge and command all manner of Persons to keep Silence, upon Pain of Imprisonment.

Cryer. Oyez! You good Men, that are impannelled to try between our Sovereign Lord the King and the Prisoner at the Bar, answer to your Names, and save your Fines.

The Jury *were called over, and appeared.*

Cl. of Arr. You, the Prisoner at the Bar, these Men which were last called, and do now appear, are those who are to pass between our Sovereign Lord the King and you, upon the Trial of your Life and Death; if therefore you will challenge them, or any of them, you must challenge them as they come to the Book to be sworn, before they are sworn: And you shall be heard.

Cl. of Arr. George Weatherill, look upon the Prisoner! You shall well and truly try, and true Deliverance make, between our Sovereign Lord the King, and the Prisoner at the Bar, whom you shall have in Charge, and a true Verdict give, according to the Evidence: *So help you God.*

And the same Oath was administered to the rest, (which were sworn) and their Names are as follow:

George Weatherill,	——	—— sworn.
Benjamin Clifton,	——	—— sworn.
John Wilson,	——	challenged.
Thomas Morgan,	——	challenged.
Alexander Douglas,	——	challenged.
William Jackson,	——	challenged.
William Garvey,	——	—— sworn.
Willet Payne,	——	challenged.
Charles Caines, sen.	—	—— sworn.
Archibald Thompson,	——	challenged.
Abraham Steele,	——	—— sworn.
Joseph King	——	challenged.
Thomas Edmead,	—	—— sworn.
William Isles,	—	—— sworn.
John Johnson, sen.	—	—— sworn.
William Wells, jun.	—	—— sworn.
Edmund Tannat,	——	challenged.
Davis Percival,	——	challenged.
John Fabie,	——	challenged.
Crisp Molineux,	——	challenged.
Andrew Armour,	——	challenged.

Prisoner. May it please your Honours, I challenge Mr. *Armour* for Cause: My Cause of Challenge is this:—Mr. *Armour* lately at *Montserrat* was heard to say, that, if he was upon my Jury, he would hang me.

* This Mr. *Mills* lived some Time at *Richmond* in *Surrey*, and married a Daughter and Coheir of Colonel *Soulegre:* (The other Daughter and Coheir married *Stephen Theodore Janssen*, Esq. Lord-Mayor of *London* in 1755.) He went over to *St. Christophe*, *Antigua*, &c. to look after his Estates there, and was barbarously murdered.

Mr. *President.*

Mr. *President.* Can you prove this Declaration of Mr. *Armour*'s?

Prif. Yes. I pray that Mr. *Frye* may be ſworn to prove it.

Mr. *President.* Swear Mr. *Frye.* (*Which was done.*)

Mr. *Frye.* I heard Mr. *Armour* ſay at *Montſerrat*, that, if he was to be on Mr. *Barbot*'s Jury, he would condemn him.

Mr. Sollicitor General. This is abundant Cauſe, to be ſure.

Mr. *President.* Mr. *Smith*, go on with the Jury.

Cl. of Arr.

William Buckley,	—	challenged.
Thomas Wylley,	—	challenged.
Chriſt. Mardenborough,	—	ſworn.
Peter Carew,	—	challenged.
Richard Peterſon,	—	ſworn.
Edward Gillard,	—	ſworn.

Cl. of Arr. Cryer, count theſe.

George Weatherill,	*William Iſles*,
Benjamin Cliſton,	*John Johnſon*, ſen.
William Garvey,	*William Wells*, jun.
Charles Caines, ſen.	*Chriſtopher Mardenborough*,
Abraham Steele,	*Richard Peterſon.*
Thomas Edmead,	*Edward Gillard.*

Cl. of Arr. Cryer, make Proclamation,

Cryer. Oyez, Oyez, Oyez! If any one can inform the King's Juſtices, the King's Sollicitor-General, or this Inqueſt now to be taken, of any Treaſons, Murders, Felonies, or Miſdemeanours, committed or done by the Priſoner at the Bar, let him come forth, and he ſhall be heard, for the Priſoner ſtands now at the Bar upon his Deliverance; and all Perſons that are bound by Recognizance to give Evidence againſt the Priſoner at the Bar, let them come forth and give their Evidence, or they will forfeit their Recognizances.

Priſ. May it pleaſe your Honours, I humbly move that I may have Pen, Ink, and Paper.

Mr. President. Ay, by all Means.

Cl. of Arr. John Barbot, hold up thy Hand! Gentlemen of the Jury, look upon the Priſoner, and hearken to his Charge; he ſtands indicted by the Name of *John Barbot*, late of the Pariſh of *St. George Baſſeterre*, in the Iſland of *St. Chriſtopher*, Gentleman, for that he not having (*as in the Indictment before ſet forth*). Upon this Indictment he hath been arraigned, and upon his Arraignment hath pleaded Not Guilty; and for his Trial hath put himſelf upon God and his Country, which Country you are: Your Charge therefore is, to enquire whether he be guilty of the Felony and Murder whereof he ſtands indicted, or Not Guilty. If you find him guilty, you ſhall enquire what Goods or Chattels, Lands or Tenements he had at the Time of the Felony committed, or at any Time ſince: If you find him Not Guilty, you ſhall enquire whether he fled for the ſame. If you find that he did fly for the ſame, you ſhall enquire of his Goods and Chattels, as if you had found him guilty: If you find him Not Guilty, and that he did not fly for the ſame, ſay ſo, and no more; and hear your Evidence.

Jury. May it pleaſe your Honours, we pray we may have Pen, Ink, and Paper.

Mr. *President.* Mr. *Smith*, let the Jury have Pen, Ink, and Paper.

Mr. *Kerr.* May it pleaſe your Honours, and you Gentlemen of the Jury, I am of Counſel for the King on this Trial: It is an Indictment by which the Priſoner at the Bar ſtands accuſed of the Murder of *Matthew Mills*, Eſq. The Indictment ſets forth, That the Priſoner at the Bar, not having the Fear of God before his Eyes, but being moved and ſeduced by the Inſtigation of the Devil, on the 19th Day of *November*, in the 26th Year of the Reign of his preſent Majeſty, about the Hour of Five of the Clock in the Morning, with Force and Arms, at a Place called *Frigate-Bay*, in the Pariſh of *St. George Baſſeterre*, in this Iſland, in and upon one *Matthew Mills*, Eſq. in the Peace of God, and our ſaid Lord the King, then and there being, felonioufly, voluntarily, and of his Malice aforethought, did make an Aſſault; and that the Priſoner, with a Piſtol then and there charged with Gunpowder and leaden Bullets, which he in his right Hand then and there had and held, into and againſt the ſaid *Matthew Mills*, then and there felonioufly, wilfully, and of his Malice aforethought, did ſhoot off and diſcharge; and that the Priſoner, with leaden Bullets iſſuing out of the ſaid Piſtol, by Force of the ſaid Gunpowder, the ſaid *Matthew Mills*, in and upon the right Side of his Body, and between the two laſt falſe Ribs, and near the Back of the ſaid *Matthew Mills*, then and there felonioufly, voluntarily, and of his Malice aforethought, ſtruck, penetrated, and wounded; and that the ſaid Priſoner then and there felonioufly, voluntarily, and of his Malice aforethought, gave to the ſaid *Matthew Mills*, in and upon the Right Side of his Body, between the two laſt falſe Ribs, and near the Back of the ſaid *Matthew Mills*, one mortal Wound of the Breadth of one Inch, and the Depth of nine Inches; of which ſaid mortal Wound the ſaid *Matthew Mills* inſtantly died.

To this Accuſation the Priſoner at the Bar hath pleaded Not Guilty; and for Trial hath put himſelf upon you, Gentlemen of the Jury: It is, therefore, the Duty of us, who are of Counſel for the King, to prove this horrid Crime upon the Priſoner to your Satisfaction; and I make no Doubt we ſhall be able to ſupport this Indictment, upon the moſt violent preſumptive Proof that ever appeared on a Trial of this Kind. If this ſhould be the Caſe, I hope the Jury will, under your Honours Direction, find the Priſoner guilty of this Murder. We ſhall proceed to examine the Witneſſes for the King, as ſoon as the Gentlemen who are to follow me have opened to your Honours, and the Jury, the Nature of the Evidence that will be produced on this Occaſion.

Mr. Sol. Gen. May it pleaſe your Honours, and you Gentlemen of the Jury;

The Priſoner at the Bar, *John Barbot*, ſtands indicted of no leſs a Crime than that of Murder; the Murder of one *Matthew Mills*, Eſq. I ſay, of *one Matthew Mills*; becauſe ſuch is the Stile and Form of the Indictment; and not as ſuppoſing you are, or can be any Strangers to the Name or Character of that unfortunate Gentleman: For who the Deceaſed was, his Rank and Diſtinction in Life would not permit any one in theſe Parts to be ignorant; and as to *what* he was, if there were any who knew it not in his Life-time, they muſt neceſſarily have learned it from the general Sorrow and Concern, and the many Hearts that are yet bleeding for his Death.

Gentlemen; as to the Murder of which the Priſoner ſtands indicted, it is perhaps the hardeſt to be accounted for, as to its Cauſes and the Motives to it, of any intended, any concerted Event, that has ever fallen out within the Compaſs of your Knowledge and Experience. The two grand and ordinary Motives to the committing of Murder, are Intereſt and Malice. But, for the former of theſe, there does not ſeem to have been the leaſt Proſpect of any Advantage to be reaped by any one whatever, by the Death of the Deceaſed: Though how many, and in how grievous a Degree, will be Sufferers by it, God knows: And for the other Motive, Malice, one would have thought his amiable Character, and moſt unexceptionable Conduct towards every one, muſt have ſecured him againſt the Enmity and Ill-will of any Perſon living; and even ſtill we may venture to affirm, that no good Man was, or could be, his Enemy: Yet that he had an Enemy, (one, at leaſt, if not more; I ſay, that he had, at leaſt, one Enemy) is but too apparent from the Manner and Circumſtances of his Death: And I believe your Conſciences will be abundantly convinced by the Evidence, that that Enemy was the Priſoner at the Bar; the Conſciouſneſs of whoſe Guilt, if that ſhould be the Caſe, muſt be greatly aggravated by this Conſideration, that he has robbed the World of a Man, whoſe Loſs he cannot make good to it in himſelf; and that there is no Probability, that in the Courſe of twenty ſuch Lives as his, he ſhould ever be able to make Amends to the great Number of Perſons whom he has rendered ſo unhappy, and made ſuch Sufferers by it: So diffuſive a Ruin, ſo extenſive a Miſchief has been accompliſhed by a ſingle Stroke of ſo inſignificant a Hand!

Gentlemen, there are few Murders committed, of which it is not with ſome Difficulty and Labour the Authors are found out: For, as the more atrocious the Crime, and conſequently the greater the Puniſhment attending it, ſo the greater the Caution and Secrecy uſed in the committing it, and the Manner and Means of putting it in Execution the more carefully ſtudied and concerted, in order to avoid a Diſcovery, and eſcape the Hand of Juſtice.

And yet, Gentlemen, in moſt Caſes of Murder, (for, indeed, in ſome few Inſtances, Heaven has thought fit to reſerve the whole of Vengeance to itſelf; but, I ſay, in moſt Caſes of Murder) it has pleaſed Providence by ſome Mark or another to point out the guilty Perſon; and all the Care and Foreſight of the cooleſt and cunningeſt Offenders, have not been able to guard againſt ſome Token, ſome unthought-of Circumſtance, which has left a Door open to a Diſcovery, when they imagined they had barred up all Acceſs to it.

Thus, Gentlemen, in the preſent Caſe, though the Priſoner at the Bar flattered himſelf he had ſo effectually laid his Meaſures, as perfectly to ſecure him againſt (not the Knowledge and Diſcovery of his Crime, for that he knew there were thoſe about him who could, and muſt, make publick; but againſt) the Puniſhment which he knew by Law was due to it; by taking care to have none preſent when he committed it, who could be legal Witneſſes againſt him: Yet I believe all his Management and Precautions of that Sort will ſtand him in very little ſtead; ſince, by Evidence unqueſtionably legal, ſo many and evident Tokens of his Guilt will appear; ſuch a Train of Circumſtances will be laid before you of various Kinds, as, when taken and conſidered together, will give ſuch Light and Strength to each other, as to convince the moſt incredulous Perſons, and ſatisfy the moſt ſcrupulous and tender Conſciences, that the Priſoner at the Bar was the Perſon by whoſe Hand the Deceaſed was murdered.

And this, Gentlemen, as it is legal Evidence, ſo it is ſufficient too, if it be ſuch as ſatisfies your Belief, that he committed the Fact. And indeed this is the beſt and only Evidence, which we can hope to meet with in almoſt all Caſes of Murder; where the Caution and Secrecy which I obſerved to be uſed in the committing it, makes a Neceſſity of inveſtigating the Truth by painful Steps, and of tracing and hunting out the Murderer, by following the Track of Circumſtances, as we can find Light enough to diſcern and purſue it. For, if the bare taking care to have no Perſons preſent at the Time of committing the moſt execrable Crimes ſhould avail, in ſpite of the plaineſt and ſtrongeſt Circumſtances pointing out the Criminals, to ſcreen them from public Juſtice, it would hardly ever be poſſible, but by extreme Accident, to convict the moſt flagrant Offenders; and nothing were eaſier than to commit the worſt of Crimes with abſolute Safety and Impunity.

Gentlemen, it were a Thing greatly to be wiſhed, both for your Sakes and the Sake of this Iſland, that it had not been made the Scene of this abominable Act: So ſhould you have been ſaved the diſagreeable Taſk that is now impoſed on you; and the Iſland the Odium, which will perhaps unjuſtly, as well as unfortunately, be thereby brought upon it: I ſay, unjuſtly, becauſe, as you will hear from the Evidence, though the Matter was executed here, it was conceived and concerted elſewhere. The Arrow was indeed thrown in this Iſland; but it was firſt dipped in the Poiſon that was generated in another; where, as you will hear, Gentlemen, the Priſoner at the Bar was exerciſing himſelf in rehearſing this fatal Tragedy, and making himſelf perfect in his Part of it, ſome Days before it was acted.

Gentlemen, as I before told you, the Motive to this unhappy Affair is hard to be accounted for; yet all that can be conceived or imagined to have been a Provocation to it, with the Subſtance of what elſe you will hear in Evidence in Proof of the Indictment, I ſhall relate to you; and though the Provocation you will hear of was the ſlighteſt and ſtrangeſt that was perhaps ever known to the committing an Act of this Kind, yet I believe the Priſoner will find it a difficult Matter to aſſign a ſtronger or a better.

You muſt know, Gentlemen, that on *Tueſday* the 7th Day of *November* laſt, there being a public Sale at the Town of *Charles-Town*, in the Iſland of *Nevis*, of an Eſtate in that Iſland, commonly called *Bridgwater*'s, the Priſoner at the Bar offered himſelf as a Purchaſer, and accordingly bade for it the Sum of 2510 *l. Sterling*. The Deceaſed, who was largely intereſted in this Sale, as having a Demand for a conſiderable Part of the Purchaſe-Money, and who, as well as many others, was not only ſurprized to hear the Priſoner bid a Sum of Money ſo far beyond what all the World muſt be ſenſible he was able to make good, but alſo juſtly offended at the Priſoner's Behaviour, which tended to throw every Impediment in the way of the Sale that he could, ſaid, he deſired that there might not be ſo much *Cavilling*, and that no *Boy's-Play* might be uſed on the Occaſion; for that this Eſtate had once before been ſold, and the Purchaſe-

Money not paid: Upon which the Priſoner, with great Heat, and a Pertneſs peculiar to him, ſtepped up to the Deceaſed, and in modiſh Phraſe told him, *He expected to be treated like a Gentleman.* To which the Deceaſed only replied, *He ſhould uſe him and every one as ſuch.*

And this, Gentlemen, is all the Provocation, which, on all the Recollection and Inquiry that can be made uſe of, it can be found was ever given by the Deceaſed to the Priſoner; ſince there appear not the leaſt Traces of their having long before ſpoken to each other, or had any Intercourſe on any Occaſion at all; and it is almoſt a Certainty, that they never ſpoke to, or ſaw one another afterwards, till the Morning of the Death of the unfortunate Deceaſed: But this, Gentlemen, according to the very high Conceit which the Priſoner had of himſelf and his own Merit, was, it ſeems, ſuch an Indignity, as nothing leſs than the taking away ſo important and valuable a Life as the Deceaſed's could atone for. And of this he was ſo full, and ſo blinded by his Purpoſe, that on the *Friday* following, the 10th of the ſame *November* laſt, he declared in the Street of this very Town, That *there was a certain Gentleman in this Iſland, whom he would either kill, or be killed by, in leſs than a Fortnight:* And indeed in leſs (and very little leſs) than that Time the Deceaſed was killed; and (as I believe you will by and bye be perfectly convinced) by the Priſoner at the Bar. What could induce the Priſoner to make this ſtrange and unneceſſary Declaration of his Intention, is difficult to ſay; nor is it at all ſatisfactorily to be accounted for, but from that Fatality which it has pleaſed Providence ſhall hang upon Guilt, to convince Men, that what he thinks proper ſhall be revealed, it ſhall not be in their Power, with all their Care and Precaution, to keep ſecret. Gentlemen, in purſuance of this Declaration, and in the Interval between that and the 19th of the ſame Month, when (as it is laid in the Indictment) the Deceaſed was killed; the Priſoner took an Opportunity to exerciſe himſelf in firing with Piſtols at a Mark; and, as the Event has proved, became but too apt a Proficient at it; having fatally improved himſelf to ſuch a Perfection in it, as to enable him to accompliſh his Deſign on the Deceaſed; who was found dead of a Wound, apparently given from a Piſtol, between five and ſix of the Clock on *Sunday* Morning the 19th Day of *November* laſt; the very Night before which, as you will hear, the Priſoner, in a very haſty Manner, made his laſt Will at a public Tavern in the Town of *Charles-Town* in *Nevis*, where he delivered it into the Cuſtody of one who was to have ſome Concern in it. Gentlemen, from theſe Circumſtances and this Behaviour of the Priſoner, previous to the Murder, I believe no Man, for his own private Satisfaction, would look further for the Perſon who committed it, than the Priſoner at the Bar. But from other more numerous, and much ſtronger Circumſtances, which you will likewiſe hear from the Evidence, and which I ſhall firſt open to you, I think all Shadow of Doubt, whether it was the Priſoner who committed it, muſt be entirely taken away. For, Gentlemen, the Night before the committing the Fact, the Priſoner, after having thus executed his laſt Will, and delivered it out of his own Cuſtody, went from the Tavern into the Country with one Dr. *James Webbe*, at whoſe Houſe he ſlept, or, at leaſt, made Appearance of ſleeping; and accordingly, between Nine and Ten o'Clock, he bade the *Doctor* and his Family a good Night, and retired to the Chamber allotted him, under Pretence of going to Bed; but in the Morning when the *Doctor* aroſe at his uſual Hour, he found to his very great—I beg Pardon; I was going to ſay, *to his very great Surprize*; but That I cannot take upon me to ſay; but however he did find, that the Priſoner was gone from his Houſe; and about Eight or Nine o'Clock in the Morning he ſaw him riding up to his Houſe on his [the *Doctor's*] own Horſe, and with his own *Negro Boy* attending him. Where he had been while he had thus withdrawn himſelf, and what he had been doing, you will preſently hear. Gentlemen, about Five o'Clock, or very little after, that ſame *Sunday* Morning, as one *John M'Kenley*, who is an Overſeer at the Plantation of Mr. *Spooner* near *Frigate-Bay*, was lying on his Bed (for he had riſen, it ſeems, ſome time before, and had been abroad; but was now lying down again; when) a *Negro Boy* whom he very well knew, called *Coomy*, who belonged to, and uſually ran with the Deceaſed when he went on Horſe-back, came haſtily into the Chamber, and even leaped on the Bed, and with great Emotion and ſeeming Fright, told *M'Kenley*, that his Maſter was fighting on the Bay with a Gentleman come from *Nevis*, and that he feared his Maſter was killed; the Negro then inſtantly went out of the Room, and mounting his Maſter's Horſe, on which he had rode thither, galloped back to the Bay again. *M'Kenley* was going to ſaddle his Horſe to follow him; but thinking that would take up too much Time, and it not being more than a Quarter of a Mile, or thereabouts, to the Place, he walked away as faſt as he could to the Place, where, when he came, he found *Coomy* ſupporting his Maſter againſt his Knees; but on coming cloſe to him, he found the unhappy Gentleman was actually dead, tho' ſtill warm; having juſt breathed his laſt. *M'Kenley* then aſking *Coomy*, who it was that had killed his Maſter? the Negro anſwered, it was Mr. *Barbot*, who was come from *Nevis*, and was then going back again; and added, If you will go to the Sea-ſide, I believe you will ſee him; for I am ſure he cannot be gone far. *M'Kenley* then ran to the Beach, which was about fifty Yards from the Spot where the Deceaſed lay; but with a riſing Bank between; and there ſaw a Canoe with four Oars and a Paddle, rowing from the Shore towards *Nevis*, with Somebody dreſſed in white ſitting in the Stern; but by the Perſon's Back being towards him, and from the great Conſternation he was in at the unhappy Event, having himſelf a little while before been a Servant to the Deceaſed, he did not diſtinguiſh who the Perſon was. However, that, Gentlemen, will ſoon be made appear to you; for about Half an Hour after, as the Canoe was in its Way to *Nevis*, it was met by a Schooner coming from *Montſerrat* to this Port; the Maſter of which very well knew the Priſoner, and ſaw him ſitting in the Canoe, dreſſed in a white Coat, and having on a laced Hat; he will ſhew you that there was no other Canoe then in Sight, than this one, which he purſued with his Eye, 'till he ſaw it near the Bay at *Nevis*, called *Molton's Bay*, where the Priſoner was ſeen to land out of it about Seven of the Clock in the Morning, by Perſons who knew the Canoe, and two of the principal Negroes who rowed it. From thence, Gentlemen, the Priſoner walked up to the Houſe of the Plantation called *Bridgwater's*, which was about Half a Mile diſtant from the Sea, and there inquiring for Dr. *Webbe's* Negro-Boy, called *Pope*, ordered him to ſaddle the Horſe; meaning, as you will hear, the *Doctor's* Horſe, which, as you will find, the Boy had brought thither about Midnight, under the Pretence of looking for his Maſter, though he knew he was then at Home. From hence, Gentlemen, the Priſoner rode back to Dr. *Webbe's*, where he had pretended to go to Bed the Night before, and which is about three Miles diſtant from *Bridgwater's*; and there diſmounting, finiſhed his glorious Expedition, and reſted from his worthy Labours. I muſt not omit, Gentlemen, that a very ſenſible Negro Fellow, belonging to the Canoe, as ſoon as they came back to *Nevis*, ſeeming greatly dejected and thoughtful, and his Maſter preſſing him to know the Occaſion of it, the Fellow anſwered, *he was afraid Mr.* Barbot *had done ſome Miſchief*; which is thus far material, that it was ſaid before the News came from *St. Chriſtopher's* to that Iſland, of the unhappy Affair.

Gentlemen, as you may perceive by what I have ſaid, and will ſtill more plainly find from the Evidence, the Priſoner at the Bar, whether to ſecure a further Chance for his eſcaping the Puniſhment due to his Crime, or, it may be, deſpairing of other Means or Opportunity to accompliſh his Purpoſe againſt the Deceaſed, took Care to draw him to a Place of Appointment, in order to give the Act he committed the favourable Conſtruction of a Duel. But, in the firſt Place, I believe you are not to be told, that were it really ſo, or were it ever ſo fair a Tranſaction, as it is generally termed, of that Sort, *that*, in the Law, by which you upon your Oaths are to try the Priſoner, is abſolutely Murder. Should that appear or be believed, how far it might be an Argument for Mercy or Pardon, is the Buſineſs of another Place, and of other Perſons: But the ſerious and ſolemn Buſineſs of this Day, and of you, Gentlemen, is upon your Oaths to ſay, whether you believe, upon the whole Matter, the Priſoner killed the Deceaſed or not. And in the next Place, Gentlemen, I believe you will be too well convinced by the Evidence given, that the Notion and Form of a Duel was only meant as a Cover and a Sanction to the intended Murder; and that the Deceaſed was unqueſtionably killed before he was provided, or could have a Chance of worſting the Priſoner or defending himſelf: For you will find, Gentlemen, that by the Wound given, which was in the Side, and the Courſe it took along his Belly, the Deceaſed could be in no offenſive Poſture; and it is plain his Piſtols neither were, nor had been, loaded. And now, Gentlemen, we ſhall call the Witneſſes to theſe ſeveral Facts which I have mentioned, from whoſe Mouths, and on whoſe Oaths, you will have a Confirmation of what it was my Duty thus to open to you, in order the better to conduct your Attention to the proper and material Parts of the Evidence.

Mr. *Horne.* May it pleaſe your Honours, and you Gentlemen of the Jury;

I humbly beg your Honours Indulgence, and, Gentlemen of the Jury, your favourable Attention to my ſpeaking in behalf of the Cown, and in Support of what Mr. Sollicitor-General has opened to you with ſuch Strength and Perſpicuity. And, though I muſt long lament the fatal Deed which brings me before you this Day; yet, it is a Circumſtance of no ſlight Satisfaction to me, when I obſerve the Solemnity of this Aſſembly, this unuſual Concourſe of People from all the Iſlands, ſpeaking the Importance of the Occaſion, and the Expectation of the Public, that my firſt Appearance before your Honours, is, in a Cauſe that requires no extraordinary Ability in the Advocate, no Art to gloſs, or Sophiſtry of Arguments to diſguiſe it; that I am to ſpeak to a Subject that lies level to every Underſtanding; and to a Crime whoſe Malignity is confeſſed by every Heart. And as in the Courſe of this Trial I ſhall not abuſe you, or diſhonour myſelf, in employing any diſhoneſt Artifice; ſo am I as ſteadily reſolved to ſuppreſs no Truth (however offenſive to any Man) that may be neceſſary to detect Guilt, to retrieve Honour from the fantaſtic Notions under which it labours, and to engage your Juſtice to the Community, as well as to an injured Family, in becoming Inſtruments in the Hand of Heaven to puniſh the Guilty, and to determine agreeably to that Denunciation of Vengeance from Heaven, that, *whoſo ſheddeth Man's Blood, by Man ſhall his Blood be ſhed.*

Such is the natural Odium that every Man conceives againſt the Crime with which the Priſoner is charged, ſo much is the common Intereſt of Man affected by Murder, that at the Name of it we take the Alarm, with Impatience and Sympathy we hear and feel the Story, with Ardor we purſue the Murderer, with Eagerneſs apprehend him, with Pleaſure deliver him up to Juſtice, with Satisfaction hear the Sentence, and with Approbation all acknowledge that Blood for Blood is a juſt Reſtitution. Is there a Crime, in the Diſcovery of which the Finger of God has been ſo often held forth? For when Man's Invention has entrenched the Criminal with Artifice behind Artifice, and covered him in a Diſguiſe fitted to cheat the moſt inquiſitive Eye, Heaven has wonderfully revealed the Man of Blood. —That Providence which is attentive to the Fall of a Sparrow, can never be regardleſs of the moſt excellent of his Creation. The firſt Murderer carried about with him a diſtinguiſhed Mark of divine Vengeance; and for the innocent Blood of a Brother, wandered a Vagabond through the World.

Crimes ſo odious in their Nature, which the Laws have puniſhed with Death, are generally contrived with the utmoſt Caution, and perpetrated with the profoundeſt Secrecy; for he who knows that an ignominious Death muſt be the certain Conſequence of the Diſcovery of his Villainy, will, as the Priſoner has done, employ all his Artifice, and exert his utmoſt Ability, in the Concealment of it; while Innocence acts always in open Day, where the World may be Spectators of its Actions. But, Gentlemen of the Jury, I am perſuaded that the Witneſſes will ſatisfy your Conſciences, that in ſpite of all the artful Preparations that attended the Contrivance, and the ſtudied Precaution and Secrecy that attended the Perpetration of this Crime, that no Man on Earth but the Priſoner at the Bar could be guilty of it; for notwithſtanding his Life depended upon the Concealment of his Crime, and the Knowledge of this kept alive all his Art and Caution when he was retired to himſelf, and was by himſelf concerting his Scheme; yet in Company you will be ſurprized to find his Vanity (ſuch is the fatal, the providential Inconſiſtency of Guilt) throwing him off his Guard, and drawing from him the Diſcovery of his Reſentment, and a Confeſſion of his Intention. You will hear him expreſſing his Malice to the Deceaſed, vowing Vengeance againſt him, and ſetting but a

Fortnight's ſhort Period, to a Life, which, from its amiable and uncommon Value, all good Men would have wiſhed to have had protracted to the happieſt old Age.

You will be able, Gentlemen, to trace him almoſt Step by Step thro' his whole Track, and keep him almoſt conſtantly in View, from the firſt opening to the cloſing of this abominable Deed. As Mr. Sollicitor has already opened the Fact and the Evidence of it, it would be impertinent in me to abuſe the Patience of the Court and Jury, by an unneceſſary Repetition of them in all their Circumſtances: And had there been nothing elſe proper to offer to you, Gentlemen of the Jury, upon this Occaſion, I ſhould not riſe, however painful for me to be ſilent on a Subject that has ſo ſenſibly affected me, and muſt ſo long lie heavy at my Heart.

The Counſel for the King will not, Gentlemen, go out of the ordinary Road of Juſtice, and have Recourſe to an unuſual Evidence, even upon ſo extraordinary an Occaſion, when you are inquiring into the Murder of ſo excellent a Man. We ſhall not therefore attempt to produce poſitive Teſtimony [*i. e.* the Teſtimony of Slaves]: For, though we have ſuch as no Law, either of our Mother-Country, or of theſe Colonies, prohibits; yet good Policy in general, the Ground of all Law, and in particular the Policy of theſe Iſlands, forbids it. Indeed there is no Neceſſity for it, the Evidence of concurring Circumſtances being in the preſent Caſe, as well as many others, more convincing, than the Teſtimony of any one poſitive Witneſs. The Evidence of the Priſoner's Guilt muſt then reſult from Circumſtances, but Circumſtances ſo ſtrong, ſo connected, reflecting ſuch Light upon each other, as will amount to the moſt violent Preſumption, which, Gentlemen, their Honours will inform you, is in Law a full Proof.

And here, Gentlemen of the Jury, as it is impoſſible in ſuch ſmall Communities to avoid hearing the Conjectures and Opinions that are thrown out in all Matters of Moment ſufficient to engage the public Attention; give me Leave to take Notice of two Notions that ſeem to have been artfully given out, and induſtriouſly propagated, on this Occaſion: "That as the Teſtimony of the Slaves, preſent at this melancholy Action, "will not be offered, circumſtantial Evidence can be no Proof; and that "if the Deceaſed thought proper to meet the Priſoner, and was killed in "a fair Duel, the Priſoner ought to be acquitted." Nothing can equal the Weakneſs of theſe Aſſertions, but the Boldneſs with which they have been maintained. For weak as they are, it ſeems they have found very zealous Supporters. How deep, or how extenſive, the Impreſſion and Influence of them may be, I cannot ſay: But as the Tendency of ſuch Notions may be of pernicious Conſequence, it becomes neceſſary to prove that they have no Foundation, either in Law or Reaſon. For it would be to little Purpoſe to aim at eſtabliſhing a Fact upon Circumſtances, if they were not to be regarded; and to as little Purpoſe would it be (admitting the Force of Circumſtances) to prove the Priſoner killed the Deceaſed, if his doing it in what is called a fair Duel, was believed to be a Juſtification.

If, Gentlemen, it be conſidered, that a Witneſs may be bribed, and the Bribe pervert and falſify his Teſtimony; that a Witneſs may be concerned in Intereſt, and Intereſt warp him into Partiality; that a Witneſs may be a *Partaker* in the Guilt, and the Fear of Puniſhment intimidate him into a Suppreſſion of the Truth; if theſe, I ſay, be conſidered, it will be allowed, that ſtrong circumſtantial Evidence is more to be depended upon, than the poſitive Teſtimony of a ſingle Witneſs. For a Series of Circumſtances, which the Wit of Man could never forge, following one the other in Order both as to Time and Place, and, as in the preſent Caſe, coming from different Witneſſes in different Iſlands, where there was no Poſſibility of concerting a Scheme for the Priſoner's Condemnation; ſo many, and ſuch ſtrong Circumſtances pointing him out, from the firſt Projection to the Completion of his Scheme, force a Conviction upon the Mind, and demand Belief. Facts ariſing out of Circumſtances are ſtubborn Things, and will never lie.

Hence it is, that in numberleſs Trials Circumſtances alone have determined the Jury. The Caſe of *Harriſon* and Dr. *Clenche*, and many others might be mentioned: But I ſhall only obſerve further, that this Kind of Proof is thought ſo ſtrong, that it is ruled particularly in the Caſe of a Baſtard Child, that if it appears there has been an *Endeavour* to *conceal* its Death, there *needs no Proof* that the Child was born alive, or that there were any Signs of Hurt on the Body; but it ſhall be undeniably taken that the Child was born alive, and murdered by the Mother *. So that Circumſtances always have determined, and always will determine, the Jury in Trials, when there is no Poſſibility of producing Eye-Witneſſes of the Fact.

This, Gentlemen, is no lately invented Proof that has but juſt found a Place only in our Law-Books; for I would (if I may preſume to take a Liberty with it) refer you to a Caſe of the greateſt Antiquity, and moſt ſacred Authority, that depended abſolutely upon Circumſtance. You will anticipate me, I am ſure, and immediately perceive, that I allude to the celebrated Judgment of the Man tranſmitted to Poſterity as the wiſeſt of the Creation. No Witneſſes as Aſſiſtants to the Birth, appeared in that Caſe to evince the Reality of the Mother; the Truth of the Fact ſeemed to depend ſolely on the Aſſertion of each intereſted Party. Here was an Act of Juſtice to be done; the Caſe was nice, the Deciſion hard; even *Solomon*'s Wiſdom was at a ſtand, 'till by a happy Thought the alarming Propoſal for deſtroying the Child, produced a Circumſtance that removed the Difficulty. The Tears and Anguiſh of the one revealed the true Mother, and prevailed againſt the Vociferation and obſtinate Perſiſtance of the other.

And indeed, if there was no Ground of Belief, no Evidence on which to determine, but from the direct and poſitive Teſtimony of an Eye-Witneſs; the Mind would be left to fluctuate in perpetual Doubt, and be irreſolute in the moſt intereſting Concerns of Life. If the Proof that ariſes from Circumſtance, from Reaſoning and Induction, be excluded out of our Notion of Evidence, it would prove too much; for how ſhould we be able to judge of the moſt important Points, even of Religion itſelf, either natural or revealed? how ſhould we able to prove the moſt momentous of all Truths, the Exiſtence of the Supreme Being? The ſeveral Parts of the Univerſe are but ſo many *Circumſtances* of Creation; from whence is deduced the Proof of a Creator. If that abſurd and ſtrange Opinion already mentioned was to prevail; no Crime committed againſt Society would be puniſhed; but ſuch alone as were proved by direct and poſitive Evidence; the Conſequence of which in a little Time would be; that no Crime would meet a Puniſhment at all; when the Criminal had nothing to do but to ſin in ſecret; and ſin ſafely. There would be then an End put to the patient Attention of Courts; and the Offices of Judge and Juror would be entirely uſeleſs.

One Thing more give me Leave to ſubmit to your Conſideration: If this Kind of Evidence were excluded from the Caſe of Duels particularly, which are always carried on with the utmoſt Secrecy and Precaution; Murders of that Sort could be rarely puniſhed. This Conſideration too will grow ſtronger, when you recollect, that if circumſtantial Evidence is not to be admitted, particularly in Duels, what Opportunity, what Encouragement will you give to this romantic, this cruel Practice, in a Country where the Duelliſt's Purpoſe is to act in ſecret, will be aſſiſted by the Intervention of our Slaves, who are incapacitated to be Witneſſes, and who are always at Hand to carry on the dangerous Intercourſe! An unhappy Circumſtance attending our Situation, (if circumſtantial Evidence be rejected) that the moſt atrocious Crimes may be committed with their Aſſiſtance, without the Fear of being convicted on their Evidence: What an Inlet this to Confuſion, and even to the Diſſolution of Government!

Whatſoever, Gentlemen, makes the Truth evident, although it be Circumſtance, is legal Evidence; and that which ſatisfies your Conſcience, convinces your Underſtanding, and induces you to believe the Priſoner guilty, is good Evidence in Law. It may ſeem ſurprizing in another Place that any Pains ſhould be taken to make out what is in itſelf ſo clear; but let Miſtakes be ever ſo unreaſonable, 'tis proper to remove them. Other Arguments upon this Point might be drawn from the Nature of Trials and other Conſiderations; but as that may poſſibly anticipate what may be offered in Reply to the Defence which may be expected from the Priſoner, I ſhall content myſelf with having premiſed thus much by way of Preparation for Evidence that is entirely circumſtantial.

I muſt appeal to you, Gentlemen of the Jury, whether you have not heard it aſſerted with equal Confidence, that if the Deceaſed met the Priſoner on his Challenge, and was fairly killed, the Priſoner ought to be acquitted. That this is not the preſent Caſe, but that the Deceaſed was baſely murdered, before he was prepared either to attack the other or to defend himſelf, you will find, Gentlemen, is to be violently preſumed from the Circumſtances of his unloaded Piſtol, his Cloak and Gloves being found upon him, and, above all, the Situation of his Wound, which the Surgeons will prove to you, from its Entrance and its Direction, could not be received by a Man in the Poſture of Defence.

To the Aſſertors of this ſecond Opinion, as irrational and almoſt as dangerous as the firſt, it will be in vain to prove the Priſoner's Guilt, if the imaginary Notion of Honour is to varniſh the Crime, and diſappoint its Puniſhment. For Argument-ſake then, grant what is ſuppoſed, that the Duel was fair, and ſee how reconcileable this Opinion is to Reaſon, or how juſtifiable by the Laws. Alas! how is the Name of Honour proſtituted! Can Honour be the ſavage Reſolution, the brutal Fierceneſs, of a revengeful Spirit? No, Gentlemen of the Jury, ſearch your own Boſoms, and there you'll find, that true Honour is manifeſted in a ſteady, uniform Train of Actions, attended by Juſtice, and directed by Prudence. Is this the Conduct of the Duelliſt? Will Juſtice ſupport the Duelliſt (and in the preſent Caſe, the Priſoner, if he be found guilty) in robbing the Community of an able and uſeful Member, and in depriving the Poor of a Benefactor? Will it ſupport him in preparing Affliction for the Widow's Heart? in filling the Orphan's Eyes with Tears, and in bringing Sorrow and Misfortune on Friends, and a numerous Train of Dependants? Will Juſtice acquit him for enlarging the Puniſhment beyond the Offence? Will it permit him, for (perhaps) a raſh Word that may admit of Apology, an unadviſed Action that may be retrieved, or an Injury that may be compenſated, to cut off a Man before his Days be half numbered, and for a temporary Fault inflict an endleſs Puniſhment? On the other hand, will Prudence bear him out in riſking an infamous Death, if he ſucceeds in the Duel? But if he falls, will it plead his Pardon at a more aweful Tribunal, for ruſhing into the Preſence of an offended God, with all his Imperfections on his Head? View the Duelliſt in the Light that either Religion or the Law conſiders him, and you'll quickly perceive and acknowledge the Illegality, the Impiety of his Spirit. Man, like the Centinel fixed to his Poſt, who dares not ſtir till he is relieved; Man, I ſay, muſt wait till Death, natural Death, the grand Relief of human Nature, ſhall diſcharge him; nor can he prodigally throw away a Life beſtowed for better Purpoſes. The Giver, the Preſerver of Life muſt be diſpleaſed with him who uſurps a Power to caſt away his own, or take away his Fellow-Creature's. Man is made in the expreſs Image of his Maker. Shall the Duelliſt with Impunity, in the Perſon of his Fellow-Creature, deſtroy that Image, in impious Diſobedience to that Command, which bids us not to kill?

The Laws of his Country too condemn the Duelliſt. The Sages of the Law, in their Books, will tell him, that Perſons convicted barely of ſending a Challenge, have been adjudged to pay † a large Fine, and ſuffer Impriſonment without Bail, to make a public Acknowledgment of their Offence, and to be bound to their good Behaviour. That where Perſons coolly and deliberately engage in a Duel, which cannot but be attended with the apparent Danger of Murder, it is not only an open Defiance of the Laws, but carries with it a direct Contempt of the Juſtice of the Nation, as putting Men under the Neceſſity of righting themſelves. That if two Perſons in ‡ cool Blood meet and fight on a precedent Quarrel, and one of them is killed, the other is guilty of Murder. And this the Law adjudges to be of Malice, and that the Party cannot help himſelf by alledging that he was firſt ſtruck by the Deceaſed; or that he had often declined to meet him, and was prevailed upon to do it by his Importunity; or that it was only his Intent to vindicate his Reputation.

Who then after this will be hardy enough to acquit the Criminal, whom the Laws of God and Man condemn? Notwithſtanding the Law declares

* *Hawk.* B. II. C. 47. Sect. 43. † 3 Inſt. ‡ 3 Vol. *Bac.* Abridg. 665, 666.

that he affronts public Juſtice, who ſnatches the Sword from the Magiſtrate's Hand, and carves out his own Revenge; yet, who ſo loud as the Duelliſt, when he has ſecretly butchered ſome worthy Man, in demanding Juſtice and a fair Trial? Try me, ſays the Priſoner, by the Laws of my Country, and I have nothing to fear. Aſtoniſhing Preſumption! That he ſhould dare to hope for the Protection of thoſe very Laws, which he has juſt before diſobeyed and diſhonoured! That he ſhould inſult the Wiſdom and Juſtice of the Laws of his Country, and ruſh contemptuouſly into the Duel that they forbid, and at the ſame Time claim a Shelter under the Mercy of them, and demand open and poſitive Evidence for a Murder which he has contrived and committed in Darkneſs! What! ſays the Man of Honour, forbid by Laws divine on one Hand, and reſtrained by human Laws on the other, muſt I never draw my Sword, never ſhew my Courage? Yes, draw the one, and exert the other, in the Cauſe of your Country; employ them to guard your Property from a Robber, to defend your Perſon from a Ruffian, your Bed from Diſhonour, your Daughter from Violation, and to ſave your Friend from Aſſaſſins. Theſe are Actions worthy of the Man of Honour.

Duelling ſeems to be an unnatural Graft upon genuine Courage, and the Growth of a barbarous Age. The polite Nations of *Greece* and *Rome* knew nothing of it; they reſerved their Bravery for the Enemies of their Country, and then were prodigal of their Blood. Theſe brave People ſet Honour up as a guardian Genius of the Public, to humanize their Paſſions, to preſerve their Truth unblemiſhed, and to teach them to value Life only as uſeful to their Country. The modern Heroes dreſs it up like one of the Dæmons of Superſtition, beſmeared with Blood, and delighting in human Sacrifice.

A Man of Honour, in the modern Senſe, ſignifies no more, than an audacious Man who will fight at all Events: A Man, perhaps, who has been firſt indebted to your Generoſity, by diſhoneſt Artifices has abuſed your Patience, and at laſt attempts your Life for calling in your Debt: A Man, perhaps, who will wound your Peace in ſtaining the Honour of a Wife or Daughter, and afterwards, on your remonſtrating the Wrong, heroically waſh away thoſe Stains in the Father's or Huſband's Blood.

Senſeleſs as this Notion of Honour is, it unhappily has its Advocates among us. But for the Prevalence of ſuch a Notion, how could the amiable Perſon, whoſe Death has made the ſolemn Buſineſs of this Day, be loſt to his Country, his Family and Friends? Would to God that I was a Maſter of Words, and it could be indulged to the Tenderneſs of a Friend to pay a Tribute to his Memory! I might then endeavour to ſet him full before you in the Variety of his Excellence: But as this, perhaps, would be venturing too far, I can only lament that ſuch Virtue had not a longer Date; that this good Man was cut off in the Strength of his Age, ere half his Glaſs was run; when his large Heart was projecting and executing Schemes to relieve Diſtreſs, and by the moſt ſurprizing Acts of Beneficence, vindicating the Bounty of Providence for heaping Wealth upon him.

We ſhall now proceed to call our Evidence.

The other Gentlemen of Counſel for the King, were Mr. *Wilſon* and Mr. *Davis*.

Mr. *Peter Carew* ſworn.

Mr. Sol. Gen. Pray, Mr. *Carew*, was you at *Nevis* on the 7th of *November* laſt?----*Carew.* Yes, Sir, I was.

Mr. Sol. Gen. Was *Bridgwater*'s Eſtate ſold that Day?

Carew. Yes, Sir, it was.

Mr. Sol. Gen. Were you preſent at the Sale?---*Carew.* Yes, Sir.

Mr. Sol. Gen. Was the Deceaſed there?---*Carew.* Yes.

Mr. Sol. Gen. Was the Priſoner at the Bar there?

Carew. Yes, he was.

Mr. Sol. Gen. Do you remember any Converſation that paſſed between the Priſoner at the Bar and the Deceaſed at the Sale?

Carew. As I went into the Room where the Eſtate was put up to Sale, I heard the Priſoner ſay to the Deceaſed, *he expected to be treated like a Gentleman*, or, *he did not treat him like a Gentleman*, or Words to that Effect; which ſeemed to be in Anſwer to ſomething the Deceaſed had ſaid to him, but I did not hear what.

Mr. Sol. Gen. Do you know whether the Priſoner and the Deceaſed had any Converſation after that?

Carew. I cannot tell whether they had or not.

Mr. Sol. Gen. Were they together at any Time after?

Carew. I really do not know.

Priſ. Pray, what was I doing at the Time that, you ſay, I ſaid this to Mr. *Mills*?

Carew. I cannot tell what you were doing.

Priſ. Was any body in the Room at that Time?

Carew. Yes, a great many People.

Thomas Mills, Eſq. ſworn.

Mr. Sol. Gen. Pray, Sir, were you at *Nevis* when *Bridgwater*'s Eſtate was laſt ſold?---*Mills.* Yes, Sir.

Mr. Sol. Gen. Were you preſent at the Sale?

Mills. Yes, Sir, it was on the 7th of *November* laſt.

Mr. Sol. Gen. Were the Deceaſed and the Priſoner at the Bar there?

Mills. Yes, they were both there.

Mr. Sol. Gen. Do you remember any Converſation that paſſed between them at the Sale, and what it was?

Mills. I remember very well that Mr. *Cottle* the Attorney was drawing the Conditions of Sale, and after he had finiſhed them, the Priſoner objected to them; and the Deceaſed ſaid, *Mr.* Barbot, *the Conditions of Sale are very fair; why will you cavil about them?* Upon which the Priſoner ſaid, *Sir, I expect to be treated like a Gentleman*; and the Deceaſed replied, *Sir, I ſhall always treat you and all Mankind as ſuch.*

Mr. Sol. Gen. Did you obſerve that the Priſoner ſpoke with Warmth?

Mills. Yes, he ſpoke very warmly.

Mr. Sol. Gen. Can you tell whether the Deceaſed had any Converſation with the Priſoner at the Bar, at any Time after theſe Words paſſed?

Mills. I cannot tell whether they had or no; for I left them together in the Auction-Room.

Mr. Sol. Gen. Do you know whether the Deceaſed ſaw the Priſoner after the Day of the Sale?

Mills. I cannot poſitively tell; but I have great Reaſon to believe he did not ſee the Priſoner 'till the Morning he was killed; for after the Sale was over, I went with the Deceaſed to *Melton's Bay*; and on the 9th, which was the ſecond Day after the Sale, we went to *St. Chriſtopher*'s together, and I ſaw him or heard from him every Day after, 'till the 19th that he was killed.

Mr. Sol. Gen. Do you know whether the Deceaſed gave the Priſoner at the Bar any Provocation?---*Mills.* None, to my Knowledge.

Mr. Sol. Gen. Had he never any Difference with him at all?

Mills. None, that I know of.

Mr. Sol. Gen. Had you ever any Difference with the Priſoner at the Bar yourſelf?---*Mills.* Never any.

Mr. Sol. Gen. The Priſoner is an Attorney at Law; did he ever do any Buſineſs for you?

Mills. Yes, he has done Buſineſs for me in his Profeſſion.

Priſoner. Yes, I have, and have always been very honeſtly paid for it.

Mr. Sol. Gen. Do you know of any Letters that paſſed between the Priſoner and the Deceaſed?

Mills. No, I do not know of any; I have heard, ſince the Murder, that ſome Letters did paſs between them.

Mr. *Frye.* Did you hear the Priſoner ſay any Thing to the Deceaſed in a cavilling Way, at the Sale of *Bridgwater*'s Eſtate?

Mills. Yes, he cavilled at the Conditions of Sale, and the Deceaſed imagined he wanted to delay the Sale 'till Sun-ſet, in order to prevent the Eſtate being ſold that Day; and from his Behaviour I imagined ſo too.

Priſ. You ſay I was cavilling; pray, were not the Conditions of the Sale, that One-third of the Purchaſe-Money ſhould be paid down immediately, and the other Two-thirds in a Month, or elſe the firſt Third to be forfeited? And do not you remember I ſaid, the Court-Act did not direct it ſhould be ſo, and that it was very hard to impoſe ſuch Conditions, againſt an Act made to regulate Sales under Executions?

Mills. I do not recollect that.

Priſ. Pray, was not the whole of my Behaviour warm that Day? Did not I ſay ſomething warmly to Mr. *Cottle?*

Mills. I do not remember that you did.

Mr. *Andrew Armour* ſworn.

Mr. Sol. Gen. Mr. *Armour*, do you recollect any Converſation that paſſed between you and the Priſoner at the Bar, ſome Time before you heard the Report of the Deceaſed being killed?

Armour. I remember ſome Time in the Beginning of *November* laſt, the Priſoner told me that Mr. *Mills* had treated him cruelly, and in ſuch a Manner as ought never to be forgiven.

Mr. Sol. Gen. Pray, what Time in *November* was it?

Armour. I am almoſt certain it was ſome Time between the 3d and the 7th, but I am ſure it was before the 7th; for I went to *Montſerrat* on the 7th, and did not return to this Iſland 'till after the Murder.

Mr. Sol. Gen. Where was you when he ſaid this to you?

Armour. I was ſtanding at Mr. *Conſtantine*'s Door.

Priſ. Pray, Sir, was there any Company preſent at that Time?

Armour. No, there had been, but the Company was juſt gone as I came to the Door.

Priſ. Did I expreſs myſelf warmly?

Armour. No, I did not think you did.

Mr. Sol. Gen. Did not the Priſoner tell you his Reaſon for ſaying this? Did he not tell you in what Manner Mr. *Mills* had behaved to him, to occaſion his ſaying this of him?

Armour. No, he only ſaid generally, that Mr. *Mills* had treated him in ſuch a Manner as ought never to be forgiven.

Priſ. Who was in Company, do you ſay?

Armour. Nobody, the Company was juſt gone as I came up.

Priſ. Had I any other Converſation with you about Mr. *Mills?*

Armour. Not that I remember; I do not recollect any other than what I have already related.

Mr. Preſident. Did the Priſoner ſay which *Mills* it was that ought never to be forgiven?

Armour. No, Sir, he only ſaid Mr. *Mills.*

Mr. *Preſident.* Which *Mills* did you apprehend it to be?

Armour. I took it to be Mr. *Matthew Mills.*

Mr. Sol. Gen. Gentlemen, pray take Notice what Mr. *Armour* ſays. Did you, from the Tenor of the Diſcourſe between you, apprehend it to be Mr. *Matthew Mills* that the Priſoner meant?

Armour. Yes, Sir, I did.

Mr. Juſt. *Loſack.* Pray, clear up this Point—Mr. *Armour*, did you then know, or have you known ſince, that, previous to this Declaration of the Priſoner to you, he had any Difference or Quarrel with Mr. *Thomas Mills*, or Mr. *William Mills?*

Armour. No, I never heard he had any Difference with either.

Mr. Juſt. *Loſack.* Did you know he was on good Terms with both thoſe Gentlemen?

Armour. I knew nothing to the contrary.

Priſ. I never had any Difference with either of thoſe Gentlemen.

Mr. Juſt. *Loſack.* Pray, what Reaſon had you to imagine it was the Deceaſed that the Priſoner meant?

Armour. Becauſe he mentioned Mr. *Mills* only, without any Chriſtian Name by way of Diſtinction; I concluded from thence it was the Deceaſed that he meant.

Patience Dorſet ſworn.

Mr. Sol. Gen. Mrs. *Dorſet*, do you know the Priſoner at the Bar?

Dorſet. Yes, Sir.

Mr. Sol. Gen. How long have you known him?

Dorſet. Above a Twelvemonth.

Mr. Sol. Gen. Give the Court and the Jury an Account of what you heard him ſay at any Time before you heard the Report of the Deceaſed being killed.

Dorſet. Upon the King's Birth-day Mrs. *M'Cabée* (the Tavern-Keeper's Wife) ſent to deſire I would come and help her, for they were to provide an Entertainment for the Lieutenant-General and a great deal of Company that Day. Accordingly I went, and as I was going into the Houſe, the Priſoner was ſtanding under the Gallery talking to two Men, and as I was paſſing by, I heard him ſay, *There was a certain Gentleman in this Iſland, that within a Fortnight he would either kill or be killed by.*

Mr. Sol. Gen. What Time of the Day was this?

Dorset. Between Eleven and Twelve in the Forenoon.

Mr. Sol. Gen. Did you hear any Guns fire that Day?

Dorset. Yes, I heard a great many.

Mr. Sol. Gen. Do you know the Persons the Prisoner was talking to?

Dorset. No, I never saw them, to my Knowledge, before nor since that Time.

Pris. Are you sure it was on the King's Birth-day you heard me say those Words?——*Dorset.* Yes, I am very sure it was.

Mr. *Frye.* It is very well: We shall bring Witnesses to prove the Prisoner was at *Nevis* on the King's Birth-day.

Doctor *James Webbe* sworn.

Mr. *Horne.* Doctor *Webbe*, do you know the Prisoner at the Bar?

Webbe. Before I answer any Questions, I pray the Court will favour me with a Word. I am brought down from *Nevis*, where I live, as an Evidence on this Trial, and I desire the Protection of this Court from any Arrests that may be issued against me. I am a Stranger in this Island, and it would be impossible for me, if I was arrested, to find Security. Another Thing too, I am afraid of being assassinated.

Mr. Sol. Gen. This is not the Country of Assassins; they come from elsewhere.

Mr. *President.* What Reason have you to apprehend being assassinated?

Webbe. Sir, I have been told there is an Intention to assassinate me.

Mr. *President.* Who has told you so?

Webbe. I have heard it commonly reported, Sir.

Mr. *President.* Can you fix the Intention on any particular Person?

Webbe. No, Sir, but I am afraid of Mr. *Mills*'s Family in general; and I desire Mr. *Colhoun* will give me Security, that I may go in Safety from Mr. *Mills*'s Family to *Nevis*.

Mr. *Colhoun.* May it please your Honours, if Dr. *Webbe* will swear that he is in Danger of his Life from me, or from any Part of Mr. *Mills*'s Family, I am very willing to give him the Security he asks.

Mr. *President.* Doctor *Webbe*, you hear what Mr. *Colhoun* offers; what say you to it?

Webbe. Sir, I cannot take upon me to swear any more than that I have heard there is an Intention to assassinate me.

Mr. *President.* It is very strange you should not know from whom you heard so!

Webbe. I did not hear it from any particular Person: I have heard it commonly reported.

Mr. *President.* Well then, unless you can charge some particular Person, we can take no Notice of it. Surely you would not have us bind over the whole Island!

Webbe. Then, Sir, I desire I may have my Expences paid me since I have been down here.

Mr. *President.* No, you cannot; for this is a Prosecution at the Suit of the Crown, and in that Case the Witnesses always bear their own Charges. With respect to your being arrested, the Court will protect you from any Arrests during their Sitting. Mr. *Solicitor*, go on with your Evidence.

Mr. *Horne.* Do you know the Prisoner at the Bar?---*Webbe.* Yes.

Mr. *Horne.* How long have you known him?

Webbe. Between four and five Years.

Mr. *Horne.* Did you not usually consult and advise with him in your Affairs?—*Webbe.* I have employed him as an Attorney.

Mr. *Horne.* Were you present when *Bridgwater*'s Estate was sold last at *Nevis*?——*Webbe.* Yes, I was.

Mr. *Horne.* Did not that Estate belong to you, and was it not sold for a Debt of yours?

Webbe. Yes, it was my Estate, and was sold for a Debt of mine.

Mr. *Horne.* When was it sold?---*Webbe.* On the 7th of *November* last.

Mr. *Horne.* Were the Prisoner at the Bar and the Deceased present at the Sale?——*Webbe.* Yes, they were.

Mr. *Horne.* Did not the Provost-Marshal make Conditions of Sale?

Webbe. Yes, I believe there were Terms of Sale.

Mr. *Horne.* Were those Conditions read, before the Estate was put up to Sale?—*Webbe.* I believe they were, but I am not certain.

Mr. *Horne.* What were the Conditions, pray?

Webbe. I do not remember what they were.

Mr. *Horne.* Did the Prisoner make any Objections to them?

Webbe. I heard him say, *We will be bound by these Conditions, as far as the Law can bind us, and no farther; and that the Marshal had no Right to make any Terms of Sale.*

Mr. *Horne.* Did you hear him make no other Objection? Were there no other Words past?

Webbe. No, only the Deceased said, *We will have no School-Boy's Play.*

Mr. *Horne.* What Answer did the Prisoner make to that?

Webbe. I do not know, I did not hear any Answer.

Mr. *Horne.* Why, were you not present all the Time?

Webbe. No, I was backward and forward.

Mr. *Horne.* How near was you to the Prisoner, when he said what you have related?

Webbe. About the Distance of the Room off.

Mr. *Horne.* And did you hear nothing else that passed on the Occasion?

Webbe. No, Sir.

Mr. *Horne.* How came you so unconcerned, as not to attend to what was going forward?

Webbe. I was so confused I could not mind any thing.

Mr. *Horne.* What was the Cause of your Confusion?

Webbe. The Estate being sold.

Mr. *Horne.* Did the Prisoner at your Request purchase that Estate?

Webbe. Yes, he did purchase it at my Request.

Mr. *Horne.* One would imagine, that, as you were so nearly concerned in the Purchase of the Estate, you would have been more attentive to all that passed.

Webbe. I was walking backward and forward, and getting Mr. *Jacob Saunders* to sign the Bills for the Purchase-Money.

Mr. *Horne.* You say you were much confused; pray, did your Confusion proceed from Concern or Resentment?

Webbe. From Concern at having my Estate sold.

Mr. *Horne.* How long did the Deceased stay at *Nevis* after the Sale?

Webbe. I do not know; I never saw him after.

Mr. *Horne.* Did the Prisoner see him after the Sale?

Webbe. I do not know that he did.

Mr. *Horne.* Did the Prisoner go Home with you after the Sale?

Webbe. No.

Mr. *Horne.* When was the first Time that you saw him after the Sale?

Webbe. I saw him the next Day.

Mr. *Horne.* Do you not live in great Intimacy with the Prisoner?

Webbe. Yes, I am intimate with him.

Mr. *Horne.* Has he not confided in you often?---*Webbe.* Yes, he has.

Mr. *Horne.* The next Day after the Sale that you saw the Prisoner, did he not tell you the Conversation that had passed between the Deceased and him at the Sale?

Webbe. No.

Mr. *Horne.* Had you no Conversation at all about the Sale?

Webbe. No, we only talked about the Bills.

Mr. *Horne.* Did you see the Prisoner the Day after that, on the 9th?

Webbe. Yes.

Mr. *Horne.* What Conversation had you with him then?

Webbe. I do not remember the Conversation.

Juryman. Had you no Conversation about the Estate that Day?

Webbe. I do not remember we had.

Juryman. It is very strange, that you, who was the Purchaser of the Estate, should not say something of it to the Prisoner, who purchased it for you; or that you should not remember what he said to you about it!

Webbe. We had frequent Conversations about the Estate, but I do not remember the Particulars of them.

Mr. *Horne.* Did you make no Inquiry about the Event of the Sale?

Webbe. No.

Mr. *Horne.* Did you never hear any Complaint from the Prisoner of his having been ill-treated at the Sale?—*Webbe.* Not that I remember.

Mr. *Horne.* Try to recollect: I am sure, Sir, your Memory will serve you on this Occasion, if you please. Did you never hear the Prisoner mention any thing of Satisfaction, or Ill-treatment?

Webbe. Never.

Mr. *Horne.* Did you never hear him express any Dissatisfaction at the Conditions of Sale?

Webbe. I heard him say they were contrary to Law.

Mr. *Horne.* Did he not complain of the Hardship of them?

Webbe. I do not remember that he did.

Mr. *Horne.* Did you yourself complain of the Conditions?

Webbe. I said I thought them hard too, and I advised him not to sign them.

Mr. *President.* You said in the Beginning of your Evidence, that you knew not what the Conditions of Sale were, and now you say you advised the Prisoner not to sign them, because you thought them hard; surely you must have known what the Conditions were, or you could not have given him such Advice. This is strangely inconnected indeed!

Webbe. I advised him not to sign any Conditions at all.

Mr. *Horne.* Do you know whether the Prisoner went to *St. Christopher*'s after the Sale of the Estate?—*Webbe.* I do not know that he did.

Mr. *Horne.* Pray, are not you a Guardian to Mrs. *Dasent*'s Daughter?

Webbe. Yes.

Mr. *Horne.* Did not Mrs. *Dasent* apply to you, and tell you she thought it improper for the Prisoner to stay at her House, and did not she desire you to speak to the Prisoner not to continue there?

Webbe. Yes, she did apply to me, and I did desire the Prisoner to leave her House, and to come to mine.

Mr. *Horne.* And did he go to your House?——*Webbe.* Yes.

Mr. *Horne.* When did he go there?

Webbe. He came to my House on the 16th of *November* at Night.

Mr. *Horne.* How long did he stay there?

Webbe. He stayed there all the next Day.

Mr. *Horne.* Did he never say any thing to you on the Subject of the Dispute that had happened at the Sale of *Bridgwater*'s Estate?

Webbe. No, he never did.

Mr. *Horne.* Do not you know, or did not you hear the Prisoner say, he had hired a Canoe from *John Gribbe* to carry him down to *St. Christopher*'s?

Webbe. No, I never heard him say so, nor I do know that he did.

Mr. *Horne.* Where was the Prisoner on the 18th of *November?*

Webbe. On the 18th he went to Mr. *Jacob Saunders*'s, where we dined.

Mr. *Horne.* Did not you and the Prisoner execute a Bond of Indemnity to Mr. *Jacob Saunders* that Day?

Webbe. Yes, we executed a Bond to indemnify him for endorsing the Bills for the Purchase-Money of the Estate.

Mr. *Horne.* Do you know whether the Prisoner sent any Letters to *St. Christopher*'s on the 18th?

Webbe. He told me he had wrote to Dr. *William Mills*, about Mr. *Symmonds*'s Affair.

Mr. *Horne.* Did the Prisoner receive any Letters from *St. Christopher*'s that Day?

Webbe. While we were at Mr. *Saunders*'s, the Prisoner's Negro Boy brought him a Packet from *St. Christopher*'s, and the Prisoner shewed me a Letter he had received from Dr. *William Mills.*

Mr. *Horne.* Did he shew you no other Letter?——*Webbe.* No.

Mr. *Horne.* Nor tell you he had received any Letter from the Deceased?

Webbe. No.

Mr. *Horne.* Did nothing more pass while you were at *Saunders*'s than what you have already related?

Webbe. Nothing more, that I remember.

Mr. *Horne.* Were you not at *O Donnell*'s Tavern with the Prisoner, the Night before the Murder?

Webbe. Yes, we were that Evening at *O Donnell*'s.

Mr. *Horne.* Did not you know the Prisoner intended to execute some Paper, or Writing, that Evening?

Webbe. No, I did not.

Mr. *Horne.* Did not you see the Prisoner that Evening writing a Paper at *O Donnell*'s?

Webbe. Yes, I saw him writing at a Side-Table.

Mr. *Horne.* What was it he was then writing?—*Webbe.* I do not know.

Mr. *Horne.* Do not you know he was then making his Will?

Webbe.

Webbe. No, I do not know whether it was a Will, or what it was.

Mr. *Horne.* Did not the Priſoner deſire you to procure three Witneſſes to atteſt that Paper? and did not you deſire one *Springett* not to be out of the Way that Evening?

Webbe. Yes, I believe he did deſire me, and I did ſpeak to *Springett* not to be out of the Way.

Mr. *Horne.* Did not you look over the Priſoner while he was writing?

Webbe. No.

Mr. *Horne.* Nor did not you read what he was writing?—*Webbe.* No.

Mr. *Horne.* Nor after he had finiſhed it?——*Webbe.* No.

Mr. *Horne.* You read no Part of it at all?——*Webbe.* No.

Mr. *Horne.* Was you in the Room all the Time the Priſoner was writing?

Webbe. No, I was in and out.

Mr. *Horne.* Did not the Priſoner call you frequently while he was writing?——*Webbe.* Yes.

Mr. *Horne.* What did he ſay to you at thoſe Times?

Webbe. I remember nothing, but his aſking me if I had got the Witneſſes ready.

Mr. *Horne.* Did not he whiſper to you?——*Webbe.* No.

Mr. *Horne.* Did he ſay nothing elſe to you?

Webbe. No, he only aſked me if the Witneſſes were come.

Mr. *Horne.* Do you know the Contents of the Paper the Priſoner was writing?——*Webbe.* No.

Mr. *Horne.* Did not he ſhew it you while he was writing it?—*Webbe.* No.

Mr. *Horne.* Who were the Witneſſes to it?

Webbe. Mr. *O Donnell*, Mr. *Potts*, and Mr. *Springett.*

Mr. *Horne.* Did the Priſoner execute it in their Preſence?—*Webbe.* Yes.

Mr. *Horne.* Did not you know, or had not you great Reaſon to believe, it was his Will?

Webbe. I do not know it was his Will: It might have been his Will, or a Power of Attorney; for I heard him ſay, he would either make a Will, or give a Power of Attorney to ſecure Mr. *Jacob Saunders* for indorſing his Bills.

Mr. *Horne.* How could a Will or a Power of Attorney ſecure Mr. *Saunders?* Beſides, what Neceſſity was there for either, when the Priſoner had that very Day joined you in a Bond of Indemnity to Mr. *Saunders?*

Webbe. I do not know, but he ſaid he would do ſo.

Mr *Horne.* Did not the Priſoner tell you he had made you a Legatee in his Will?——*Webbe.* No, he did not.

Mr. *Horne.* What did the Priſoner do with that Paper, when he had executed it?——*Webbe.* He gave it to me.

Mr. *Horne.* Did you look into it at the Time he gave it to you?

Webbe. No.

Mr. *Horne.* Was it ſealed or open when he gave it to you?

Webbe. It was folded up, but not ſealed.

Mr. *Horne.* When the Priſoner delivered it to you, did he pronounce any Words?——*Webbe.* None that I heard.

Mr. *Horne.* In whoſe Cuſtody is that Paper now?

Webbe. In mine, it is at *Nevis.*

Mr. *Horne.* Was it indorſed?——*Webbe.* No.

Mr. *Horne.* Was it ever recorded?——*Webbe.* No.

Mr. *Horne.* What did you really take it to be?

Webbe. I thought it was a Power of Attorney to ſecure *Jacob Saunders.*

Mr. *Horne.* Did you never read it, nor look into it at all?

Webbe. No, I never did.

Mr. *J. Loſack.* It is very ſtrange you ſhould not have the leaſt Curioſity to look into a Paper, that, by your own Confeſſion, was ſo relative to your own Concerns! But, upon the Oath you have taken, did the Priſoner ſay any thing to you, and what, at the Time he delivered into your Hands the Paper we are now upon, at the Tavern?

Webbe. No, he ſaid nothing at all to me.

Mr. *J. Loſack.* Did he not tell you it was his Will?—*Webbe.* No.

Mr. *J. Loſack.* Upon your Oath, Dr. *Webbe*, did he not inform you it was his Will, and that you were a Legatee in it?

Webbe. No, he did not.

Mr. *J. Loſack.* Is Dr. *Webbe*'s Examination, which was taken at *Nevis*, in Court?

Cl. of Arr. Yes, Sir.

Mr. *J. Loſack.* Pleaſe to hand it up here.

Mr. *Horne.* I pray that Judge *Herbert* may be called, and the Examination read; for this Gentleman has now contradicted what he poſitively ſwore to before Judge *Herbert.*

Joſeph Herbert, Eſq; ſworn.

Mr. *Horne.* Judge *Herbert*, is not that the Hand-writing of Dr. *Webbe* ſubſcribed to that Examination? and was not that Examination ſworn to and ſubſcribed by Dr. *Webbe* before you?

Mr. *Herbert.* Yes, this Examination was ſubſcribed by Dr. *Webbe*, and ſworn to before me, and that is my Hand to the *Jurat.*

Mr. *Horne.* Was not the Examination read by Dr. *Webbe*, or read to him, before he ſwore to it?

Mr. *Herbert.* Yes, the Examination was by my Deſire written by Mr. *Cottle* the Attorney, and taken from Dr. *Webbe*'s own Lips, and afterwards read by Mr. *Cottle* to Dr. *Webbe* before he ſwore to it, or before the *Doctor* had ſigned it, and he read it himſelf alſo.

Mr. *Preſident.* Mr. *Smith*, read Dr. *Webbe*'s Examination.

Cl. of Arr. Nevis, *Before the Honourable* Joſeph Herbert, *Eſq. Chief-Juſtice of his Majeſty's Court of King's Bench and Common-Pleas, in the Iſland of* Nevis, *and* Samuel Clarke *and* Sommers Payne, *Eſqrs. Juſtices of the ſame Bench.*

The Examination of James Webbe, *of the ſaid Iſland, Surgeon, who being ſworn on the holy Evangeliſts of Almighty God, depoſeth and ſaith,*

THAT on *Thurſday* the 16th Day of this *Inſtant*, Deponent going to his Houſe, found *John Barbot* there.

That it was ſome Time in the Evening after Candle-light, when he ſo returned Home; but Deponent knoweth not the Time preciſely, or any particular Hour near it.

That ſaid *John Barbot* continued at this Deponent's with Deponent till the *Saturday* following, when they dined at Mr. *Jacob Saunders*'s, and ſtaid there till about Five in the Evening, when *Barbot* and Deponent both went away from thence to Mr. *Edward Paris*'s, where they made a Stay of about Half an Hour, and thence came to *Charles-Town* to Mr. *O Donnell*'s Tavern, where they ſtaid about an Hour, and then went directly Home to Deponent's Houſe, where they arrived about Nine o'Clock, as Deponent believes.

That the ſaid *Barbot*, ſoon after his coming to Deponent's Houſe, declared he was ſleepy, and wiſhed Deponent a good Night, and went to Bed, as Deponent believes; that Deponent being troubled with a Lax, got up in the Night to go to the Neceſſary-houſe, and on paſſing through the Hall for that Purpoſe, ſaid *Barbot* called to Deponent, and aſked him, what was the Matter? To which Deponent replied, nothing had happened, or was the Matter: Said *Barbot* then aſked, what it was o'Clock? Deponent told him, he believed it was about One: No other Converſation then paſſed. Deponent did not ſee or hear ſaid *Barbot* 'till the next Morning, *Sunday* the 19th *Inſtant*, when ſaid *Barbot* came to Deponent's Houſe on Horſeback, upon one of Deponent's own Horſes, between Eight and Nine o'Clock, attended by a Boy-Slave called *Nero.*

Barbot continued with Deponent 'till they both ſet out for *Gingerland* Pariſh, in order to dine abroad; and Deponent parted with ſaid *Barbot* at Mr. *Pemberton*'s Negro-Houſes, when ſaid *Barbot* took Leave of Deponent, who told him he was going to dine at Deponent's Uncle *George Webbe*'s. That Deponent then went and dined at Mr. *Maynard*'s; from thence he went with Mr. *Maynard* to Capt. *Symmonds*'s; but whilſt he was at Mr. *Maynard*'s, a Negro Man came to inquire for Deponent, and aſked Deponent, who was then by himſelf in a back Room upon a Bed, if he knew where Mr. *Barbot* was? Deponent told him, he was at *Stony-hill*; the Negro then went out, and ſoon afterwards returned, and told Deponent, that there were People come from *St. Chriſtopher*'s after Mr. *Barbot*, for killing Mr. *Mills*, or the Gentleman upon *Toby Wall*'s Eſtate; but Deponent does not particularly remember which. The Boy told no other white Perſon in the Family. About Half an Hour after Deponent's hearing this Account from the Boy, Deponent and Mr. *Maynard* ſet out for Capt. *Symmonds*'s as aforeſaid, where he received a Note from ſaid *Barbot*, deſiring him, upon the Receipt thereof, to come to the ſaid *Barbot* directly at Mr. *John Herbert*'s; upon which Deponent went to him immediately, and found him drinking Tea. *Barbot* ſoon afterwards told Deponent he wanted to ſpeak with him, and they both went out together into the Neceſſary-houſe. *Barbot* there aſked Deponent, if he had heard any Thing of the killing Mr. *Mills*; the Deponent told him, Yes, he had heard it at Capt. *Symmonds*'s, who read a Letter which had been received from *St. Kitt*'s about it, and that he (Capt. *Symmonds*) was gone after him (*Barbot*) to take him. *Barbot* replied, He did not care, he ſhould not go out of the Way, for he knew nothing of the Matter. This was the Purport of all the Converſation which paſſed between Deponent and *Barbot* in the Neceſſary-houſe, 'till the Conſtables appeared to take him. The Deponent never heard, ſaw, knew, or was informed of any Letters or Meſſages that paſſed between the ſaid *Barbot* and the deceaſed Mr. *Mills.* That Deponent and ſaid *Barbot* were one Day at the Widow of *James Daſent*'s Houſe upon *Saddle-hill*, when ſhe was from Home; when Deponent took up a Caſe of Piſtols that were lying in the Houſe, and ſaid he would try whether he could ſhoot with them, and aſked the ſaid *Barbot* if he would go; and they accordingly went out and fired ſeveral Shot together at the Head of a Barrel. That Deponent believes, it was about the Time Mrs. *Hickman* was ſick, and that Deponent believes Mrs. *Daſent* was then gone to viſit her.

That on the *Saturday* Evening when the ſaid *Barbot* came to Mr. *O Donnell*'s Tavern as aforeſaid, he made his Will: That the ſaid *O Donnell*, and *Charles Potts*, and *John Springett*, both in the Deponent's Service, were Witneſſes to the ſame; the Will was delivered to the Deponent that ſame Night: That ſaid *Barbot* informed Deponent he was a Legatee. That the Road Deponent and *Barbot* went that ſaid *Saturday* Night to Deponent's Houſe, was through *Willet*'s Eſtate. That ſaid *Barbot* was writing at Mr. *O Donnell*'s Houſe that ſame *Saturday* Night, and Deponent believes it was his Will. That Deponent was preſent when the ſaid *Barbot*'s Will was executed, and does not recollect any Converſation that paſſed between the ſaid *O Donnell* and *Barbot* on that Occaſion; nor that, upon the ſaid *O Donnell*'s ſaying to ſaid *Barbot*, that this (meaning the executing the ſaid Will) looked like a military Settlement of a Man's Affairs, he this Deponent ſaid *huſh* to the ſaid *O Donnell*, or made uſe of any other Means to deſire the ſaid *O Donnell* to keep Silence.

James Webbe.

Sworn this 22d Day of
November, 1752,
before
Joſeph Herbert.
Samuel Clarke.
Sommers Payne.

Webbe. I do not remember, when I read the Examination, that any Thing was in it about making me a Legatee. I read it in a Hurry.

Mr. *Horne.* Did the Priſoner give you any Reaſon for making his Will ſo ſuddenly?

Webbe. I do not remember it was his Will; he had talked of going to *England*, and ſaid he would make his Will.

Mr. *J. Loſack.* Dr. *Webbe*, pray raiſe your Voice, the Court does not hear you; and conſidering how much your Evidence ſeems calculated for the Advantage of the Priſoner, it is pity he ſhould loſe any Part of the Benefit of it. Did you ever receive any Letters from the Deceaſed?

Webbe. Yes, I have received a Note or two from him.

Mr. *J. Loſack.* Then you know his Hand?

Webbe. Yes, I believe I ſhould, if I was to ſee it.

Mr. *J. Loſack.* Did you never ſee his Hand-writing in any Letters to the Priſoner?——*Webbe.* No.

Mr. *J. Loſack.* Nor on the Superſcription of any Letter to the Priſoner?——*Webbe.* No, I never did.

Mr. *Horne.* At what o'Clock did you leave *O Donnell*'s Tavern the Evening the Priſoner executed the Paper he delivered to you?

Webbe. Between Seven and Eight in the Evening.

Mr. *Horne.* Where did you go to?——*Webbe.* We went Home.

Mr. *Horne.* Did the Priſoner go Home with you?—*Webbe.* Yes.

Mr. *Horne.* Had you no Converſation with the Priſoner relative to the Deceaſed, in your Way Home, or after you got Home?

Webbe. I do not remember any.

Mr. *J. Loſack.* Had you poſitively no Converſation relative to the Deceaſed?—*Webbe.* I do not remember we had.

Mr. *J. Loſack.* Pray, Dr. *Webbe*, do you remember on what Day you came laſt from *Nevis*?

Webbe. From *Nevis*, Sir?

Mr. *J. Loſack.* Yes, from *Nevis*.

Webbe. I came from *Nevis* the Day before Yeſterday.

Mr. *J. Loſack.* It is very well, Sir; I only wanted to know whether you had Remembrance of any Thing.

Mr. *Horne.* Did the Priſoner never tell you of any Letter he had received from the Deceaſed?—*Webbe.* No.

Mr. *Horne.* Nor any verbal Meſſage?—*Webbe.* No.

Mr. *Horne.* Did he mention to you any Intention he had of going out that Night you came from *O Donnell*'s?—*Webbe.* No.

Mr. *Horne.* Pray, what was the Converſation you had together, after you got Home?

Webbe. I do not recollect what it was, but we had very little Converſation together, for we were reading.

Mr. *Horne.* How long were you reading?

Webbe. I cannot tell exactly, I believe it was about an Hour.

Mr. *Horne.* What Book were you reading?

Webbe. James's Dictionary.

Mr. *Horne.* At what Time did the Priſoner go to Bed?

Webbe. At about Nine o'Clock.

Mr. *Horne.* Did you ſee him that Night after he went to Bed?

Webbe. No. I did not ſee him till the next Morning; but I was up at about One o'Clock in the Morning, and heard him.

Mr. *Horne.* How came you up at that Hour?

Webbe. I had a Lax, and was going to the Neceſſary-houſe, and as I was paſſing through the Hall, the Priſoner called to me, and aſked me what o'Clock it was? and I told him it was about One.

Mr. *Horne.* You ſay you ſaw the Priſoner the next Morning: Was he on Foot, or on Horſeback, when you ſaw him?

Webbe. He was on Horſeback, riding up to the Houſe.

Mr. *Horne.* Whoſe Horſe was he on?—*Webbe.* On my Horſe.

Mr. *Horne.* Had he any Negro with him?

Webbe. Yes, he had my Boy.

Mr. *Horne.* What is the Boy's Name?—*Webbe. Pope.*

Mr. *Horne.* Pray, at what Time do you generally riſe in the Morning?

Webbe Between Seven and Eight generally.

Mr. *Horne.* At what Time does the Priſoner uſually riſe?

Webbe. He commonly riſes later than that.

Mr. *J. Loſack.* Did you miſs any of your Horſes that Morning, before the Priſoner came to your Houſe?—*Webbe.* No, Sir.

Mr. *J. Loſack.* How many Horſes do you keep?

Webbe. I keep four, Sir.

Mr. *J. Loſack.* When you get up in a Morning, do you not uſually go to your Stable to ſee to your Horſes?—*Webbe.* No, I very ſeldom do.

Mr. *J. Loſack.* Did not you viſit your Stable that Morning, on the 19th of *November*?—*Webbe.* No, Sir

Mr. Preſident. Pray, when the Priſoner came to your Houſe that Morning, had he any Piſtols?—*Webbe.* No, he had none.

Mr. Preſident. Was his Coat wet?—*Webbe.* I cannot tell.

Mr. Preſident. Were any of his Cloaths wet?

Webbe. I do not know, I did not take Notice that they were.

Mr. *J. Loſack.* Had you any Converſation with the Priſoner when he came into your Houſe?—*Webbe.* Yes.

Mr. *J. Loſack.* What was it?

Webbe. He aſked me, whether I had breakfaſted? I ſaid, I believed not.

Mr. *J. Loſack.* Why, could not you tell whether you had breakfaſted or not?—*Webbe.* I meant, that I believe Breakfaſt was not over; for I ſeldom do breakfaſt myſelf.

Mr. *J. Loſack.* Did you not aſk the Priſoner where he had been?

Webbe. No.

Mr *Horne.* Did you not aſk him why he took your Horſe and Boy without your Leave?

Webbe. No, for he was always welcome to my Horſe and Boy too; he had my Leave to take them, whenever he wanted them; and he had frequently taken them without firſt acquainting me of it.

Mr. *Horne.* Where did you imagine the Priſoner had been?

Webbe. I had no Suſpicion of where he had been; I thought he had been wenching.

Mr. *Horne.* Did the Priſoner ſay nothing to you about one *Peter Rowland*, a Chriſtian Slave?—*Webbe.* No.

Mr. *Horne.* Did he never tell you he had beſpoke a Canoe of *that Peter Rowland*?—*Webbe.* No.

Mr. *Horne.* Did he ſay nothing to you about a Canoe?

Webbe. Nothing at all.

Mr. *Horne.* Did he not tell you he was to give a Dollar to each of the Oars-Men?—*Webbe* No, he did not.

Mr. *Horne.* How does the Priſoner carry his Things generally when he travels?—*Webbe.* His Boy generally carries them.

Mr. *Horne.* What is his Boy's Name?—*Webbe. Nero.*

Mr. *Horne.* Do you know whether the Priſoner has a Trunk?

Webbe. Yes, he has.

Mr. *Horne.* What Colour is it of?—*Webbe.* It is a red Trunk.

Mr. *Horne.* Where did you ſee the Trunk laſt?

Webbe. The laſt Time I ſaw it was at Mrs. *Daſent*'s.

Mr. *Horne.* Does he generally carry his Things in that Trunk when he travels?

Webbe. He generally carries them in a red Trunk, I cannot tell whether it is the ſame I ſaw at Mrs. *Daſent*'s.

Mr. Preſident. When the Priſoner came to your Houſe from Mrs. *Daſent*'s on the 16th of *November*, had he a Trunk with him?

Webbe. Yes, I believe he had.

Mr. Preſident. Was the Priſoner's Boy *Nero* at your Houſe on the 18th of *November* at Night?—*Webbe.* No, I did not ſee him there.

Mr. Preſident. Did you ſee him on the 19th in the Morning?

Webbe. Yes.

Mr. Preſident. Had he the Trunk with him then?

Webbe. Yes, I ſaw him with the Trunk coming up to the Houſe.

Mr. Preſident. Was it before the Priſoner came to your Houſe?

Webbe. It was about the ſame Time.

Mr. *Horne.* Did you not ſee the Trunk opened; or did you not ſee the Priſoner, or his Boy, take any Piſtols out of it?

Webbe. No, I did not ſee it opened, nor I did not ſee the Priſoner, or his Boy, take any Piſtols out of it.

Mr. *Horne.* What Cloaths had the Priſoner on, when he came to your Houſe that Morning, on the 19th of *November*?

Webbe. He had on a *whitiſh Coat and a ſilver-laced Hat.*

Mr. *Horne.* What Waiſtcoat had he on?

Webbe. A dark-coloured Waiſtcoat, I think.

Mr. *Horne.* Did the Priſoner ſhift his Cloaths as ſoon as he came in?

Webbe. Yes.

Mr. *Horne.* Where did he ſhift them?

Webbe. In one of the Rooms of the Houſe, I cannot tell which.

Mr. *Horne.* Did you ever ſee the Priſoner fire at a Mark with a Piſtol?

Webbe. Yes.

Mr. *Horne.* Where was it?—*Webbe.* At Mrs. *Daſent*'s, at *Saddle-hill.*

Mr. *Horne.* On what Occaſion?—*Webbe.* He fired at my Requeſt.

Mr. *Horne.* What was your Reaſon for deſiring him to fire the Piſtols?

Webbe. No particular Reaſon, we were talking about Mr. *Daſent*'s fighting *Peterſon* with thoſe Piſtols.

Mr. *Horne.* What kind of Piſtols were they the Priſoner fired out of?

Webbe. They were ſilver-mounted, and braſs Barrels.

Mr. *Horne.* How often did he fire out of them?

Webbe. But that once.

Mr. *Horne.* I mean, how many Times did the Priſoner fire out of the Piſtols that Day?—*Webbe.* A good many Times.

Mr. *Horne.* What Mark did he fire at?—*Webbe.* At a Barrel-head.

Mr. *Horne.* On what Day was it?

Webbe. The *Sunday* before the Deceaſed was killed.

Mr. *Horne.* Who did the Piſtols belong to?

Webbe. They were a Pair of *James Daſent*'s.

Mr. *Horne.* Are theſe the Piſtols? (*a Pair of Piſtols ſhewn him.*)

Webbe. I believe they are.

Mr. *Horne.* When you were exerciſing the Piſtols, had you any Converſation with the Priſoner about the Deceaſed?—*Webbe.* No.

Mr. *Horne.* What became of the Piſtols, when you had done exerciſing them?

Webbe. I ordered one of Mrs. *Daſent*'s Boys to clean them.

Mr. *Horne.* Where were the Piſtols generally kept at Mrs. *Daſent*'s?

Webbe. There was no fixed Place for them: Sometimes they were kept in the Shop, and ſometimes in the Judge's Room on a Beam.

Mr. *Horne.* When did you hear that Mrs. *Daſent* miſſed the Piſtols?

Webbe. On *Monday*, the Day after I heard the Report of the Deceaſed being killed, Mrs. *Daſent* ſent to me to deſire I would go to her: I went to her accordingly, and ſhe told me ſhe miſſed a Pair of Piſtols, and had been looking for them, but could not find them. She ſeemed frightened, and aſked me, if I knew where they were? I ſaid, I did not, but I would help her to look for them; and I went into the Shop, and ſearched there, but could not find them; from thence I went with her into the Judge's Room, and I ſaid, Let us look under the Bed; and I ſat upon the Bed, and took up the Baſe, and found the Piſtols under the Bed.

Mr. *Horne.* Why, did you know where they were, that you ſo readily found them?—*Webbe.* No, I did not know where they were.

Mr. *Horne.* Were they not in Holſter Caps?

Webbe Yes, lying on a Box upon the Floor: The Caps were mouldy.

Mr. *Horne.* Do you, or do you not know that the Piſtols were placed there by the Priſoner, or his Boy?

Webbe. I did not know they were in that Place, nor do I know who put them there.

Mr. *Horne.* Did the Piſtols appear to have been lately made uſe of?

Webbe. I cannot tell, I did not examine them.

Mr. *Horne.* Were they the ſame Piſtols the Priſoner fired at the Mark with?—*Webbe.* I believe they were.

Mr. *Horne.* Did the Priſoner ever make uſe of them, after he fired at the Mark with them?---*Webbe.* Not to my Knowledge.

Mr. *Horne.* Did he ever borrow any Piſtols of you?

Webbe. No, he never did.

Mr. *Horne.* Had he any Piſtols of his own?

Webbe. He had none that I know of.

Mr. *Horne.* Did he not uſually ride with Piſtols?---*Webbe.* No.

Mr. *Horne.* Do you not know, or have you not great Reaſon to believe, the Priſoner had thoſe Piſtols with him the Morning the Murder was committed?

Webbe. I do not know whether he had them or not.

Mr. *Horne.* Did not the Priſoner's Boy carry the Piſtols to Mrs. *Daſent*'s, the Morning the Murder was committed?

Webbe. I do not know that he did.

Mr. *Horne.* Did not you and the Priſoner uſually lie in the Room where the Piſtols were found?---*Webbe.* We have lain there ſometimes.

Mr. *Horne.* Did you obſerve the Furniture of the Room the Day you found the Piſtols?---*Webbe.* No, I did not take Notice of it.

Mr. *Horne.* Was there a red Trunk in it?

Webbe. Yes, there was a red Trunk.

Mr. *Horne.* Did it belong to the Priſoner?

Webbe. Yes, I believe it did.

Mr. *Horne.* Was it the ſame that *Nero* brought to your Houſe the Morning before?---*Webbe.* Yes, I believe it was.

Mr. *Horne.* Did not the Priſoner aſk you, the Night before you heard the

the Deceaſed was killed, to lend him your Horſe, or your Boy *Pope?*

Webbe. No.

Mr. *Horne.* Nor had you no Suſpicion of his going out that Night?

Webbe. None at all; nor I did not know where he had been 'till the next Morning, that *Pope* told me he had been at *Molton's Bay.*

Mr. *Horne.* Did not you miſs *Pope* that Night?

Webbe. No, I did not miſs him, 'till I ſaw him in the Morning coming up with the Priſoner.

Mr. *Horne.* Where did you dine on *Sunday* the 19th of *November?* and where did the Priſoner dine that Day?

Webbe. The Priſoner dined at my Uncle *Webbe*'s at *Stony-hill*, and I dined at Mr. *Maynard*'s.

Mr. *Horne.* Did the Priſoner ſtay at your Houſe all that Morning, from the Time you ſaw him alight, 'till he went to your Uncle's to Dinner?

Webbe. Yes, he did; and I rode with him to the turning off at Mr. *Ottley*'s, where we parted; I went to Mr. *Maynard*'s, and he went to my Uncle's.

Mr. *Horne.* Had you no Converſation with the Priſoner about the Deceaſed then? Did he not tell you of his having killed the Deceaſed, or having fought a Duel with him that Morning?

Webbe. No, he did not ſay a Word about the Matter.

Mr. *Horne.* Did not you hear of the Murder while you were at Mr. *Maynard*'s?——*Webbe.* Yes.

Mr. *Horne.* By what Means did you hear it?

Webbe. A Negro came to me and told me, that Mr. *Barbot* had killed Mr. *Mills.*

Mr. *Horne.* Whoſe Negro told you this, and who ſent him to tell you? Did not you inquire?

Webbe. I do not know whoſe Negro it was: I did not inquire, and do not know who ſent him.

Mr. *Horne.* This is extremely odd, that a Negro ſhould come and tell you this News, and you not inquire whom he belonged to, or who ſent him! When you heard this, did you tell the News to Mr. *Maynard*'s Family?

Webbe. I do not know whether I did or not, but I believe I did tell it.

Mr. *Horne.* Strange, indeed! that upon hearing ſuch News as muſt have ſurprized and concerned every other Man, you ſhould be ſo very indifferent about it, as not to recollect poſitively your telling it to the Family!——*Webbe. I believe* I told them the News.

Mr. *Horne.* How long did you ſtay at Mr. *Maynard*'s after hearing the News?——*Webbe.* Not very long.

Mr. *Horne.* Where did you go from thence?

Webbe. I went to Mr. *John Symmonds*'s.

Mr. *Horne.* Who did you find there?

Webbe. Mr. *Edward Bridgwater.*

Mr. *Horne.* Did you tell them the News of the Murder, when you went there?—*Webbe.* No, I did not.

Mr. *Horne.* Did you not receive a Letter from the Priſoner, while you were at Mr. *Symmonds*'s?—*Webbe.* Yes, I received a Note from him.

Mr. *Horne,* What was the Purport of it?

Webbe. It was, as well as I remember, *Dear Doctor, I want much to ſee you; on Receipt of this, come immediately to me.*

Mr. *Horne.* Did not Mr. *Symmonds,* while you were at his Houſe, receive a Letter, giving him an Account of the Murder?

Webbe. Yes, he did.

Mr. *Horne.* Did he not, upon receiving the News, aſk you, if the Priſoner did not ſleep at your Houſe the Night before?

Webbe. Yes, he did; and I told him that the Priſoner had ſlept at my Houſe the Night before.

Mr. *Horne.* Did he not aſk you, if you had ſeen the Priſoner that Morning?—*Webbe.* Yes, I believe he did.

Mr. *Horne.* What Anſwer did you make him?

Webbe. I do not recollect the Anſwer.

Mr. *Horne.* Did you, or did you not tell him, you had not ſeen the Priſoner that Day?—*Webbe.* I do not recollect what I told him.

Mr. *Horne.* Did not Mr. *Symmonds,* on hearing the News of the Murder, ſay, he would go and aſſiſt the *Poſſe* in taking the Priſoner? and did he not immediately order his Horſe, and ſet out for that Purpoſe?

Webbe. Yes, he did ſay he would go and aſſiſt, and did order his Horſe, and I believe did go.

Mr. *Horne.* Did you make any Offer to aſſiſt in taking the Priſoner, or did you tell Mr. *Symmonds* where the Priſoner was?

Webbe. No, I did not.

Mr. *Horne.* Why did you not offer to give your Aſſiſtance? Was it not the Duty of every honeſt Man to aſſiſt in taking up a Murderer? What was your Reaſon for behaving with that Indifference, on a Matter of ſuch Conſequence?

Webbe. It was none of my Buſineſs. *I did not like ſuch troubleſome Jobbs.*

Mr. *Horne.* It is very ſtrange you ſhould act thus, when a Gentleman of Mr. *Mills*'s univerſal good Character had loſt his Life, nay, when it was reported he had been murdered! Surely you muſt have had ſome very particular private Reaſons for ſuch a Behaviour!

Webbe. I did not care to meddle in ſuch Matters; I thought it was *nothing to me.*

Mr. *Horne.* How long did you ſtay at Mr. *Symmonds*'s, after you received the Letter you mention from the Priſoner?

Webbe. I did not ſtay long; I went immediately to *John Herbert*'s, where I found the Priſoner.

Mr. *Horne.* Who was with the Priſoner?

Webbe. Nobody but the Family, they were drinking Tea.

Mr. *Horne.* Where was the Priſoner taken?

Webbe. At Mr. *John Herbert*'s.

Mr. *Horne.* Was you preſent when he was taken?—*Webbe.* Yes, I was.

Mr. *Horne.* How long had you been with the Priſoner before he was taken?

Webbe. Not long.

Mr. *Horne.* How long?——*Webbe.* I cannot poſitively ſay.

Mr. *Horne.* Pray, Sir, recollect how long.

Webbe. When I came in, they were drinking Tea; and the Priſoner took a Turn or two about the Houſe, and then deſired to ſpeak with me, and we went into the *Neceſſary-houſe,* where he was taken by the Officers of Juſtice.

Mr. *Horne.* This, Sir, does not anſwer the Queſtion. Pray, Sir, tell the Court and Jury how long (as near as you can recollect) you were with the Priſoner at Mr. *John Herbert*'s, before he was taken.

Webbe. We were in the *Neceſſary-houſe,* I believe, about five Minutes before he was taken.

Mr. *Horne.* Pray, what did the Priſoner ſay to you when he took you aſide there?

Webbe. I do not recollect what he ſaid to me.

Mr. *Horne.* What! not recollect what he ſaid to you, when you had been ſent for by the Priſoner upon a Matter of ſuch Conſequence! You ſay, you had heard the News of the Priſoner's killing the Deceaſed; the Priſoner wrote to deſire you to come immediately to him: You went, you ſay, directly to him, and were in private with him, the Priſoner, your very particular Friend; and, notwithſtanding all this, you cannot recollect what paſſed between you! This is very ſtrange! But pray, Sir, recollect yourſelf, and tell the Converſation.

Webbe. I cannot recollect poſitively what paſſed, for I did not take much Notice of it. I believe he ſaid ſomething of the Report of his having killed Mr. *Mills.* He aſked me, if I had heard the Report of his having murdered Mr. *Mills?* I told him, Yes, I had heard it; and he ſaid, he ſhould not fly for it, for he knew nothing of it.

Mr. *Horne.* Did he, or did he not tell you, he had killed Mr. *Mills* that Morning?—*Webbe.* No, he did not.

Mr. *Horne.* Did no other Converſation paſs between you and the Priſoner at that Time?——*Webbe.* No other, that I remember.

Mr. *Horne.* Did you not aſk him whether he had been off *Nevis?*

Webbe. No, I did not.

Mr. *Horne.* Did not the Priſoner, after he was taken into Cuſtody, take you aſide in Mr. *Herbert*'s Hall, and ſpeak in private with you?

Webbe. Yes, he did.

Mr. *Horne.* What did he ſay to you at that Time?

Webbe. He deſired me to ſpeak to my Uncle, *George Webbe,* to let him have *ten Piſtoles.*

Mr. *Horne.* Did nothing more paſs?——*Webbe.* Nothing more.

Mr. *J. Loſack.* Was that all he whiſpered to you?

Webbe. Yes, Sir, all.

Mr. *J. Loſack.* Was it neceſſary to convey ſuch a Requeſt in a Whiſper?

Mr. *Horne.* How long was you aſide with the Priſoner at that Time?

Webbe. About two or three Minutes.

Mr. *Horne.* Did he give you any Papers at that Time?

Webbe. No, he did not.

Mr. *Horne.* Did you ſee the Priſoner while he was in Gaol at *Nevis?*

Webbe. Yes, I ſaw him once.

Mr. *Horne.* What Converſation had you with him then?

Webbe. I deſired him to make over *Bridgwater*'s Eſtate to me.

Mr. *Horne.* What elſe?—*Webbe.* I do not remember any thing elſe.

Mr. *Horne.* Had you no other Converſation at all?

Webbe. I do not recollect any thing but that.

Mr. *Horne.* Do you know whether the Priſoner burnt any Papers while he was in Gaol?---*Webbe.* I heard Mr. *Burnet,* the Marſhal, ſay he did.

Mr. *Horne.* Do not you know it of your own Knowledge?

Webbe. No, I only heard Mr. *Burnet* ſay ſo.

Mr. *Horne.* Did not you hear from the Priſoner what thoſe Papers were that he burnt?——*Webbe.* No.

Mr. *Horne.* Did the Priſoner ever give you any Paper relative to this Murder?——*Webbe.* No, he never did.

Mr. *Horne.* Where was your Boy *Pope* on the *Saturday* Night preceding the Murder?——*Webbe.* At Home.

Mr. *Horne.* Did you ſend him out on any Errand that Night?

Webbe. No.

Mr. *Horne.* Did you ſend any of your Horſes out?---*Webbe.* No.

Mr. *Horne.* You did not poſitively ſend either your Boy *Pope* or your Horſe out at all that Night?——*Webbe.* No, I did not poſitively.

Mr. *Horne.* Were you ſent for that Night by any of your Patients?

Webbe. No.

Mr. Sol. Gen. Gentlemen of the Jury, I beg, for a particular Reaſon, that you would attend to this Part of Dr. *Webbe*'s Evidence. He ſays, that the Night preceding the Murder, he neither ſent out his Boy *Pope,* nor any of his Horſes; and further, that he himſelf was not ſent for by any of his Patients.

Mr. *Horne.* Did you give the Priſoner any Dram or Cordial that Night?---*Webbe.* No.

Mr. *Horne.* Did you make any Compoſition for him?---*Webbe.* No.

Mr. *Horne.* When you got up that Night, did you obſerve what Kind of Night it was?---*Webbe.* Yes, it was a very boiſterous Night.

Mr. *Horne.* Would you have gone out in ſuch a Night for Pleaſure?

Webbe. No, I ſhould not.

Mr. *Horne.* Do you know whether *Pope* was at *Bridgwater*'s Eſtate that Night?---*Webbe.* I cannot tell whether he was or no.

Mr. *Horne.* Do you think that, from the Time you ſpoke to the Priſoner that Night, to the Time you ſaw him riding up to your Houſe the next Morning, he could have been at *St. Chriſtopher*'s and back again?

Webbe. Yes, I believe he might.

Mr. *Horne.* Were you preſent at Mrs. *Daſent*'s, when the Priſoner's Trunk was opened?---*Webbe.* Yes.

Mr. *Horne.* What was in it?

Webbe. There was a Coat and Waiſtcoat, and ſome Linen.

Mr. *Horne.* Was not there a Night-gown?---*Webbe.* Not that I ſaw.

Mr. *Horne.* Were the Coat and Waiſtcoat wet?

Webbe. Yes, they were moiſt.

Mr. *Horne.* What Part of them was moiſt?

Webbe. I cannot tell what particular Part, but they were moiſt.

Mr. *Horne.* Are theſe the ſame Coat and Waiſtcoat that were found in the Trunk, and is this the Trunk *(the Priſoner's Trunk and Cloaths ſhewn him)* in which they were found?

Webbe. I believe they are the ſame, and I believe that is the Trunk.

Mr. *Horne.* Are theſe the ſame Coat and Waiſtcoat the Priſoner had on, when he came to your Houſe on *Sunday* Morning, the 19th of *November* laſt?—*Webbe.* I cannot tell whether they are or not.

Mr. *Horne.* Is this the Priſoner's Trunk?

Webbe.

Webbe. I do not know.

Mr. *Horne.* Did you know that the Coat and Waiſtcoat were in the Trunk at your Houſe?

Webbe. No, I knew nothing of the Matter.

Mr. *Horne.* May it pleaſe your Honours, we have done with this Witneſs.

Mr. *Preſident.* Mr. *Barbot*, the King's Counſel have done with this Witneſs, would you aſk him any Queſtions?

Priſoner. No, Sir.

Mr. Sol. Gen. Then call *Hugh O Donnell.* (*Who appeared, and was ſworn.*)

Mr. *O Donnell.* Do you keep a Tavern at *Nevis?*

O Donnell. Yes, Sir.

Mr. Sol. Gen. Do you remember to have heard the Report of the Deceaſed being killed?

O Donnell. Yes, I heard it on *Sunday* the 19th of *November* laſt.

Mr. Sol. Gen. Do you remember to have ſeen the Priſoner the Night before you heard the Report?

O Donnell. The Night before I heard the Report, between Seven and Eight o'Clock, Dr. *Webbe*, and Mr. *Barbot* the Priſoner at the Bar, rode up to my Houſe. I called to the Priſoner, and gave him a Letter that had been left at my Houſe for him. As ſoon as I gave him the Letter, he attempted to read it by the Light of the Moon; but finding, I ſuppoſe, that he could not, he alit off his Horſe, and came into the Houſe; Dr. *Webbe* followed him in, and the Priſoner, as ſoon as he came in, aſked for Pen, Ink, and Paper, which was brought him, and he ſat down to write, and continued writing for a conſiderable Time.

Mr. Sol. Gen. Was Dr. *Webbe* in the Room with the Priſoner while he was writing?

O Donnell. Yes, the Priſoner called to him ſeveral Times, and he went to him.

Mr. Sol. Gen. Did the Priſoner ſpeak to him while he was writing?

O Donnell. Yes; but I did not hear what he ſaid, for they ſpoke in a Kind of Whiſper.

Mr. Sol. Gen. When the Priſoner called Dr. *Webbe* to him, did Dr. *Webbe* look over him?

O Donnell. Yes, he did look over him.

Mr. Sol. Gen. What did the Priſoner do with the Paper he was writing, when he had finiſhed it?

O Donnell. As ſoon as it was finiſhed, he ſealed it, and the Priſoner and Dr. *Webbe* went into another Room; and after ſome little Time, Dr. *Webbe* came out, and deſired Dr. *Potts*, Mr. *Springett*, and myſelf, to go in and witneſs a Paper: We went into the Room, where the Priſoner was, and we did ſee him write his Name to the Seal.

Mr. Sol. Gen. Did you ſee him acknowledge it?

O Donnell. Yes, he put his Thumb on the Seal, and ſpoke ſome Words, but they were hurried over ſo inarticulately, that I did not underſtand them.

Mr. Sol. Gen. Tell in what Manner he did it?

O Donnell. When he took his Thumb off the Seal, he ſaid, *ſeal and deliver this*, and then mumbled over ſome Words (as I ſaid before) ſo very inarticulately, that I did not underſtand them.

Mr. Juſtice *Greatheed.* Was there any Thing written juſt over the Place where you ſigned?

O Donnell. I believe there was, but he covered that with his Hand.

Mr. Sol. Gen. Pray, what did you take that Paper to be?

O Donnell. I took it to be a Will.

Mr. Sol. Gen. Why did you think it was a Will?

O Donnell. Becauſe there were three Witneſſes to it.

Mr. Sol. Gen. Who witneſſed the Paper beſides yourſelf?

O Donnell. Dr. *Potts* and Mr. *Springett* were the other Witneſſes.

Mr. Sol. Gen. What did the Priſoner do with the Paper, after it was ſigned and witneſſed?

O Donnell. He folded it up, and gave it to Dr. *Webbe.*

Mr. Sol. Gen. Did you hear him ſay any Thing, when he delivered it to Dr. *Webbe?*

O Donnell. He did ſay ſomething, but I could not hear diſtinctly what it was, for he ſpoke in a low Voice.

Mr. Sol. Gen. Did you hear him pronounce the Words, *publiſh* or *declare?*

O Donnell. I did not hear any one Word diſtinctly that he ſaid.

Mr. Sol. Gen. Had you Reaſon to think, from his Manner of pronouncing the Words, that he intended to conceal them?

O Donnell. No, I did not apprehend that he did.

Mr. Sol. Gen. In what Manner did he ſpeak the Words?

O Donnell. He ſeemed to ſpeak them indifferently.

Mr. Sol. Gen. Was the Paper ſealed, or only folded up, when he delivered it to Dr. *Webbe?*

O Donnell. It was folded up, but not ſealed.

Mr. Sol. Gen. Is it uſual to make Wills, or draw Inſtruments of Writing, at your Tavern?

O Donnell. No, Sir, I do not remember any ſuch Thing being done at my Houſe before.

Mr. *Preſident.* Would you aſk this Witneſs any Queſtions, Mr. *Barbot?*

Priſ. No, Sir.

Mr. Sol. Gen. Then call *Charles Potts.* (*Who was ſworn.*)

Do you remember on what Day it was you heard that the Deceaſed was murdered?

Potts. Yes, I remember it was on *Sunday* the 19th of *November* laſt.

Mr. Sol. Gen. Were you at Mr. *O Donnell's* Tavern the Night before you heard the Deceaſed was killed?——*Potts.* Yes, I was.

Mr. Sol. Gen. Do you remember what paſſed with regard to your witneſſing any Paper for the Priſoner?

Potts. I was ſitting in the Tavern in the Evening, and ſomebody called me, and told me, I was wanted in the inner Room.

Mr. Sol. Gen. Who called you?

Potts. I cannot tell who it was, but ſomebody called me, and told me, I was wanted in the inner Room; and I went in, and the Priſoner deſired me to ſign, as a Witneſs, to an Inſtrument of Writing; and accordingly the Priſoner ſigned his Name to it: Mr. *O Donnell* ſigned firſt as a Witneſs to it, I ſigned next, and Mr. *Springett* laſt.

Mr. Sol. Gen. Did not the Priſoner acknowledge that Inſtrument of Writing, when he had ſigned his Name to it?

Potts. Yes, he put his Thumb on the Seal, and took it off again.

Mr. Sol. Gen. What did he ſay when he acknowledged it?

Potts. I do not recollect what he ſaid.

Mr. Sol. Gen. What did you apprehend that Inſtrument of Writing to be?

Potts. I thought it was ſome Deed to ſecure *Jacob Saunders.*

Mr. Sol. Gen. Why did you think ſo?——*Potts.* Becauſe I met the Priſoner and Dr. *Webbe* coming from Mr. *Saunders*'s that Day.

Mr. Sol. Gen. Is that all the Reaſon?——*Potts.* That is all, Sir.

Mr. Sol. Gen. Did you read the Paper before you ſigned it?

Potts, No, I did not read it.

Mr. Sol. Gen. Nor any Part of it?——*Potts.* No, Sir.

Mr. Sol. Gen. Then how are you ſure it was not a Note of Hand that you ſigned?

Potts, I am ſure it was not a Note of Hand, for it was too long.

Mr. Sol. Gen. What was too long, the Atteſtation? Did you not ſign juſt under the Atteſtation?

Potts. I did not obſerve the Atteſtation; I had no Suſpicion of its being a Note of Hand: I thought it was a Deed to ſecure Mr. *Saunders*'s Debt.

Mr. Sol. Gen. Did not the Priſoner cover the Atteſtation with his Hand?

Potts. He did not when I ſigned.

Mr. Sol. Gen. Did you not hear the Priſoner ſay, he publiſhed that Paper as his Will?——*Potts.* No, I did not.

Mr. Sol. Gen. Did you come to the Tavern by Accident, or did any one deſire you to be there at that Time?

Potts. I came there by Accident; I had been round the Iſland, and called at Mr. *O Donnell's* to refreſh myſelf with a Mug of Beer.

Mr. Sol. Gen. Where did you go after you ſigned as a Witneſs to the Paper?——*Potts.* I went with Mr. *James Brodbelt* to his Plantation, and from thence I went to Dr. *Webbe's*: It was about Ten o'Clock when I got there, and I went to Bed in about an Hour after.

Mr. Sol. Gen. Did you ſee the Priſoner that Night at Dr. *Webbe's?*

Potts. No, I did not ſee him from the Time I left Mr. *O Donnell's*, till about Nine o'Clock next Morning I ſaw him come into the Yard on Horſe-back, upon Dr. *Webbe's* Horſe, *Kent.*

Mr. Sol. Gen. Did you ever hear of any Reſentment the Priſoner had againſt the Deceaſed?——*Potts.* None in the World: On the contrary, I have always heard him expreſs great Reſpect for the Deceaſed.

Priſ. Mr. *Potts*, you ſaw me ſome Days before this Accident happened, did you ever hear me expreſs any Reſentment againſt Mr. *Mills?*

Potts. Never; I never did indeed.

Priſ. Have you not often heard me ſpeak of him in the moſt reſpectful Terms, and ſuch as ſhewed I had a great Eſteem for him?

Potts. I have indeed very often; and I never heard you ſay any Thing of him that looked like Malice or Reſentment.

Thomas Hobſon ſworn.

Mr. Sol. Gen. Do you remember hearing the Report of the Deceaſed being killed?——*Hobſon.* Yes, Sir.

Mr. Sol. Gen. Do you remember when it was that you heard it?

Hobſon. It was on *Sunday* the 19th of *November* laſt.

Mr. Sol. Gen. Where do you live?

Hobſon. I live on *Bridgwater's* Eſtate at *Nevis.*

Mr. Sol. Gen. Pray inform the Court and the Jury of what you know concerning a Horſe and Boy coming to your Houſe, the Night before you heard the Deceaſed was killed.

Hobſon. On *Saturday* Night, the Night before I heard the Deceaſed was killed, Dr. *Webbe's* Boy *Pope* came to the Houſe where I live with Dr. *Webbe's* Horſe, and knocked at the Door, and called me: It was about Midnight. I got up, and opened the Door, and ſaw it was *Pope.* He was wet. I aſked him, where he had been; he told me, he had been round the Iſland looking for his Maſter.

Mr. Sol. Gen. Was the Horſe wet?—*Hobſon.* Yes, the Horſe was wet.

Mr. Sol. Gen. Did the Horſe and Boy ſtay at your Houſe all Night?

Hobſon. Yes, Sir, he put the Horſe in the Stable, and ſtaid there all Night; and about Eight o'Clock next Morning, I ſaw a little Man, *in a whitiſh Coat, and a ſilver-laced Hat*, coming up. As ſoon as he came up to the Steps, he aſked for *Pope. Pope* went to him, and he bade him *ſaddle the Horſe.*

Mr. Sol. Gen. Did not he aſk firſt, if there was a Horſe there?

Hobſon. No, the Minute he came to the Steps, he called for *Pope*, and bade him *ſaddle the Horſe.*

Mr. Sol. Gen. Did he ſeem to expect a Horſe there?

Hobſon. Yes, I believe he did, for he bade *Pope ſaddle the Horſe*, without aſking whether there was any Horſe there.

Mr. Sol. Gen. Pray, look at the Priſoner. Was the Perſon you ſaw that Morning, that bade *Pope ſaddle the Horſe*, like the Priſoner?

Hobſon. Yes, it was that very Man.

Mr. Sol. Gen. You are ſure it was the Priſoner?

Hobſon. Yes, I am ſure it was him.

Mr. Sol. Gen. After he ordered *Pope to ſaddle the Horſe*, what did he do then?——*Hobſon.* As ſoon as the Horſe was ſaddled, he aſked *Pope* which Road he ſhould take; and *Pope* ſhewed him the higheſt Way to *Pinney's*, where Dr. *Webbe* lives, and he got on Horſeback, and rode away.

Mr. Sol. Gen. Did the Priſoner come up from the Bay the Morning you ſaw him?——*Hobſon.* I believe he did; he came from that Way.

Mr. Sol. Gen. Did you take Notice whether his Cloaths were wet?

Hobſon. I obſerved his Shoes were wet. I cannot tell if the reſt of his Cloaths were wet or not.

Mr. Sol. Gen. How high up was he wet?

Hobſon. Only his Shoes, that I ſaw.

Mr. Sol. Gen. Had he any Boy with him with a Trunk?

Hobſon. No, I ſaw no Boy with him, nor no Trunk.

Mr. Sol. Gen. We have done with this Witneſs.

Mr. *Preſident.* Would you aſk this Witneſs any Queſtions, Mr. *Barbot?*

Priſ. No, Sir.

Sarah Hobſon ſworn.

Mr. Sol. Gen. Where do you live?

Hobſon. I live on *Bridgwater's* Eſtate at *Nevis.*

Mr. Sol. Gen. Do you remember hearing the Report of the Deceaſed being killed?——*Hobſon.* Yes.

Mr. Sol. Gen. And when it was?

Hobſon. Yes, it was on *Sunday* the 19th of *November* laſt.

Mr. Sol. Gen. Well, give the Court and the Jury an Account of what you know of a Horſe and Boy coming to your Houſe, the Night before you heard of the Report of the Murder.

Hobſon. The Night before I heard the Report of the Murder, I heard a knocking at the Door about Midnight, and I called to my Brother, and aſked him what it was. He told me, he believed it was the Negroes cutting Wood in the Garden; but I knew it could not be that, for the Garden was too far off to have heard, if it had been ſo. My Brother immediately got up and opened the Door, and found it was Dr. *Webbe*'s *Pope* with his Horſe. My Brother aſked him, where he had been? He ſaid, he had been round the Iſland looking for his Maſter. I did not ſee *Pope*, but I heard this as I was in the Chamber; and, about Eight o'Clock the next Morning, as I was ſtanding at the Door, I ſaw a little Gentleman coming up to the Houſe. As ſoon as I ſaw him, I went into the Chamber, and looked through the Window at him; and as ſoon as he came up to the Steps, he called for *Pope*. *Pope* went to him, and he ordered him to *ſaddle the Horſe*.

Mr. Sol. Gen. Gentlemen of the Jury, you obſerve both theſe Evidences ſay the Boy *Pope* declared, when he came to *Bridgwater*'s, that he was looking for his Maſter; and yet, as I deſired you to take Notice in the Courſe of Dr. *Webbe*'s Evidence, the Doctor himſelf declared, he neither ſent out this Boy, nor any of his Horſes, that Night. What! did he bid *Pope* ſaddle the Horſe, before he knew whether there was a Horſe there or no?

Hobſon. Yes, the Moment he came to the Steps, he called for *Pope*, and bade him *ſaddle the Horſe*.

Mr. Sol. Gen. Did he ſpeak as if he expected to find a Horſe there?

Hobſon. I believe he did, by bidding *Pope ſaddle the Horſe* the Minute he came to the Steps.

Mr. Sol. Gen. Pray, how was he dreſſed?

Hobſon. He had on *a whitiſh Coat, a ſilver-laced Hat, and a pig-tail Wig.*

Mr. Sol. Gen. Look at the Priſoner. Pray, was the Perſon, you ſaw that Morning, like him?---*Hobſon.* Yes, that is the very Man.

Mr. Sol. Gen. You are ſure it was the Priſoner?

Hobſon. Yes, I am ſure it was him.

Mr. Sol. Gen. What did he do, after he had ordered *Pope* to ſaddle the Horſe?

Hobſon. As ſoon as the Horſe was ſaddled, he aſked *Pope* which Road he ſhould take, and *Pope* ſhewed him the higheſt Way to *Pinney*'s, where Dr. *Webbe* lives, and he got on Horſeback, and rode away.

Mr. Sol. Gen. Do you know where the Priſoner came from, when he came up to your Houſe?

Hobſon. I believe he came from the Bay, for he came from that Way.

Mr. Sol. Gen. Were his Cloaths wet?---*Hobſon.* I did not take Notice that his Cloaths were wet, but his Shoes were.

Mr. Sol. Gen. How high up was he wet?

Hobſon. I only obſerved that his Shoes were wet.

Mr. Sol. Gen. Had he any Boy with him with a Trunk?

Hobſon. No, he had Nobody at all with him, that I ſaw, nor no Trunk.

Mr. Sol. Gen. We have done with this Evidence.

John M'Kenley ſworn.

Mr. Sol. Gen. Mr. *M'Kenley*, where do you live?

M'Kenley. I live upon Mr. *Spooner*'s Eſtate at *Frigate-Bay*.

Mr. Sol. Gen. Pray inform the Court and the Jury of what you know concerning the Death of the Deceaſed.

M'Kenley. On *Sunday* Morning the 19th of *November* laſt, I got up at about Four o'Clock, and went out to give ſome Orders in the Plantation, and returned in about a Quarter of an Hour. As ſoon as I came in, I lay down upon my Bed; and preſently after a Negro-Boy ruſhed into my Chamber, and threw himſelf upon the Bed where I was lying, and cried out, *O Lord, Maſter, make Haſte and come down, for my Maſter is fighting with Sword and Piſtols, with a Gentleman that is come from* Nevis. I immediately got up, and aſked him, who was his Maſter? He anſwered me, Mr. *Matthew Mills*. I then looked hard at the Boy, and knew him to be *Coomy*, that always ran with the Deceaſed. The Boy immediately got upon his Maſter's Horſe, (for he had rode up) and galloped down as faſt as he could, and I followed him on Foot, for I thought I ſhould get down to the Bay ſooner, than if I ſtayed to have my Horſe ſaddled. When I came down to the Place juſt by the Starting-Poſt, I found *Coomy* ſupporting the Deceaſed between his Legs, and the Deceaſed's Head leaning on *Coomy*'s Breaſt. I ran immediately up to him, and aſked him who had uſed him ſo, but he made me no Anſwer. I took hold of his Hand at the ſame Time, and he had no Pulſe. I found then that he was ſtone-dead, but ſtill warm, and was but juſt expired. I then aſked *Coomy*, who it was that had killed his Maſter; he told me it was Mr. *Barbot*, and that if I would go down to the Bay, I might ſee him, for that he was juſt gone off in a Canoe.

Priſ. Gentlemen of the Jury, you will pleaſe to obſerve, that what Mr. *M'Kenley* tells you of *Coomy*'s Declaration, is no Evidence at all. *Coomy* himſelf cannot be an Evidence at any Rate, much leſs can what he only told another be Evidence.

Mr. *Frye.* Gentlemen, this is but hearſay Evidence, which I appeal to the Bench is no Evidence in any Caſe, much leſs where a Man's Life is concerned.

M'Kenley. I immediately ran down to the Sea-ſide, and ſaw a Canoe with four Oars and a Paddle, making very faſt from the Shore.

Mr. Sol. Gen. At what Diſtance was the Canoe from the Shore, when you firſt ſaw it?---*M'Kenley.* It was about fifty Yards off.

Mr. Sol. Gen. Could you diſtinguiſh the Perſons in the Canoe?

M'Kenley. No, I could not diſtinguiſh who they were. I ſaw ſomebody in white ſitting in the Stern of the Canoe, but I could not tell who it was. I was in ſo much Confuſion, that I did not take as much Notice as I might have done.

Mr. Sol. Gen. What Cloaths had the Deceaſed on?

M'Kenley. He had on his great Coat and his Gloves.

Mr. Sol. Gen. What Kind of Gloves?---*M'Kenley.* I really cannot tell what Kind of Gloves; they were of a browniſh Colour.

Mr. Sol. Gen. Were they *Buff* Gloves?

M'Kenley. No, I think they were not *Buff*; but I cannot poſitively ſay what Kind of Gloves they were.

Mr. Sol. Gen. What Situation were the Deceaſed's Piſtols in?

M'Kenley. His Piſtols were in the Holſters on his Horſe.

Mr. Sol. Gen. Did you examine his Piſtols?—*M'Kenley.* No, I did not.

Mr. Sol. Gen. Was his Sword drawn?

M'Kenley. No, his Sword was lying on the Ground at ſome Diſtance from him in the Scabbard, and the Belt wrapt round the Hilt.

Mr. *J. Loſack.* What Time do you think it would take to go in a Canoe from *Frigate-Bay* to the *Salt-Ponds*?

M'Kenley. I cannot tell; but the Canoe was rowing very hard from the Shore.

Mr. Sol. Gen. How long do you think it would take? You may gueſs pretty near the Time.

M'Ken. I believe it might take about Half an Hour.

Priſ. Was the Perſon you ſaw in white, ſitting in the Stern of the Canoe, a white Man or a Negro?

M'Kenley. I cannot tell whether it was a white Man or a Negro.

Mr. Sol. Gen. Call *William Johnſon*. *(Who appeared.)*

Priſ. May it pleaſe your Honours, I humbly beg Leave to oppoſe *Johnſon*'s being ſworn.

Mr. Preſident. Let us hear your Objections to him.

Priſ. He is an infamous Perſon.

Mr. *Frye.* He is ſo, for I ſaw him publickly whipt at *Montſerrat* for Petty Larceny.

Mr. Sol. Gen. May it pleaſe your Honours, if the Priſoner would invalidate the Evidence of *Johnſon*, on the Score of what Mr. *Frye* alledges, it is neceſſary that he produce the Record of his Conviction. Let him produce the Record.

Mr. *Frye.* I knew nothing of this Man's being produced as a Witneſs till the Day before Yeſterday; otherwiſe I could have had the Record, or an atteſted Copy of it now. But I humbly apprehend I may be admitted to produce Witneſſes to prove that he was publickly whipt for Petty Larceny, for ſtealing a Pair of ſilver Shoe-buckles. He is rendered an infamous Man, and ought not to be admitted as a Witneſs.

Mr. Sol. Gen. I am ſurprized to hear a Gentleman of Mr. *Frye*'s Standing and Experience in the Law, offer a Thing of this Kind, when he muſt know, that nothing but the Record of this Man's Conviction, or an atteſted Copy of it, can diſable him to be a Witneſs. It is abſolutely illegal, Sir, to offer to prove the Fact Mr. *Frye* ſpeaks of by Witneſſes, who, he ſays, ſaw *Johnſon* puniſhed; or by any other Method, than that which I have mentioned.

Mr. *Frye.* Surely we ſhall be allowed to examine Witneſſes to the Character of this Man.

Mr. Sol. Gen. Yes, to his general Character you may be allowed to give Evidence, but not to any particular Part of it; and that only to diſcredit his Evidence, after he has given it: But no Evidence of that Sort can diſable him from being a Witneſs at all.

Mr. *Frye.* I did ſee him publickly whipt, and I know him to be an infamous Perſon, and would not regard his Oath of a Farthing.

Mr. *Horne.* May it pleaſe your Honours, I humbly beg that Mr. *Frye* be not allowed to ſpeak in this Manner of the Witneſs. If he had intended to object to this Man, he ought to have done it legally; he knew the Method the Law had preſcribed, and ought to have purſued it; and I hope your Honours will not allow him to diſcredit the Witneſs, by throwing out Things he cannot legally ſupport. It is done with a Deſign to influence the Jury. If Mr. *Frye* can produce any Evidence to his general Character, he has been told he may do ſo; but that in its proper Place, and not to prevent his giving his Evidence, or before he has given it.

Mr. *Frye.* I will produce Witneſſes to his Character; but it is ſtrange I ſha'n't be allowed to prove that Fact by *viva voce* Witneſſes!

Mr. *Horne.* You are not to be allowed that, Mr. *Frye*; you know it is illegal; and I am ſurprized a Gentleman of your Knowledge in the Law, ſhould inſiſt on a Thing of this Kind.

Mr. *Frye.* Go on then, Sir, I will by and bye produce Witneſſes to this Man's Character.

Mr. Preſident. Swear *Johnſon*. *(Which was done.)*

Mr. Sol. Gen. Did you come to this Iſland at any Time in or about the Month of *November* laſt?

Johnſon. Yes, on *Sunday* the 19th of *November*.

Mr. Sol. Gen. Pray inform the Court and the Jury, whether you ſaw the Priſoner at the Bar on *Sunday* the 19th of *November* laſt, and where it was you ſaw him?

Johnſon. I left *Montſerrat* on *Saturday* the 18th of *November* laſt, and came to an Anchor at the *Salt-Ponds* at about Two o'Clock the next Morning, and at about Four I put out of the *Salt-Ponds*; and in about two Hours after, a Canoe with four Oars and a Sail paſſed by me. The Priſoner was in the Canoe, he had on a white Coat and a laced Hat, and a dark-coloured Waiſtcoat.

Mr. Sol. Gen. Do you know the Priſoner?---*Johnſon.* Yes, I have ſeen him ſeveral Times at *Nevis*, and once at *Montſerrat*.

Mr. Sol. Gen. Could you ſee, from the Place where you were when you met the Canoe, all the Way between *Frigate-Bay* and *Nevis*?

Johnſon. Yes.

Mr. Sol. Gen. And was there any other Canoe in the Channel?

Johnſon. No, there was none but that which the Priſoner was in.

Mr. Sol. Gen. At what Diſtance was the Canoe from you, when it paſſed by?---*Johnſon.* It was about forty or fifty Yards off.

Mr. Sol. Gen. Where did you think it came from?---*Johnſon.* It ſeemed coming from *Frigate-Bay*, and was ſtanding for *Nevis*.

Mr. Sol. Gen. Are you ſure the Priſoner at the Bar was the Perſon you ſaw in the Canoe?—*Johnſon.* Yes, I am ſure he was the Perſon.

Mr. *Frye.* It is very odd you ſhould now be ſo poſitive it was the Priſoner, when you could not poſitively ſwear to him the very Day of the Murder, when you were examined before the Coroner's Inqueſt. We ſhall produce a Witneſs by and bye to prove that you were not then ſo poſitive.

Mr. Sol. Gen. Since this has been thrown out, I beg Leave to aſk the Witneſs another Queſtion. Pray, did you ſee the Priſoner at any Time between your Examination before the Coroner, and this Day?

Johnſon. Yes, I ſaw him in Gaol; and when I ſaw him there, I was ſatisfied he was the Man that I had ſeen in the Canoe the Morning I was coming from the *Salt-Ponds*.

Mr. Sol. Gen. However, to make this Matter ſtill plainer, we ſhall call a Gentleman of Character, who will inform the Court and Jury, that this

this Witness declared his seeing the Prisoner at the Time and Place he has now sworn he did, before he had received any Intimation, or had it at all suggested to him, that the Prisoner was then there. Call *Thomas Wilson*, Esq.

Thomas Wilson, Esq. sworn.

Mr. Sol. Gen. Mr. *Wilson*, will you please to give the Court and the Jury an Account of your seeing *Johnson* on the 19th of *November* last, and what passed between you?

Wilson. On *Sunday* the 19th of *November* last, in the Morning, on hearing that the Deceased was killed, I went down to Mr. *Colhoun*'s, to inquire further of the Matter. I staid there about half an Hour, and at my Return Home I found this Witness, *Johnson*, waiting for me with a Letter, which he had just brought from Mr. *Misset* of *Montserrat*. He told me, that Mr. *Misset* had hired him on Purpose to bring me that Letter, and that if I did not dispatch him by Twelve o'Clock, Mr. *Misset* was to pay him so much an Hour after that Time. I then said to him, *There has been Murder committed here.* He asked me, *What Murder?* I told him, that a Gentleman of this Island, one Mr. *Mills*, was killed, and it was supposed by Mr. *Barbot*. *Barbot!* said he, *why I met him going in a Canoe to* Nevis *this Morning. Do you know him then?* said I. *Yes*, said he, *I have known him above eighteen Months.* I thought this so material a Circumstance, that I immediately acquainted Mr. *Colhoun* of it.

Mr. Sol. Gen. The Court and Jury will take especial Notice of Mr. *Wilson*'s Evidence, because it will stand for an Answer to the Objection that will be made to *Johnson*'s Evidence, from what they insinuate of the Badness of his Character; which in this Case must be wholly out of the Question, seeing the first Information he gave was before there is the least Probability he could have had it suggested to him.

Jasper Thomas sworn.

Mr. Sol. Gen. Pray inform the Court and the Jury, whether you saw the Prisoner on the 19th of *November* last, and where you saw him.

Thomas. On *Sunday* Morning, the 19th of *November* last, I saw a Canoe land under the Manchioneal Trees, just under *Lowland-Church:* it was Mr. *Cribbe*'s Canoe: Mr. *Hulburd*'s *Peter* and Mr. *Deverade*'s *Joe* were in it, and the Prisoner jumped out of the Canoe the Instant it struck the Shore. He had on a silver-laced Hat, and a whitish Coat.

Mr. Sol. Gen. What Time in the Morning was it that he landed?

Thomas. It was between Six and Seven in the Morning.

Mr. Sol. Gen. Did any body come out of the Canoe with the Prisoner?

Thomas. There was a little yellow Negro Boy, with a little red Trunk on his Head, that jumped out of the Canoe at the same Time that the Prisoner did, and went towards the Town.

Mr. Sol. Gen. Did you see the Canoe at any Distance before it landed?

Thomas. I saw it above fifteen hundred Yards off before it landed. It was under Sail, and they did not strike Sail 'till the Canoe struck the Ground.

Mr. Sol. Gen. Where did you think the Canoe came from?

Thomas. It seemed to me to be coming from the *Salt-Ponds.*

Mr. Sol. Gen. Are you sure it was the Prisoner at the Bar you saw land out of the Canoe?

Thomas Yes, I am sure it was him, for I know him very well.

Mr. Sol. Gen. Do you know where he went to when he landed?

Thomas. No, I cannot tell where he went to.

John Thomas sworn.

Mr. Sol. Gen. Do you remember when it was you heard the Deceased was killed?

Thomas. Yes, it was on *Sunday* the 19th of *November* last that I heard it.

Mr. Sol. Gen. Did you see the Prisoner at the Bar that Day?

Thomas. Yes.

Mr. Sol. Gen. Then give the Court and the Jury an Account where, and at what Time, you saw him.

Thomas. It was on *Sunday* Morning, the 19th of *November* last, the Day that I heard the Deceased was killed. I was with my Father *Jasper Thomas*, and I saw a Canoe at a Distance under Sail, that seemed to be coming from *St. Kitt*'s; and I said to my Father, I believed there were some *St. Kitt*'s People coming up; and soon after the Canoe came ashore, and Mr. *Hulburd*'s *Peter* and Mr. *Deverade*'s *Joe* were in it; and I saw a little Man, very like the Prisoner, jump out of the Canoe, and run up the Bank. He had on a silver-laced Hat and a long-tail Wig, a whitish Coat, and a brownish Waistcoat.

Mr. Sol. Gen. Was it the Prisoner at the Bar that you saw?

Thomas. I do believe it was him, for the Person I saw was very like him.

Mr. Sol. Gen. Did any body land out of the Canoe besides the Prisoner?

Thomas. There was a little yellowish Negro Boy, with a small red Trunk on his Head, that jumped out of the Canoe at the same Time the Prisoner did, and went towards Town.

Mr. Sol. Gen. What Time in the Morning was it that the Prisoner landed out of the Canoe?

Thomas. It was between Six and Seven in the Morning.

Mr. Sol. Gen. Did you observe which Way he went after he landed?

Thomas. No, I did not take Notice which Way he went.

William White sworn.

Mr. Sol. Gen. Do you know the Prisoner at the Bar?

White. Yes, I know him very well.

Mr. Sol. Gen. Do you live at *Nevis?*

White. No, but I have been working there for above a Twelvemonth.

Mr. Sol. Gen. When was it you first heard the Report of the Deceased being killed?

White. I heard it on *Sunday* the 19th of *November* last.

Mr. Sol. Gen. Did you see the Prisoner that Day?

White. Yes, I was at work at Mr. *Woodley*'s Estate at *Nevis* that very Morning, and I looked towards the common Road, and saw a little Man that I took for the Prisoner. He was walking up the Road that leads to *Bridgwater*'s Estate.

Mr. Sol. Gen. Pray, does that Road lead to any other Estate or House besides *Bridgwater*'s?

White. Yes, it leads to Mr. *Huggins*'s.

Mr. Sol. Gen. Did you see where the Prisoner came from?

White. No, but I believe he came from the Bay.

Mr. Sol Gen. How was he dressed?

White. He had on a laced Hat, and a brown Coat.

Mr. Sol. Gen. A brown Coat? You must be mistaken surely?

White. No, I am not; it was a brown Coat.

Mr. Sol. Gen. Do you see any Coat here in Court that is like it? Look about, and see if you can't find some Coat that resembles it in Colour?

White. It was like this Coat, I think *(shewing a brown Coat).*

Mr. Sol. Gen. He may be mistaken in the Colour of the Coat. If he swears to the Identity of the Person, it is sufficient. Once more let me ask you on your Oath, Are you sure it was the Prisoner at the Bar that you saw?---*White.* Yes, I am sure it was him.

Mr. *Edward Bridgwater* sworn.

Mr. Sol. Gen. Mr. *Bridgwater*, pray inform the Court and the Jury, whether you saw the Prisoner on the 19th of *November* last, and where you saw him.

Bridgwater. On the 19th of *November* last, between Nine and Ten in the Morning, I saw the Prisoner riding over *Gruff*'s *Gutt*, the nearest Way to Dr. *Webbe*'s. He met *Jacob Saunders*, and they stopt and spoke together, and that gave me an Opportunity of coming pretty near him, and I took Notice that the Prisoner was on a Horse of Dr. *Webbe*'s; it was a sorrel Horse, with a white Face. In the Afternoon of the same Day I went to Mr. *John Symmonds*'s; while I was there, Dr. *Webbe* came in, and presently after Mr. *Symmonds* received a Letter, that gave an Account of the Prisoner's having killed the Deceased. As soon as Mr. *Symmonds* mentioned it, Dr. *Webbe* said, that the Prisoner had lain at his House the Night before.

Mr. Sol. Gen. Did you perceive any Alteration in Dr. *Webbe*, on Mr. *Symmonds*'s mentioning what had happened?

Bridgwater. Yes, he changed Countenance, and seemed, I thought, a good deal confused; and Mr. *Symmonds* asked him, if he had seen the Prisoner that Morning? Dr. *Webbe* answered, That he had not seen the Prisoner since he went to Bed the Night before at his House; at which I expressed a good deal of Surprize, and said, that I had seen him that Morning riding towards Dr. *Webbe*'s House on a Horse which I was sure belonged to Dr. *Webbe.*

Mr. Sol. Gen. Did Dr. *Webbe* make you any Answer to this?

Bridgwater. I do not remember that he did; but in about five or six Minutes after he went away, and said he was going up towards the Mountain.

John Cribbe sworn.

Mr. Sol. Gen. Pray inform the Court and the Jury, whether the Prisoner hired a Canoe of you, and when it was.

Cribbe. It was the *Friday* before I heard the Deceased was killed. The Prisoner hired my Canoe to carry some Letters to *St. Kitt*'s, and the Canoe returned the next Day in the Afternoon.

Mr. Sol. Gen. Did the Prisoner hire the Canoe again of you the Day she returned?

Cribbe. No, the Day she returned, the Negroes that belong to her took her to go a-fishing, as I understood; and I did not see them again 'till about Eight o'Clock on *Sunday* Morning, which was the Day I heard the Deceased was killed. I went to *Peter*, and asked him, *What Luck?* for I imagined they had been fishing: He answered me, *Poor Luck!* and looked very thoughtful and melancholy, and said, he was troubled. I asked him, what was the Matter? He told me, he had been at *St. Kitt*'s with Mr. *Barbot*, who, he was afraid, had done a great deal of Mischief, for he believed he had killed Mr. *Mills*.

Pris. Gentlemen of the Jury, pray don't be influenc'd by this Part of the Evidence. This is the same with what *M'Kenley* swore of *Coony*'s Declaration; but neither one or other of them, as being only hearsay Evidence, and that of Slaves too, ought to affect me.

Mr. *Frye.* Nay, indeed, the Evidence ought not to have been given: Surely, no Hearsay can be Evidence. Nothing is more indisputable than that.

Mr. Sol. Gen. In this Case it is very material Evidence; but of that by and bye: We won't interrupt the Course of Evidence; but observe upon it in a more proper Place. At what o'Clock in the Morning was it that you had this Discourse with *Peter?*

Cribbe. It was about Ten o'Clock.

Mr. Sol. Gen. Had you then heard it reported that the Deceased was killed?

Cribbe. No, I had not heard it, 'till *Peter* told me of it.

Mr. Sol. Gen. He was the first Person you heard it from?

Cribbe. Yes, he was the first that told me of it.

Mr. Sol. Gen. We will bring a Witness to prove that *Peter* could not have heard the *Report* of the Murder at the Time this Witness says he told him of it; for we shall shew that the Person who carried the first News of the Murder to *Nevis* did not arrive there, 'till at least an Hour after *Cribbe* had the Conversation he has related with *Peter.*

Call *Thomas Quin* (Who was sworn).

Mr. Sol. Gen. Mr. *Quin*, at what o'Clock did you arrive at *Nevis*, the Day you were sent up in pursuit of the Prisoner at the Bar?

Quin. It was about Eleven o'Clock, Sir.

Mr. Sol. Gen. When you arrived at *Nevis*, did you report publickly that the Deceased was killed?

Quin. No, I did not say a Word of it to any body but the Gentleman I carried the Letters to from Mr. *Colhoun.*

Mr. Sol. Gen. Was it known at *Nevis*, before you arrived there, that the Deceased was killed?

Quin. No, I am sure it was not, or I should have heard of it. I am sure I was the first that carried the News of it, for I did not stop or stay any where, but went off the Minute Mr. *Colhoun* gave me the Letters, and made the best of my Way up.

Mrs. *Frances Dasent* sworn.

Mr. Sol. Gen. Madam, will you please to give the Court and the Jury an Account of what you know concerning the Prisoner's taking away a Case of Pistols from your House?

Dasent. Upon hearing that the *Magazine* was broke open on *Sunday* Night, the 19th of *November* last, I ordered all the Arms in the House to be

be ſearched for, to ſee that there were none miſſing; and upon miſſing a Pair of Piſtols, I ordered the Boy to look on the Beam for them, where I had directed him to put them. He looked, and could find but one Pair: I then grew very uneaſy, and ſent to deſire Dr. *Webbe* to come over to me. He did ſo the next Morning, and I told him I was very uneaſy; that I miſſed a Pair of Piſtols, and aſked him, if he knew where they were? He told me, that he knew nothing of them. I begged of him then to help me to ſearch for them. Accordingly he went into the Shop with me, and ſearched there, but could not find them. From thence we went into the Chamber, and the *Doctor* looked under the Bed and found the Piſtols.

Mr. *Horne.* What was it that induced you to look for the Piſtols?

Daſent. Hearing the Magazine was broke open, and the Accident that had happened to Mr. *Mills* together, made me think of looking for them. I was very uneaſy about it, for I had heard that the Priſoner and Dr. *Webbe* took down the Piſtols in my Abſence, while I was at my Mother's, to fire out of.

Mr. *Horne.* Did you ſee a red Trunk belonging to the Priſoner, in the Room where the Piſtols were found?

Daſent. Yes, there was a ſmall red Trunk that belonged to the Priſoner.

Mr. *Horne.* Did you ever deſire the Priſoner to leave your Houſe?

Daſent. Yes; the *Thurſday* before this Accident happened, I deſired him to come to my Houſe no more, for ſome prudential Reaſons I had.

Mr. *Horne.* Did this put an End to his Viſits?

Daſent. Yes, he came to my Houſe no more; but he ſent to borrow a Horſe of me the Day before the Murder, which I refuſed to lend him; nor I knew nothing of his Trunk being at my Houſe 'till the *Monday* after the Accident, that Judge *Herbert* came to my Houſe, and demanded the Trunk, and it was opened before him.

Mr. *Horne.* Were you preſent when the Trunk was opened?

Daſent. Yes, Sir.

Mr. *Horne.* What was in it, pray?

Daſent. I ſaw nothing in it but a brown Waiſtcoat, and a Pair of black Breeches.

Mr. *Horne.* Did they belong to the Priſoner?

Daſent. Yes, I believe they did.

Mr. *Horne.* Is this the Priſoner's Trunk, and are theſe the Cloaths *(the Priſoner's Trunk and Cloaths ſhewn her)* you ſaw taken out of that Trunk?

Daſent. Yes, I believe they are.

Joſeph Herbert, Eſq. ſworn.

On hearing the Deceaſed was killed by the Priſoner with a Pair of *James Daſent*'s Piſtols, I went, the Day after the Murder, to Mrs. *Daſent*'s, to inquire for them. When I came there, I ſaw a ſmall red Trunk, which being opened, I found a Pair of black Breeches and a brown Waiſtcoat in it, which were wet. I touched the Waiſtcoat with my Tongue, and found it ſalt, from which I concluded it muſt have been wet with Salt-Water. Theſe Piſtols *(Piſtols ſhewn him)*, which Mrs. *Daſent* had miſſed, were ſhewn to me at the ſame Time; and I was informed by ſome of the Negroes, that they believed the Priſoner's Boy had brought the Piſtols to Mrs. *Daſent*'s privately in his Cloaths.

Mr. Sol. Gen. Is this the Trunk, and are theſe the Cloaths, you ſaw at Mrs. *Daſent*'s *(the Trunk and Cloaths ſhewn him)* the Day after the Murder?---Mr. *Herbert.* Yes, they are.

Dr. *Hamilton* and Mr. *Edwards* ſworn.

Mr. *Horne.* Dr. *Hamilton*, you were ſent for, I think, to inſpect the Body of the Deceaſed?

Dr. *Ham.* Yes, Sir, I was ſent for on *Sunday* the 19th of laſt *November* by the Coroner, to view the Body of the Deceaſed. When I came to Mr. *Colhoun*'s, where the Body lay, I found that the Deceaſed had received a Wound on the right Side, which muſt have been given him by a Ball out of ſome Fire-arm.

Mr. *Horne.* Whereabout on the right Side?

Dr. *Ham.* I cannot deſcribe it better than thus; by drawing a ſtraight Line directly from the Pap four Inches downwards, and then carrying it four Inches towards the Back. In that Place was the Wound.

Mr. *Horne.* Sir, will you pleaſe to put your Finger on the Place, as near as you can gueſs, where the Wound was received?

Dr. *Ham.* It was juſt here *(placing his Finger on his own Side)*.

Mr. *Horne.* Now, go on, Sir, if you pleaſe.

Dr. *Ham.* I then, with the Aſſiſtance of my Son, Mr. *Edwards*, opened the Body, and found that the Ball had entered between the two laſt falſe Ribs, and ſplintered one of them, and had penetrated the Body obliquely from the right to the left Side, and had wounded the fore Part of the Liver on the left Side. I found too, that in paſſing it had wounded a large Blood-veſſel.

Mr. *Horne.* Do you think the Deceaſed could have received that Wound, if he had been ſtanding in a Poſture of Defence?

Dr. *Ham.* No, I think he could not; for the Situation of the Wound was ſuch, that had he been in a Poſture of Defence, he could not have received it in that Place: And from the Courſe the Ball took (which was towards the fore Part of the left Side of the Body) it is evident, I think, that the Deceaſed could not have been in a Poſture of Defence.

Mr. *Horne.* Do you think that that Wound was the Cauſe of his Death?

Dr. *Ham.* Yes, I am certain it was.

Mr. *Horne.* Did you find the Ball?

Dr. *Ham.* No, I ſearched for it, but could not find it. I believe it had fallen into the *Abdomen*, which was ſo full of Blood, that there was no Poſſibility of finding the Ball, unleſs we had taken out all the Bowels; and it was ſo late, that the Jury, ſatisfied on my Report that the Wound muſt have been given by a Ball diſcharged from ſome Fire-arm, and that it was the Cauſe of the Deceaſed's Death, did not think it neceſſary to look any farther for the Ball.

Mr. *Horne.* Mr. *Edwards*, you aſſiſted Dr. *Hamilton* in opening the Body of the Deceaſed; can you give the Court any farther Information of the Nature of the Wound than what the *Doctor* has already related?

Edwards. No, Sir, I can ſay no more than what Dr. *Hamilton* has already related.

Mr. *Walter Pringle* and Mr. *Samuel Baker* ſworn.

Mr. Sol. Gen. Mr. *Pringle*, Pray give the Court and the Jury an Account of the Situation you found the Deceaſed's Piſtols in the Morning he was killed.

Pringle. On *Sunday* Morning, the 19th of *November* laſt, I heard the Deceaſed was killed at *Frigate-Bay*, and that his Body was brought to Mr. *Colhoun*'s, where I went to ſee it. As ſoon as I came into the Room, I aſked for the Deceaſed's Piſtols, and ſomebody (I really do not recollect who it was) brought them to me. They were a ſmall Pair of ſcrew-barrel Piſtols, with a brown wooden flat Handle *(the Piſtols ſhewn him)*. Theſe are the Piſtols. I unſcrewed one of them, and found a Ball ſticking in the Barrel. I looked into the Chamber, and could find no Powder in it. I ſmelt it, and it did not appear to me by the Smell that it had been lately fired out of. Then I examined the Screws and the Cock very carefully, and could not perceive that any Part of them were the leaſt tinged with Powder. I then unſcrewed the other Piſtol, and examined it in the ſame Manner I had done the firſt; but I found no Ball in it, nor any the leaſt Sign of Powder either in it or about it, except about two Grains, which I imagine had been bruiſed by the Hammer; but I think, if the Piſtols had been fired out of lately, there would have been a Stain of burnt Powder left about the Cock, which always remains after any Fire-arm is diſcharged; and there was no ſuch Stain on either of theſe Piſtols.

After I had done with the Piſtols, I examined the Deceaſed's Cloaths, and found upon the right Flap of his Coat a Stain of dry Powder, and the ſame upon the Inſide of his great Coat, on the right Side.

Baker. I was at Mr. *Colhoun*'s on *Sunday* the 19th of *November* laſt, the Morning that the Deceaſed was killed, and upon inquiring for the Deceaſed's Piſtols, they were brought to me. Theſe are the Piſtols: They were half-cocked. I unſcrewed one of them, and examined it very carefully, and there was neither Powder nor Ball in it, nor any where about it, except about two Grains of Powder, which ſeemed to have been bruiſed by the Hammer. I unſcrewed the other, and examined it in the ſame Manner, and found a Ball ſticking in the Barrel, but no Powder at all either in the Chamber, or any where elſe about it, nor there was not the leaſt Stain of burnt Powder either about the Cock, or any where elſe; for I put my little Finger into the Barrel, and there came off upon my Finger a yellowiſh ruſty Dirt; whereas if the Piſtols had been fired out of, there would have remained in the Barrel a black Moiſture, which would have come off on my Finger: From all which Circumſtances I am convinced the Piſtols had not been fired out of. After I had done with the Piſtols, I examined the Deceaſed's Cloaths; and the right Flap of his Coat, and the Inſide of his great Coat, were ſtained with dry Powder, as Mr. *Pringle* has related.

Mr. *Horne.* I deſire Judge *Herbert* may be called again.

Judge *Herbert* was called, and appeared.

Mr. *Horne.* Will you pleaſe, Sir, to give the Court and the Jury an Account of what you found in the Pockets of the Deceaſed?

Mr. *Herbert.* The Morning that the Body of the Deceaſed was brought to Mr. *Colhoun*'s, I was there; and a little while after the Body was laid down, I ſearched the Deceaſed's Pockets, and found in his Breeches Pockets three Bullets.

Mr. Sol. Gen. May it pleaſe your Honours, we ſhall call no more Witneſſes, unleſs the Priſoner makes it neceſſary by his Defence; but ſhall reſt the Charge here.

Mr. Preſident. Mr. *Barbot*, now is the Time to make your Defence. The King's Counſel will call no more Witneſſes 'till they hear what you have to ſay.

Priſoner. May it pleaſe your Honours, and you Gentlemen of the Jury,

Now that the Counſel for the Crown have gone through their Evidence, ſuch as it is, and finiſhed their Charge, I am to beg your ſerious Attention, while I ſpeak to you in my Defence.

To you Gentlemen of the Jury, I ſhall chiefly addreſs myſelf. You, Gentlemen, are my principal Judges on this unhappy Occaſion; Judges, which the Wiſdom of our Anceſtors has provided for every *Britiſh* Subject, who is, or ſhall be, accuſed; leſt the Torrent of Power ſhould at any Time prevail over Juſtice, and Malice and Ill-will ſhould injure and oppreſs the Innocent. It is now, Gentlemen, I have Reaſon to think myſelf fortunate. I am by Birth an *Engliſhman*, and thereby, notwithſtanding the implacable Reſentment of my powerful Proſecutors, I cannot be denied the Privilege of having twelve honeſt Men to acquit me of the Crime laid to my Charge: For acquit me you muſt, if you, as I am ſure you will, govern yourſelves according to the Evidence; ſince, notwithſtanding the Colourings which the Gentlemen for the Crown have given to what they have produced as ſuch, there cannot, even upon the Footing on which it now ſtands, be more Reaſon to adjudge me guilty, than any of you, Gentlemen, who are now to paſs upon me on my Life or Death.

Gentlemen, could I lay open my Heart to you, and make the Sentiments of my Soul viſible to your Eyes, you would there ſee the moſt lively Sorrow for the Deceaſe of the worthy Gentleman, for whoſe Death I ſtand here accuſed. I truly revere his Memory. He was, I doubt not, all that the Gentlemen concerned againſt me have ſaid of him. But while I lament his untimely End, I cannot accuſe myſelf for his Death. Would the depriving me of Life, on Rumour and Surmiſe, make Atonement for the Loſs the World has ſuſtained in him? Surely no! And therefore, as this Proſecution has been begun and carried on againſt me, not only with all imaginable Heat, but every Art has been uſed to deprive me of Exiſtence, I muſt, I will ſtand up in Support of it, and, by preſerving my Life, thereby pave the Way for vindicating my injured Character, and deprive my Proſecutors of the Satisfaction of triumphing over my Misfortunes.

Gentlemen, was I not afraid I ſhould take up too much of your Time, I could give you a Detail of Impoſitions and Hardſhips that would ſhock you; the chief End of which was to deprive me of the Opportunities and Means of making a fair and juſt Defence. My Friends, Gentlemen, have been ſpirited from me; they have been threatened, if they ſhould dare to come near me; Spies have been placed round the Gaol, to ſee if I was continually in Irons or no; and if at any Time I was taken out to dreſs, Mr. *Thompſon* the Marſhal has been harraſſed and reprimanded for giving me too much Indulgence. I have been kept in total Ignorance of all which I ought to have known; and 'till this Day, I was not made acquainted with the Perſons who were to be produced as Evidence againſt me, much leſs with the Purport of what they were to ſwear, leſt I might have provided the Means of invalidating any of their Teſtimony. I have been deprived of the Privilege of writing privately to ſuch Perſons as I had Buſineſs with;

with; even Mr. *Cooke* my Sollicitor never approached me without a Witneſs (intended at leaſt) to our Converſations; and the whole Iſland has been made acquainted with the Contents of a private Letter I received from my Father, on which ſome very ingenious Comments have been made, with an Intent, I ſuppoſe, to raiſe a popular Odium againſt me, and to make you think, Gentlemen, the Life of a Villain, ſuch as I have been repreſented to be, was not worth your Care, and that you might, upon the ſlighteſt Surmiſe, condemn me to Death, if not for the Crime wherewith I am accuſed, yet for the general Diſrepute I might acquire by the Succeſs of theſe artful Endeavours to viliſy my Reputation.

No Wonder then, Gentlemen, if that appears thus clouded. But I have ſuch Confidence, Gentlemen of the Jury, in your Honour and Integrity, that I am aſſured you will not be influenced by any of theſe Artifices. Your Breaſts, I doubt not, are diveſted of all Prejudice. I therefore promiſe myſelf you will attend calmly and deliberately to me, while I make ſome Obſervations on the Evidence you have heard delivered to you, and anſwer the Arguments which have been advanced againſt me.

One of theſe Witneſſes, *Johnſon*, Gentlemen, has taken upon himſelf, you have heard, to ſwear moſt poſitively he ſaw me on *Sunday* the 19th of *November* laſt in a Canoe, rowing towards *Nevis*, with ſome other Particulars. Yet is it not ſtrange that this Man, on the very Day on which he thus pretends to have ſeen me, when the Fact muſt have been ſuppoſed to be moſt recent in his Memory, before the Coroner's Inqueſt, on being to this Purpoſe particularly interrogated by Mr. *Julius*, declared he could not poſitively ſwear it was me he ſaw, but only believed ſo? His Reaſon he gave for knowing me, at the ſame Time ſhewing his Malice againſt me, on Account of my being the Inſtrument of putting him twice in Gaol, which, however, I have no Recollection of. It is moſt plain, if he ſaw any Canoe at all, he judged me to be in ſuch Canoe, from the Reports he had heard on Shore; and mad with the Deſire of Revenge, he haſted to the Coroner's Inqueſt, with Intent to do me all the Prejudice in his Power. Yet there his Conſcience pricked him, and, when made to recollect himſelf, could ſay no more than that he believed he ſaw me. After this, and from the Character you have heard of him, can any Credit be given to what he has ſworn? I am well aſſured, Gentlemen, you will give it none.

As to the Evidence of *Patience Dorſet*, ſhe ſwears, Gentlemen, poſitively, that the Words which ſhe is pleaſed to have heard me ſay, were ſpoken by me on the 10th of *November* in the Morning, being the King's Birth-day, at Mr. *M'Cabée*'s Tavern. Now, Gentlemen, I ſhall prove to you beyond Contradiction, I was all that Day, and for four preceding Days, and for ten Days after, at *Nevis*. And particularly on the 10th of *November*, I was for the whole Day in a Part of *Nevis* the fartheſt removed from this Iſland, at leaſt ſeven Miles from the Town, and did not in the leaſt dream of coming down here, having Buſineſs of Importance to tranſact there, which required my Preſence. And when I have done this, I hope I ſhall have effectually deſtroyed this mighty Fabrick, which the Counſel for the Crown have taken ſuch infinite Pains to raiſe up. All the reſt of the Evidence have not the leaſt, the moſt diſtant Relation to the Crime wherewith I am charged, conſiſting only of my Motions from Place to Place, and of ſome trifling Tranſactions, none of which ſhew any Thing like my harbouring Deſigns to the Prejudice of any one, much leſs of Mr. *Mills*; againſt whom there is not the leaſt Appearance I could entertain any Anger. I deſire Mrs. *Lowman* may be called.

Mrs. *Frances Lowman* ſworn.

Priſ. Pleaſe to inform the Court, Madam, whether I was, or was not at *Nevis* on the 10th of *November* laſt.

Lowman. Mr. *Barbot* came to my Father's, Mr. *George Webbe*'s ſenior, on the 8th of *November* laſt; he dined and lodged there; and lodged there the next Night alſo. On the 10th he breakfaſted there; and after Breakfaſt, he and Mr. *William Daniel* walked out together, and returned in about two Hours; and I left him at my Father's, at about One o'Clock, juſt going to ſit down to Dinner. Dinner was upon Table, and I went away to my Brother *George Webbe*'s, where I dined in Company with Mr. *William Herbert*.

Mr. Sol. Gen. You ſay the Priſoner and Mr. *Daniel* took a Walk after Breakfaſt on the 10th of *November*; pray, where did they go to?

Lowman. I believe they went to Mr. *Ottley*'s.

Mr. Sol. Gen. They were abſent for two Hours, you ſay; at what Time in the Morning did they go out?

Lowman. They went out at about Nine o'Clock, and returned in about two Hours.

Mr. Sol. Gen. Pray, Madam, when were you firſt applied to, to endeavour to recollect where the Priſoner was on the 10th of *November?*

Lowman. I was firſt applied to the Day before Yeſterday, and I am poſitive he was at my Father's on the 10th of *November*.

Priſ. I pray Mrs. *Ottley* may be ſworn.

Mrs. *Lucretia Ottley* ſworn.

Priſ. Do not you recollect, Madam, that I came to your Houſe with Mr. *William Daniel*, on the King's Birth-day in the Morning?

Ottley. I do remember that Mr. *Daniel* and you came to my Houſe one Morning after the Sale of *Bridgwater*'s Eſtate, but I cannot poſitively ſay what Day it was, though I remember it was in the ſame Week that *Bridgwater*'s Eſtate was ſold.

Mr. Sol. Gen. Was the Priſoner at your Houſe any more than one Morning?

Ottley. No, he never was there more than once, to my Knowledge.

Priſ. I pray Mr. *Ottley* may be alſo ſworn.

Mr. *Thomas Ottley* ſworn.

Priſ. Will you pleaſe, Sir, to inform the Court on what Day it was I came to your Houſe with Mr. *William Daniel?*

Ottley. I remember that the Priſoner did come to my Houſe one Morning with Mr. *Daniel*, but I neither remember on what Day of the Week or Month it was.

Priſ. I deſire that Mr. *Joſiah Webbe*, the Son of Mr. *George Webbe*, ſenior, may be ſworn.

Mr. *Joſiah Webbe* ſworn.

Priſ. Pray, Sir, be kind enough to inform the Court, whether I was not at your Father's on the 10th of *November* laſt.

Webbe. I am not certain, but I think Mr. *Barbot* dined at my Father's on the 10th of laſt *November*. I remember that he and Mr. *Daniel* dined at my Father's on *Wedneſday* the 8th of *November*, and lay there at Night, and they ſtayed all next Day, and ſpent moſt Part of the Day in playing at Backgammon, and lay there again that Night; and I cannot be poſitive, but, to the beſt of my Remembrance, Mr. *Barbot* dined at my Father's on the 10th. I ſtayed at Home that Day to keep Mr. *Barbot* Company, and I am almoſt ſure it was the 10th.

Mr. Sol. Gen. When were you firſt deſired to recollect this?

Webbe. The Day before Yeſterday.

Priſ. I deſire Mrs. *Lowman* may be called again.

Mrs. *Lowman* called up again.

Priſ. Pray, Madam, are you not very poſitive I was at your Father's on the 10th of *November?*

Lowman. Yes, Sir, I am poſitive that I left you at my Father's on the 10th of *November*, and I dined that Day at my Brother *George Webbe*'s, in Company with Mr. *William Herbert*.

Mrs. *Ottley.* I now recollect very well that it was on *Thurſday* the 9th of *November*, that Mr. *Barbot* came to my Houſe with Mr. *Daniel*. Miſs *Nanny Herbert* was at my Houſe at the ſame time. She is now here, and has mentioned ſome particular Circumſtances, that make me recollect the Thing perfectly well.

Mr. Sol. Gen. I deſire Miſs *Herbert* may be ſworn.

Miſs *Ann Herbert*, the elder, ſworn.

Mr. Sol. Gen. Pleaſe to declare to the Court, on what Day it was the Priſoner went with Mr. *Daniel* to Mr. *Ottley*'s.

Herbert. The Day after the Sale of *Bridgwater*'s Eſtate, I dined in Town at my Brother's with Mrs. *Ottley*, and we ſaw Mr. *Daniel* there, and Mrs. *Ottley* invited him to her Houſe in the Country: Accordingly he came the next Morning after Breakfaſt with Mr. *Barbot:* They ſtayed about an Hour and an half, and went away again.

Mr. Sol. Gen. Are you ſure it was on the 9th of *November* that the Priſoner and Mr. *Daniel* went to Mr. *Ottley*'s?

Herbert. Yes, I am ſure it was on the 9th; for it was on the ſecond Day after the Sale of *Bridgwater*'s Eſtate.

Priſ. I deſire Mr. *William Herbert* may be ſworn.

Mr. *William Herbert* ſworn.

Priſ. Pleaſe to declare to the Court, Sir, whether you did not dine, in Company with Mrs. *Lowman*, at Mr. *George Webbe*'s junior, on the 10th of *November* laſt.

Herbert. I remember dining at young Mr. *George Webbe*'s, the *Thurſday* after the Sale of *Bridgwater*'s Eſtate, in Company with Mrs. *Lowman*; and the next Day I dined at Mr. *Cole*'s. As I was riding to Mr. *Cole*'s, I heard the Guns fire, and on aſking the Reaſon of their Firing, I was told it was the King's Birth-day: I remember particularly it was the King's Birth-day; for after Dinner, I ſaid to Mr. *Pemberton*, who was one of the Company, As you are the oldeſt Man in Company, begin with a Bumper to his Majeſty's Health.

Mr. Sol. Gen. Are you ſure it was on the King's Birth-day you dined at Mr. *Cole*'s?

Herbert. Yes, I am ſure it was. Mr. *James Brodbelt* is now in Court; he was one of the Company.

Mr. Sol. Gen. Can you tell how many Guns you heard fired on the King's Birth-day?

Herbert. I think I heard fifteen; but Mr. *Weekes* the Gunner is in Court, he can tell poſitively how many he fired.

Mr. *William Weekes* ſworn.

Mr. Sol. Gen. Do you remember firing any Guns on the King's Birth-Day?——*Weekes.* Yes, I remember to have fired fifteen.

Mr. Sol. Gen. Did you fire any more or leſs than that Number?

Weekes. No, I fired exactly fifteen.

Priſ. I pray *John Cornelius* may be ſworn.

John Cornelius (a free Negro) ſworn.

Priſ. Do you remember on what Day it was *Bridgwater*'s Eſtate was ſold?

Cornelius. It was on *Tueſday* the 7th of *November* laſt. I was at work at Mr. *George Webbe*'s that Day, and the *Thurſday* after I ſaw Mr. *Barbot* at old Mr. *Webbe*'s: He and Mr. *Daniel* went out in the Morning to Mr. *Ottley*'s, as I was told, and returned in about two Hours; and the next Day, which was the King's Birth-day, Mr. *Barbot* dined at Old Mr. *Webbe*'s.

Mr. Sol. Gen. Did you hear any Guns fire that Day?

Cornelius. No, I heard none.

Mr. Sol. Gen. Was you deſired by any body to recollect this?

Cornelius. No.

Mr. Sol. Gen. Did Nobody inſtruct you to ſay it?

Cornelius. Nobody at all.

Mr. *James Brodbelt* ſworn.

Mr. Sol. Gen. Pleaſe to declare to the Court, where you dined on the King's Birth-day.

Brodbelt. I dined at Mr. *Cole*'s on the King's Birth-day, with Mr. *William Herbert*, Mr. *Pemberton*, Mr. *Paris*, and ſome other Gentlemen. The Fort-Guns fired on account of the Day, and I remember Mr. *Herbert* propoſed to Mr. *Pemberton* drinking the King's Health in a Bumper, which we all did.

Priſ. I deſire *Samuel Lawrence* may be ſworn.

Samuel Lawrence ſworn.

Priſ. Do you remember when *Bridgwater*'s Eſtate was ſold?

Lawrence. I do not remember the Day.

Priſ. Do not you remember the Day I came to old Mr. *Webbe*'s?

Lawrence. No.

Priſ. Do not you know how long I ſtayed there?

Lawrence. Indeed I cannot tell.

Priſ. Do you remember the Day I wrote a Note for old Mr. *Webbe* to ſend to Mr. *Cradock* for Corn?

Lawrence. I do remember you wrote a Note to Mr. *Cradock* for Corn for Mr. *Webbe*, but I do not recollect on what Day it was.

Priſ. Do you not remember I dined at old Mr. *Webbe*'s the Day I wrote that Note?

Lawrence. Yes, you did dine there the Day you wrote the Note, but I do not remember what Day that was.

Priſ. I pray Mr. *Joſiah Webbe* (Dr. *Webbe*'s Brother) may be ſworn.

Mr.

Mr. *Joſiah Webbe* ſworn.

Priſ. Pray, Sir, inform the Court, whether I was not at your Houſe on the King's Birth-day, and whether I was not ſent for, while I was there, to make Mrs. *Hickman*'s Will?

Webbe. I remember Mr. *Barbot* came to my Houſe one Afternoon ſoon after the Sale of *Bridgwater*'s Eſtate, and while he was there, a Meſſenger came from Mrs. *Hickman* to him, to deſire he would go and make her Will.

Priſ. Was it not on the King's Birth-day?

Webbe. It was one Day after the Sale of *Bridgwater*'s Eſtate, but I am not certain what Day it was.

Priſ. I deſire Mrs. *Daſent* may be ſworn.

Mrs. *Frances Daſent* ſworn.

Priſ. Pleaſe to declare to the Court, Madam, on what Day it was you ſent for me to make your Mother's (Mrs. *Hickman*'s) Will.

Daſent. I ſent for Mr. *Barbot* to make my Mother's Will, and I remember he came and made her Will, but I cannot be certain what Day it was.

Priſ. I deſire Miſs *Jenny Herbert* may be ſworn.

Miſs *Jane Herbert* ſworn.

Priſ. Do you remember being at Mrs. *Hickman*'s when ſhe was ill?

Herbert. Yes.

Priſ. Do you remember my making her Will?

Herbert. Yes; Miſs *Nancy Herbert* and myſelf were Witneſſes to it.

Priſ. Do you recollect when *Bridgwater*'s Eſtate was ſold?

Herbert. Yes, it was on *Tueſday* the 7th of laſt *November*.

Priſ. How long after that was it that I made Mrs. *Hickman*'s Will?

Herbert. I am not certain whether it was the *Thurſday* or *Friday* after, but I *believe* it was the *Friday*.

Priſ. It was the *Friday* after.

Herbert. I think it was, but I am not poſitive whether it was the *Thurſday* or *Friday*.

Priſ. Did you ſtay at Mrs. *Hickman*'s that Night?---*Herbert.* No.

Priſ. Do you know whether young Mr. *Payne* came there the Day following?---*Herbert.* I cannot tell whether he did or no.

Priſ. I pray Mr. *Sommers Payne*, junior, may be ſworn.

Mr. *Sommers Payne*, junior, ſworn.

Priſ. Do you remember the Day that I was at Mrs. *Hickman*'s?

Payne. I remember ſeeing you there, but I cannot tell on what particular Day it was.

Priſ. I pray Miſs *Nancy Herbert* may be ſworn.

Miſs *Anne Herbert*, the younger, ſworn.

Priſ. Do you remember what Day it was I was at Mrs. *Hickman*'s to make her Will?

Herbert. No, I do not recollect the Day.

Priſ. Do not you remember to have heard of a Ball being at *St. Kitt*'s, on the King's Birth-day?

Herbert. I remember to have heard there was to be a Ball at *St. Kitt*'s, but I cannot tell on what Day.

Priſ. Had you no Converſation with any young Ladies of your Acquaintance about the Ball?

Herbert. Yes, I believe I might have talked about it, but I do not remember the Day.

Priſ. I deſire Mr. *Julius* may be ſworn.

Mr. *William Julius* ſworn.

Priſ. Mr. *Julius*, you were one of the Coroner's Inqueſt; pray, what did *Johnſon* ſwear before the Inqueſt?

Julius. When he came before the Inqueſt, I aſked him if it was Mr. *Barbot* that he ſaw in the Canoe? He ſaid, he believed it was, but he could not ſwear poſitively to him, for he was a Muſket-ſhot off.

Priſ. I pray *Manſell Wilkes* may be ſworn.

Manſell Wilkes ſworn.

Mr. *Frye.* Do you know *Johnſon*?---*Wilkes.* Yes, I know him very well.

Mr. *Frye.* What Character does he bear?

Mr. Sol. Gen. You are to take Notice, that you are to ſpeak to the Character of the Man in general, and not charge him with any particular Fact; for he is not come here prepared to defend himſelf againſt any particular Charge.

Wilkes. Since I have known him, he has always borne a bad Character.

Mr. *Frye.* Has he been always looked upon as a Man of infamous Reputation?

Wilkes. Yes, he is reckoned a bad Man.

Mr. *Preſident.* Have you any more Witneſſes to examine, Mr. *Barbot*?

Priſ. No, Sir.

Mr. Sol. Gen. May it pleaſe your Honours, ſince the Priſoner has attempted to prove that he was at *Nevis* on the 10th of *November*, in order to invalidate the Teſtimony of *Patience Dorſet*; we beg leave to produce ſome further Evidence of his being actually on this Iſland on that Day. Call *Martha Scoaper*, *Mary Sutton*, and *Mary Cockade* (a free Mulatto). *Who appeared and were ſworn.*

Mr. Sol. Gen. Mrs. *Scoaper*, do you know the Priſoner at the Bar?

Scoaper. Yes, Sir, I know Mr. *Barbot* very well.

Mr. Sol. Gen. How long have you known him?

Scoaper. I have known him a great while; he is my near Neighbour.

Mr. Sol. Gen. Do you remember ſeeing him on this Iſland on the 10th of *November* laſt?

Scoaper. I do not know what Day of the Month it was, but I am almoſt ſure I ſaw Mr. *Barbot* here on the King's Birth-day. To the beſt of my Remembrance, I ſaw him paſs by my Houſe in the Forenoon, and his Boy came to my Houſe that Morning to beg ſome Water.

Mr. Sol. Gen. Do you know, by any particular Circumſtance, that it was on the King's Birth-day you ſaw the Priſoner?

Scoaper. It was the Day that there was a great Ball at *Manaſſeh Williams*'s. I was at the Ball myſelf.

Mr. Sol. Gen. That was on the King's Birth-day. Mrs. *Sutton*, do you know the Priſoner at the Bar?

Sutton. Yes, I know him very well.

Mr. Sol. Gen. Pleaſe to inform the Court and the Jury, whether you ſaw him here on the King's Birth-day.

Sutton. Between Eleven and Twelve o'Clock in the Forenoon, on the King's Birth-day, as I was ſitting in my Houſe, I ſaw Mr. *Barbot* coming down by Mr. *Bunyard*'s Houſe, and he turned down the Alley that leads to Mrs. *Philips*'s.

Mr. Sol. Gen. Do you remember how he was dreſſed?

Sutton. He had on a white Coat, a green Waiſtcoat, and a ſilver-laced Hat flapt.

Mr. Sol. Gen. Are you ſure it was on the King's Birth-day you ſaw the Priſoner?

Sutton. Yes, I am ſure it was on the King's Birth-day.

Mr. Sol. Gen. Mrs. *Cockade*, do you know the Priſoner at the Bar?

Cockade. Yes, Sir, I know him very well.

Mr. Sol. Gen. Pray inform the Court and the Jury, whether you ſaw him here on the King's Birth-day.

Cockade. Mrs. *M'Cabée* ſent for me on the King's Birth-day to help her; for they were to provide an Entertainment for a great deal of Company: And while I was in the public Room below, Mr. *Barbot* came in, and I heard him aſk a Man whom I did not know, whether there was a good deal of Company up Stairs.

Mr. Sol. Gen. Are you ſure it was on the King's Birth-day you heard him ſay this?---*Cockade.* Yes, I am ſure it was.

Mr. Sol. Gen. May it pleaſe your Honours, we have gone through all our Evidence. We could produce many more Witneſſes to prove the Priſoner's being actually on this Iſland on the 10th of *November*, but we think thoſe that have been already examined ſufficient to eſtabliſh that Fact, notwithſtanding what hath been ſworn to by Mrs. *Lowman* and *Cornelius*, who are the only poſitive Witneſſes to the Priſoner's being at *Nevis* on the 10th of *November*; and the firſt of them (Mrs. *Lowman*) founds her Evidence on two Circumſtances, in both of which ſhe ſtands flatly contradicted: The firſt, that of the Priſoner's going with Mr. *Daniel* to Mr. *Ottley*'s on the King's Birth-day in the Morning; and the other, that of her dining on the ſame Day at her Brother *George Webbe*'s, in Company with Mr. *William Herbert*. Now, your Honours and the Gentlemen of the Jury muſt have obſerved, that, in the firſt of theſe Circumſtances, Mrs. *Lowman* ſtands contradicted by the Evidence of Mrs. *Ottley* and Miſs *Anne Herbert*, who have both poſitively ſworn that it was on the 9th of *November*, the Day preceding the King's Birth-day, that the Priſoner and *Daniel* were at Mr. *Ottley*'s; and in the other ſhe is alſo contradicted by Mr. *William Herbert*, who has likewiſe poſitively ſworn, that it was on the 9th of *November* he dined at Mr. *George Webbe*'s junior, in Company with Mrs. *Lowman*, and that on the 10th he dined at Mr. *Cole*'s. And this Evidence of Mr. *Herbert* is corroborated by that of Mr. *James Brodbelt*.

Mr. Preſident. Mr. *Barbot*, go on with your Defence.

Here Mr. Frye *got up, and handed ſome Papers to the Priſoner, which Mr.* Horne, *one of the Counſel for the King, obſerving, addreſſed the Court, in this Manner:*

Mr. *Horne.* May it pleaſe your Honours, I beg Mr. *Frye* may not be allowed to do this. He is now giving Papers to the Priſoner to aſſiſt him in his Defence.

Mr. *Frye.* They are nothing more than ſimple Notes of the Evidence, which I took, in order to help his Memory, when he comes to make his Defence; and one or two Caſes that I have writ down for him.

Mr. Sol. Gen. It is what they have not a Right to; but it is no great Matter. You may give him the Papers.

Mr. *Frye.* Here, Mr. *Barbot*, you are to read from this Place to this, *(pointing with his Finger.)*

Priſ. May it pleaſe your Honours, the firſt Witneſs produced againſt me, in order to prove my having had ſome Reſentment againſt the Deceaſed, is Mr. *Carew*, who, as you muſt have obſerved, ſays no more, than that on the Day *Bridgwater*'s Eſtate was ſold at *Nevis*, he heard me ſay to the Deceaſed, *That I expected to be treated like a Gentleman.* If I did ſay theſe Words, I aſſure you, Gentlemen, they made no Impreſſion at all on me, for I have not the leaſt Recollection of having ſaid any Thing like this to the Deceaſed. But, admitting I had; does the ſaying to a Gentleman, that I expect to be well treated, or treated like a Gentleman by him, imply any kind of Malice, or Reſentment, againſt that Gentleman? Surely no!

Mr. *Thomas Mills* was the next Witneſs produced on this Occaſion. He agrees with Mr. *Carew* in the Words that paſſed at the Sale of *Bridgwater*'s Eſtate. But, Gentlemen, was there any Thing offenſive, or malicious, in my Anſwer to the Deceaſed; or can any Thing be collected from thence, to ſhew that I had any Reſentment againſt him? I think not, and I am confident you will think ſo too.

Mr. *Armour* has ſworn to a Converſation that, he ſays, paſſed between him and myſelf, ſome Time before the Sale of *Bridgwater*'s Eſtate. He ſwears, he heard me ſay, Mr. *Mills* had treated me in a Manner never to be forgiven. This, I confeſs, aſtoniſhes me; for I have not the leaſt Remembrance of it. And it is indeed ſtrange and very improbable, that I ſhould throw out ſuch Expreſſions concerning a Gentleman, againſt whom I never had any Reaſon to conceive the leaſt Anger or Reſentment. It is probable I might, at the Time Mr. *Armour* ſays he joined Company with me, have been talking about Mr. *James Daſent*'s Affairs, and might have ſaid that Mr. *Mills*'s Behaviour to Mr. *Daſent* ought never to be forgotten; for I well knew that Mr. *Mills* had been a great Friend to Mr. *Daſent*. It is therefore probable, I ſay, that Mr. *Armour* might have miſunderſtood me. And indeed he muſt have been miſtaken, for I am certain I never uttered the Words he has ſworn to. Beſides, it is obſervable, that Mr. *Armour* does not ſwear which of the *Mills*'s I ſpoke of. He believes, indeed, it was the Deceaſed, and for no other Reaſon than becauſe I did not uſe any Chriſtian Name by way of Diſtinction. I might, Gentlemen, for any Thing Mr. *Armour* knew, have meant Mr. *William Mills*, or Mr. *Thomas Mills*.

The Evidence of *Patience Dorſet*, I confeſs, is more ſurprizing than any. She has boldly ſworn, that ſhe heard me throw out a Menace at a public Tavern in this Town on the King's Birth-day, in Company with two Men, whom ſhe ſays ſhe did not know, nor did ſhe hear any of the Converſation previous or ſubſequent to this Menace. Is it not very ſtrange, that this Woman ſhould only hear that particular Part of the Converſation and no other, and not be able to recollect who the People were I was talking to? Beſides, admitting I had had any Reſentment againſt Mr. *Mills*, it would have betrayed great Weakneſs in me to have thrown out ſuch a Menace. But, Gentlemen of the Jury, I am confident this Piece of Evidence will have no Weight with you, as it has been

ſufficiently proved by three Witneſſes, (one of them a Lady, and the other a Gentleman, of undoubted Characters, and the third a very honeſt Man) that at the Time *Dorſet* heard me uſe this Threat ſhe has ſworn to, I was actually at the Iſland of *Nevis*. This, I think, Gentlemen, fully ſufficient to invalidate her Evidence, and I make no Doubt will have its proper Weight with you.

Doctor *James Webbe* was called next on the Part of the Crown. Between the *Doctor* and myſelf, there has for a long Time paſt, and ſtill does ſubſiſt a very great Intimacy; inſomuch, that if I had ever had any Quarrel with, or Reſentment againſt, the unhappy Gentleman deceaſed, it is extremely probable I ſhould have communicated it to him. And yet, Gentlemen, you have heard the *Doctor* poſitively ſwear, that ſo far from his being acquainted with my having any Difference with the Deceaſed, or any Intention to fight him, that he never knew, or even ſuſpected, any thing of the Kind.

It has been alſo given in Evidence to your Honours, and the Gentlemen of the Jury, that on the 18th of *November* at Night, I went to Bed at Dr. *Webbe*'s Houſe about Nine o'Clock; and Dr. *Webbe* ſwears, that about One in the Morning, as he was paſſing through the Hall, he ſpoke to me. This plainly proves, I was at that Time at Dr. *Webbe*'s Houſe in *Nevis*. It has been alſo proved, that I was at Dr. *Webbe*'s at Nine o'Clock in the Morning of the 19th, the Day on which the Deceaſed is ſuppoſed to have been killed; and it is obſerveable, that through all the Evidence that has been produced againſt me, there has not been one Witneſs who could ſwear that I was even at *Frigate-Bay that Morning*; and I do take upon me to ſay, it was incumbent on the Counſel for the King to prove, by ſome poſitive Witneſs, that I was that Morning at *Frigate-Bay*. They have endeavoured indeed, by preſumptive Evidence, to prove my being there, and for that Purpoſe *John M'Kenley* and *Johnſon* have been examined. *M'Kenley* ſwears the Deceaſed's Negro Boy *Coomy* told him, I had killed his Maſter, and that on this he ran to the Bay, and ſaw a Canoe rowing from the Shore, with a Perſon in white ſitting in the Stern. I beg Leave to make two Obſervations on *M'Kenley*'s Evidence: Firſt, That his Information was from a Slave, who, by the Laws of this Country, would have been an incompetent Witneſs, had he been produced as ſuch; and conſequently any Hearſay from him muſt be illegal, and ought to have no Weight with the Jury. Add to this too, the Poſſibility that *Coomy* might have been bribed to fix the Murder on me. And next, That *M'Kenley* himſelf cannot poſitively ſay that it was even a white Perſon that he ſaw ſitting in the Stern of the Canoe. Is it not therefore unjuſt to conclude that I was the Perſon?

As to *Johnſon*'s Evidence, I beg Leave to add only one Obſervation to what I have already ſaid on that Matter. It has appeared in Evidence to you, Gentlemen of the Jury, that he is a Man of a very bad Character, and, had I had timely Notice of his being a Witneſs againſt me, I could have had a Copy of the Record of his Conviction for Petty Larceny from *Montſerrat*, which would have proved him beyond all Doubt an infamous Perſon. But although I have been ſo unfortunate as not to be able to produce this Record, yet from what you have heard of this Man's Character, I am perſuaded you, Gentlemen of the Jury, will pay no Regard to what he has ſworn.

The Counſel for the King, to prove this Fact upon me, have endeavoured, by a Number of Witneſſes, to trace me, as they are pleaſed to call it, from Place to Place. This Kind of Evidence, I hope, will have no Weight with you, Gentlemen of the Jury, as it is at beſt but very light, preſumptive Evidence, and as it is abſolutely neceſſary to prove poſitively that I committed the Fact. Great Streſs has been laid alſo on my exerciſing the Piſtols at Mrs. *Daſent*'s. It has been proved to your Honours and the Jury, by Dr. *Webbe*, that this was merely accidental, and that after we had done with the Piſtols, they were cleaned and put up by a Boy of Mrs. *Daſent*'s. Is it not ſtrange that this Piece of Evidence ſhould be made uſe of to prove the Murder upon me? What had my exerciſing theſe Piſtols (which I did a Week before merely for my Amuſement) to do with the killing Mr. *Mills?* Did no other Perſon ever fire at a Mark with Piſtols? Now, Gentlemen of the Jury, if it had happened that a Man was found dead of the Wound of a Sword, and one of you had been exerciſing a few Days before a Caſe of Foils; might it not with equal Juſtice be ſaid that you killed that Man?

For my being ſeen to land out of a Canoe, I am ſure, Gentlemen, that can be no Proof of my having been at *Frigate-Bay*. Beſides, the Witneſſes themſelves cannot take upon them to ſwear I came from *Frigate-Bay*. For any thing they knew, I might have been a-fiſhing; and ſurely that is an innocent Action. Was no other Perſon ſeen that Morning in a Canoe but myſelf?

There has been no Kind of Proof that I had any Piſtols with me, or that my Boy had any. They have indeed now produced a Caſe of Piſtols which they ſuppoſe I uſed that Morning; but I beg Leave to obſerve, that theſe very Piſtols were found by Dr. *Webbe*, under the Bed at Mrs. *Daſent*'s, in a Pair of Holſter Caps; and it does not appear from any of the Evidence, that they had been lately uſed.

I make no Doubt the Counſel for the King will lay great Streſs on the Evidence that has been given of my having executed a Paper at *O Donnell*'s, which they have endeavoured to prove was my Will. Is it not the Duty of every Man, as well as a Satisfaction to him, to make a Will? and is he not at Liberty to make it when and where he pleaſes? Beſides, I had very good Reaſons for making a Will, which were to ſecure Mr. *Jacob Saunders* for indorſing my Bills, as I intended going to *England* in Captain *Fleming*, who was to ſail in a few Days.

Mr. Juſtice *Loſack*. Mr. *Barbot*, give me Leave to interrupt you. I apprehend you are only waſting your Time, and doing yourſelf very little Service, by all this. Would it not be much more for your Advantage, to prove where you was from the Time you went to Bed at Dr. *Webbe*'s the Night preceding the Murder, to the Time you were ſeen to land at *Nevis?*

Priſ. That, Sir, would be a Hardſhip indeed. I ſubmit it to you, Gentlemen of the Jury, whether it would not be very difficult for any of you to prove where you were on any particular Night, from Nine to Six in the Morning; and, on Failure of ſuch Proof, to be ſuppoſed guilty of Murder? Beſides, may it pleaſe your Honours, I humbly apprehend that in this Caſe the *onus probandi* lies on the Crown, and that they muſt firſt prove an *ibi*, before I am obliged to prove an *alibi*. But admitting I had been out the Night preceding the Murder, ought it from thence to be concluded, that I committed the Murder? Was no other Perſon out that Night but myſelf?

Gentlemen of the Jury, it has been ſaid to you, that preſumptive Evidence is ſufficient to convict a Man of Murder, and I expect the Counſel for the King will labour to prove this Point. But I beg Leave to aſſert, that preſumptive Evidence is by no Means ſufficient, and that nothing but poſitive Proof ought to be admitted to convict a Man of a Crime where his Life is at Stake. It would be of the moſt dangerous Conſequence to admit of preſumptive Evidence in ſuch Caſes; for an innocent Man might ſuffer for a Crime he never was guilty of. I have ſome Authorities in my Hand, to ſhew how extremely cautious Juries ought to be in finding a Man guilty, on any but the cleareſt and fulleſt Proof. *Coke Inſt.*

> " An Uncle was correcting his Nephew, and the Boy was heard to
> " cry out, O Lord, Uncle, don't kill me! The Boy immediately
> " after abſented himſelf. The Neighbours, who had heard the
> " Outcry, on miſſing the Boy, ſuſpected the Uncle had killed him.
> " The Uncle, finding he was ſuſpected to have murdered his Ne-
> " phew, procured a Boy very like his Nephew to perſonate him.
> " But it being ſoon diſcovered that this was not his real Nephew,
> " the Uncle was thereupon apprehended, tried for the Murder, and
> " convicted. Some time after this the Nephew appeared."

Another Caſe I have, Gentlemen, to the ſame Point. I do not immediately recollect the Book it is in; but the Caſe is this:

> " A Man was found dead in a Field. Another Man happened to paſs
> " by and ſee him, and went and told two Perſons of it. Theſe two
> " Perſons, ſuſpecting him to be the Murderer, carried him before a
> " Magiſtrate. He was indicted for the Murder; and one of the
> " Jury that tried him, contraty to the Opinion of the other Eleven,
> " and of the Court alſo, would not find him guilty. Upon this
> " Man's ſtanding out a long Time, and abſolutely refuſing to agree
> " with the reſt of the Jury, they were called into Court, and upon
> " the Judge's aſking this Man his Reaſon for refuſing to find the
> " Priſoner guilty, he honeſtly confeſſed that he himſelf had killed
> " the Man, and that the Priſoner at the Bar was perfectly innocent."

From hence it appears, Gentlemen of the Jury, that you ought not to be determined by circumſtantial Evidence. If former Juries have taken upon themſelves to judge ſeverely from preſumptive Evidence, that ſhould be no Rule, no Example, for you.

I beg Leave to trouble your Honours, and the Gentlemen of the Jury, with one Caſe more, to ſhew the Neceſſity of having poſitive Evidence to convict a Man on a Trial of this Sort.

> " It happened at *Montſerrat*, that one Captain *Watts* was indicted for
> " killing of one *Oulds*. A Woman, who was the only Evidence,
> " ſwore ſhe heard the claſhing of Swords, and ſaw Captain *Watts*
> " draw a Sword out of *Oulds*'s Body; but becauſe ſhe could not
> " ſwear that ſhe ſaw *Watts* thruſt the Sword into his Body, the Jury
> " acquitted him."

Common Fame, Gentlemen, I am perſuaded, will have no Weight with you at all. You muſt all have been ſenſible at Times, how Report is apt to ſpeak untruly. And, in the preſent Caſe, every Art has been tried to raiſe it to my Prejudice. You are ſworn to judge by the Evidence which is delivered to you, not by what you have heard out of Doors. If the Evidence is favourable, you muſt in your Conſciences judge ſo; otherwiſe you introduce a Precedent for the greateſt Evils.

Gentlemen, if you examine the whole Tenor of my Behaviour for a few Days which preceded this unhappy Accident, until my Commitment, you will find me ſolely employed about Dr. *Webbe*'s and Mrs. *Daſent*'s Affairs, and preparing for a Voyage to *Europe*; and for the Moments of Receſs from Buſineſs, only employed in paſſing my Time agreeably among my Friends. The very Night before poor Mr. *Mills*'s Death, my Behaviour was ſuch, as ſhewed I harboured no miſchievous Intentions. And can it be ſuppoſed that, if I had been conſcious of the Crime laid to my Charge, I ſhould have dined at Colonel *Webbe*'s (the Houſe where I always dined on a *Sunday* when at *Nevis*) the very Day on which the Murder was committed, and behaved there in my uſual Manner? My Circumſtances were ſuch as might have made the Means of eſcaping very eaſy to me, had I been guilty of ſo weighty a Crime as that I am accuſed of.

Upon the whole, if any Preſumption can be drawn from Evidence like this, it muſt be favourable for me, as they do moſt effectually demonſtrate the whole of my Behaviour to have been moſt innocent and inoffenſive. I ſhall juſt beg Leave to caution ye, Gentlemen, againſt any Arguments that have, or may be made uſe of, to influence your Paſſions on this Occaſion. Much Pains have been taken to ſtir up in your Breaſts Sentiments of Rage and Indignation againſt me, and to make me appear guilty in your Eyes, though I could by no Means be proved ſo.

But, Gentlemen, I know you are not to be blinded by Subtleties of this Kind. It is not rhetorical Flouriſhes will move you on this Occaſion to lay down my Life a Sacrifice to my Proſecutors, however powerful they may be. You are, Gentlemen, a Jury, Judges upon your Oaths of Matters of Fact according to Evidence; and, from the perſonal Knowledge I have of every one of you, I am perſuaded nothing but full and demonſtrative Proof will anyways induce you to condemn me: not diſtant Arguments that amount hardly to a Poſſibility; and when they have an equal Poſſibility, that any of the Perſons in this Court may be the guilty Perſon, and not me. For the Preſumption, I am ſure, that is altogether in my Favour.

I ſhall ſay no more to you on this Occaſion, but commit myſelf, Gentlemen, to your Judgments, not doubting a happy Iſſue. May God Almighty incline your Hearts in my Favour! On his Protection I depend; and to him be all Honour and Glory henceforth and for ever! *Amen.*

Mr. Sol. Gen. May it pleaſe your Honours,

I ſhall beg the Indulgence of a few Words, in Reply to the Priſoner's Defence. I ſhall not make any Recapitulation of the whole Evidence; both as the Trial has been drawn out into ſo very great a Length, and as that will be done from the Bench; but confine myſelf to the making a few Obſervations which I think neceſſary, on what has fallen from the Priſoner in the Courſe of his Defence: In which too I ſhall not be long; for indeed the Priſoner has ſaved me the Neceſſity of giving you much Trouble, by the extreme Weakneſs of his Defence; which was indeed ſo very weak, that his very Defence itſelf ſeems a Proof of his Guilt. For has he invalidated any Part of the Evidence againſt him? Has he diſproved a ſingle Fact? Nay, has he even attempted to do it? ſave in one Inſtance only, where it was not without Concern I ſaw him endeavouring to cover one Crime by another, in offering, by a palpable Perjury, to take away the Force of the Evidence of *Patience Dorſet*, by getting it proved, that he was not on this Iſland at the Time when ſhe ſwore ſhe heard him ſpeak the particular Words ſhe gave an Account of. Could he indeed have fairly and honeſtly diſproved her, it might have been of no ſmall Avail to him: But by unſucceſsfully attempting to do it, he has only the more eſtabliſhed the Truth of her Teſtimony; and the very Attempt itſelf ſhews how ſtrongly he felt the Weight of it to lie upon him; and amounts to a Sort of Confeſſion of his Crime, in labouring, by ſo undue Means, to deſtroy an Evidence, which only the Conſciouſneſs of his Guilt could make him ſo ſtrenuous to invalidate.

But the main of his Defence ſeems to lie in this, that the Evidence againſt him is only circumſtantial; and therefore, however ſtrong, ought not to avail to convict him, without abſolute and poſitive Proof of his committing the Fact, by Perſons who ſaw him do it. I indeed expected he would fly to this miſerable Refuge, the laſt Reſort of a guilty Man, oppreſſed by the Weight of Conviction, and borne down by the Force of the plaineſt Evidence againſt him. I ſhall therefore beg to be a little particular to this Point; not only as being what the Priſoner ſeems to have reſted the whole Force of his Defence upon, and placed all his Hopes of an Acquittal in; but as I am ſenſible great Pains have been alſo taken to inculcate this Doctrine abroad: A Doctrine the falſeſt and moſt dangerous that can be broached, and which plainly contradicts all our Reaſon and Experience on this Matter. For,

Not only, according to this Doctrine, hardly any Criminal could ever be convicted at all; but moreover, I am bold to ſay, out of all thoſe that have been ſo, by much the greater Part were convicted on circumſtantial Evidence.

So far from being none, or even bad Evidence, it has ever been allowed that, for the Lights it does give, it is the beſt and ſureſt of all Kinds whatſoever, and the leaſt likely to deceive and miſlead.

A Man may lye; but, as an ingenious Gentleman ſaid this Morning, Facts cannot lye. A well-invented Tale may be told and ſtood to by a wicked and daring Witneſs, in a Manner that he knows it is impoſſible for him to be detected in: But a Variety of Facts of ſeveral Kinds, all collected from different and diſtant Perſons, Places and Times, with an apparent Impoſſibility of Combination or Confederacy, all independent of each other, and with no other Connexion or Agreement between them, but what ariſes from their bearing from different and diſtant Points to the ſame Center of Truth; theſe can never miſlead the Judgment, or impoſe upon the Belief; but juſtify and confirm each other, and are the ſureſt and moſt unerring Guides to conduct to Truth.

They who affirm, that circumſtantial Evidence alone cannot be ſufficient to convict, muſt not only be greatly unuſed to the Hearing or Reading of Trials; but muſt alſo be perfectly ignorant of the very Nature of a Trial, and what it is. For what is a Trial, but to hear, examine, and weigh all that is offered on either Part; and then from the Whole to draw out, or (as the well-known Term is) to *find* the Truth?

Is it not the conſtant and univerſal Practice on Trials by Juries, for the Judge who ſums up the Evidence, to cloſe the Charge with Words to this Effect? "If, upon the whole Matter, you believe in your Conſciences "that the Priſoner at the Bar committed the Fact of which he ſtands in-"dicted, you are to find him guilty: But if, upon the whole Matter, "you do not believe in your Conſciences that he committed it, you are "to find him not guilty." Is it not the uſual and conſtant Practice, I ſay, to cloſe the Charge with Words like theſe?

But where is the Senſe or Meaning, I pray ye, of ſuch an Admonition, or of Words like theſe, if ſtrong Circumſtances alone may not, in any Caſe, be a ſufficient Evidence to authorize the Jury to find the Priſoner guilty?

If nothing but poſitive, ocular, point-blank Evidence can be ſufficient for that Purpoſe, how trifling and impertinent were it to give ſuch a Charge? For,

If there be ſuch poſitive and abſolute Evidence, what Doubt or Difficulty can there be in the Caſe? or how is it then congruous to ſay, if they believe, upon the whole Matter, a Thing ſo plainly and palpably ſworn, as to leave no Room to talk of the whole Matter, or hardly of believing at all? And,

If there be not ſuch poſitive and abſolute Evidence, what Reaſon or Juſtice is there in the Judge's ſaying to them, if, upon the whole Matter, they believe in their Conſciences, what he ſees there is no Foundation, and they can have no Right, to exerciſe their Belief or their Conſciences at all about?

In a Word, if nothing leſs than ſuch poſitive Evidence would avail, how can there ever be any Doubt at all? or what Occaſion can there be, in any Caſe, of having a Jury at all? In God's Name, what, in that Caſe, is, or can a Jury be for?

If ſuch poſitive Evidence only will ſuffice, 'tis immediately ſeen whether there be ſuch or not: And then the Court, without the Mediation of a Jury, have no more to do than to acquit or condemn at a ſingle Word; and the very ſwearing a Jury were a moſt unneceſſary and idle Formality.

But to conſider this Matter a little further.—How frequently do Trials of Murder in *England*, laſt eight, twelve, ſixteen Hours, or longer? Every body knows that ſuch Things have frequently happened.

But, I beſeech ye, how could this be, if only ocular, downright poſitive Proof could avail to convict a Perſon?

Is it not, and muſt it not be ſeen, in one Hour of the Trial, whether there be ſuch poſitive and abſolute Proof or not?

If there be ſuch poſitive Proof, what can there be further to be done? or what Occaſion to protract the Trial to any greater Length?

If there be not ſuch poſitive Proof, why are ſo many fruitleſs Hours waſted in giving in Evidence, and laying together Circumſtances and Preſumptions, which, though ever ſo numerous, or ever ſo powerful, could be of no Conſequence at all?

What a Figure muſt the Judges make in ſuffering ſo much Time to be miſpent, in hearing, and permitting to be ſolemnly given in Evidence, what in itſelf, at this Rate, muſt all be ſo utterly inſignificant and beſide the Purpoſe?

And yet, do they not conſtantly, after Trials of ſo great a Length, ſolemnly and gravely enumerate all the Circumſtances and Preſumptions, and then put it to the Belief and Conſciences of the Jury, whether they are from them convinced of the Priſoner's Guilt? and are not Priſoners accordingly conſtantly convicted on them? But,

Were it not the moſt crying Abuſe in the Judges, and the greateſt Profanation of Juſtice in itſelf, thus gravely to ſet the Priſoner's Life on ſuch a Hazard, if they knew in their Conſciences, that there was no Evidence given, which ought to affect him?

Ought they not to tell the Jury at once, they are to find the Priſoner not guilty, without more ado?

Gentlemen of the Jury,

Though I hope you need no further Conviction of the Falſeneſs of this Doctrine, yet it may not be amiſs to tell you what our great Oracle of the Law, my Lord *Coke*, whoſe Name you have, I make no Doubt, often heard of, defines a Trial to be: "A Trial (ſays he) is to find out, by "due Examination, the Truth of the Point in Iſſue."

And is not this, Gentlemen, perfectly agreeable to, and a Confirmation of, what I have been inſiſting on? that is, That it is to hear, examine and weigh all that is offered on either Side? Is not this, I ſay, the finding out the Truth on due Examination?

But, I pray ye, would this be an apt or proper Definition, or would this exhibit a juſt or adequate Idea of a Trial, if nothing but Point-blank Proof of the Commiſſion of the Fact were, or could be, allowed a ſufficient Evidence to convict a Perſon?

Does it not, on the contrary, ſuppoſe an Uncertainty? Does it not imply a Doubt and Difficulty? But,

Where can be the Doubt and Difficulty, if there is ſuch poſitive point-blank Proof? or what is there to be found out, on due Examination, if none elſe be ſufficient?

But, Gentlemen, to illuſtrate this Matter ſtill further by the ſame great Authority, I beg Leave to read you other Words of the ſame Author, extremely pertinent to this Purpoſe; and, Gentlemen, they are theſe: "When the Trial is by Verdict of twelve Men, there the Judgment is not "given upon Witneſſes, or other Kind of Evidence, but upon the Ver-"dict; and upon ſuch Evidence as is given to the Jury, they give their "Verdict——And many Times Juries, together with other Matter, are "much induced by Preſumptions, whereof there be three Sorts, *viz.* vio-"lent, probable, and light or temerary. *Violenta præſumptio* is many "Times *plena probatio*; as if one be run through the Body with a Sword "in a Houſe, whereof he inſtantly dieth, and a Man is ſeen to come out "of that Houſe with a bloody Sword, and no other Man was at that Time "in the Houſe." Thus you hear, Gentlemen, the general Doctrine he lays down; and the Inſtance he gives by way of Illuſtration of it, and which may ſerve the better to make it underſtood.

But, Gentlemen, I have another Authority in my Hand ſtill more explicit of this Matter, and which may enable you ſtill the more clearly to judge of it; and that is from a Trial which I had Occaſion to mention this Morning to another Purpoſe; which is of Miſs *Blandy*, who (as I make no Doubt you have all heard) was tried at *Oxford* no longer ago than the Month of *March* laſt, for the Murder of her own Father; where the learned Judge, in the Cloſe of his Charge to the Jury, has the following Words, extremely appoſite to the preſent Purpoſe: "In the preſent "Caſe, which is to be made out by Circumſtances, great Part of the Evi-"dence muſt reſt upon Preſumption, in which the Law makes a Diſtinc-"tion: A ſlight or probable Preſumption only, has little or no Weight; "but a *violent Preſumption* amounts, in Law, to full Proof, that is, where "Circumſtances ſpeak ſo ſtrongly, that to ſuppoſe the contrary, would "be abſurd."

Thus, Gentlemen, it appears in the plaineſt Manner, from the Reaſon of the Thing; from conſtant Experience; from the Words with which the Charge of the Judge to the Jury is always wont to be cloſed; from the, otherwiſe, Impropriety of thoſe Words of the Charge; from the frequent extreme Length of Trials of Murder in *England*; from the abſolute Unneceſſarineſs of ſuch Length on any other Suppoſition; from the Definition of a Trial by my Lord *Coke*; and laſtly, from the expreſs and plain Words of the very Charge of which I have juſt now read you a Part: From all theſe, I ſay, it is plain and clear, that circumſtantial Proof may be, and frequently is, ſufficient in itſelf to convict an Offender, and prove the Charge againſt him; and that the contrary Doctrine is contrary to Experience and good Senſe, and in itſelf falſe and abſurd.

But, may it pleaſe your Honours, and you Gentlemen of the Jury, as abſurd as this Doctrine is, the Abſurdity of it is not all.——No; there is ſtill ſomething further to be conſidered and guarded againſt; and that is, its dangerous and deſtructive Tendency.

If once it comes to be eſtabliſhed into a Rule, that nothing but point-blank, poſitive, ocular Evidence ſhall ſuffice to convict a Man; who can be ſecure of his Life or Property but for a ſingle Day? What a Leſſon of Encouragement were this to hold out to bloody-minded and ill-diſpoſed Men! What a Security and Indemnity were here promiſed and inſured to them in the Commiſſion of their Crimes!

Were not this plainly to ſay to them in ſo many expreſs Words, "See "that you commit your Crimes with tolerable Secrecy and Cau-"tion, and you may be aſſured of Impunity; only take Care that "none be preſent to behold you execute them: And then, though a "thouſand and a thouſand Circumſtances ever ſo loudly proclaim your "Guilt; though it ſhould be evinced by ever ſo many and ever ſo "glaring Tokens; though every body believes, ſees, and aſſuredly "knows, that you did, and muſt have committed the Fact; yet "all

" all this is but Circumſtance and Preſumption, and by no Means " Evidence to convict, or at all affect you; but, with all the plaineſt " and cleareſt Marks of your Guilt about you, you may laugh at your " Proſecutors, and ſet the whole World at Defiance."

Is not this the plain and palpable Language, is it not the neceſſary and inevitable Conſequence of ſuch a Doctrine? Is it to be ſuppoſed, that ill Men can be ſo mighty dull, as not to take ſo very plain a Hint? or is it to be imagined they will be checked and reſtrained by Juſtice and the Laws, when they are taught how they may ſo eaſily, and with uſing ſo little Caution, put themſelves out of their Reach?

I hope, therefore, we ſhall hear no more of this ſenſeleſs and pernicious Doctrine; pretended to be grounded on Scrupulouſneſs and Tenderneſs of Conſcience; but the mere Effect of Falſeneſs of Judgment, or Perverſeneſs of Will. For,

What Sort of Conſcience muſt that be, which thus combats itſelf? or by what unaccountable Kind of Reaſoning muſt it be, that a Man perſuades himſelf he is bound in his Conſcience to find that to be the Caſe, which in his Conſcience he believes, and is perfectly aſſured, is not the Caſe?

A Man that can argue at this Rate, let his Pretence be what it will, perverſely believes the Truth, and equivocates and plays double with God Almighty, and Juſtice, and his own Conſcience.

But now, if it ſhould be aſked, if then any Thing leſs than poſitive and abſolute Proof of the Commiſſion of the Fact will avail, and a Man may be convicted on circumſtantial Evidence only, how ſhall we know what Circumſtances are ſufficient to convict an Offender? I ſay, if this be aſked, I anſwer, in the Words which I obſerved to be wont to be uſed in the Cloſe of a Charge, " when, upon the whole Matter, you believe in " your Conſciences that the Priſoner committed the Fact of which he " ſtands indicted;" or, (which is ſtill better) when (as it is ſo happily and ingeniouſly expreſſed in the Part of the Charge I have juſt read to you) I ſay, " when Circumſtances ſpeak ſo ſtrongly, that to believe the con- " trary, would be abſurd." For,

It is not barely what this or that Witneſs, or theſe two or three, or any other preciſe Number of Witneſſes ſay, that ſhall acquit or condemn. No; 'tis the joint Reſult of the whole Evidence taken and conſidered together; and what, upon examining and weighing that, ſhall appear to you, or (as the well-known Term is) you ſhall find to be the Truth.

To pretend to lay down any general Rule of what is, or is not, ſufficient Evidence, were ridiculous and abſurd.

Every Fact is to ſtand on its own Circumſtances; and that, and that only, is to be taken to be proved, of which the Conſciences and Belief of the Jury are convinced.

The Evidence that does not convince their Conſciences and Belief, though it conſiſt of a thouſand Particulars, is not enough: And,

The Evidence that does convince their Conſciences and Belief is enough, though it conſiſt of ever ſo few.

Gentlemen, you may have obſerved how ſtrenuous both the Priſoner and his Counſel were in endeavouring to ward off the Force of one Piece of Evidence, which they perceived made ſo powerfully againſt him; and that was, that *Coomy*, the Deceaſed's Negro Boy, told *M'Kenley*, when he came down to the Bay, that it was Mr. *Barbot* who had killed his Maſter: This, they ſay, you are to give no heed to; as being what is called Hearſay Evidence only, and no more than what one Perſon tells another. But, Gentlemen, give me Leave to obſerve, there is a Diſtinction in this Matter; and that this is, in Truth, a very ſtrong Evidence indeed. That Hearſay Evidence is no Evidence at all, I do generally allow; and therefore had *Coomy* the next Day, or ſome Hours after, told this to *M'Kenley*, or any other Perſon, it ought to have no Weight at all with you, becauſe in that Caſe it might not be true; but in the preſent Caſe it ought to weigh with you, and powerfully too, becauſe it muſt have been true, as the Event, and what followed, invincibly demonſtrated.

A Gentleman is found murdered, and juſt expiring, and a Clamour is made, on the Spot and on the Inſtant, that ſuch an one was his Murderer; a Perſon is ſeen flying from the Place where the Murder was committed; and the Perſon ſo flying is purſued from the Place, and found to be the very ſame who was alledged on the Spot to have been the Murderer: I pray ye, does not this prove that the Clamour was, and muſt have been, true? and that the Perſons who made it ſpoke from abſolute Certainty, and were neither deceived themſelves, nor deceived others? Therefore, as Hearſay is generally no Evidence, becauſe it *may be* falſe; ſo that *Coomy* told *M'Kenley* is good Evidence, becauſe it *muſt* be true. And there is no Medium between theſe two Things, that either *Coomy* ſaw the Priſoner kill his Maſter, or he muſt have been inſpired.

The ſame Obſervation will hold, with regard to what *Peter* the Negro told *Cribbe* in the Morning at *Nevis*, *viz.* that he feared Mr. *Barbot* had done Miſchief; and againſt which too the ſame Objection was ſo ſtrongly preſſed, that it was only Hearſay, and what one Perſon told another. But as you heard, Gentlemen, this was ſaid by *Peter* before the News otherwiſe came from this Iſland to *Nevis* of this unhappy Event: And therefore *Peter* (who, as *Jaſper Thomas* ſwore, was one of the Negroes who rowed the Canoe which brought the Priſoner to *Nevis*) could not then ſpeak what he did, from the Information of others, but of his own Knowledge only; and as the Deceaſed actually was found murdered at that Time, either what he ſaid of the Priſoner was a neceſſary Truth, or he muſt have known that Miſchief was done, by Inſpiration. And now, Gentlemen, as either of theſe two Circumſtances ſingly, ſpeaks ſo exceeding ſtrongly, what is not the Force of them when put together? 'Tis plain there could be no Combination or Confederacy between theſe two Negroes, *Coomy* and *Peter*; and therefore for the former to ſay, on the Spot, and on the Inſtant of the Murder committed, that Mr. *Barbot* had killed his Maſter; and the latter ſo ſoon after, at the Diſtance of ſeveral Leagues, that he feared Mr. *Barbot* had done Miſchief; amounts to a Demonſtration that both muſt have ſpoke Truth: And when to this we join all the intermediate Circumſtances, and the tracing the Priſoner from Place to Place, the Whole compoſes the fulleſt and moſt invincible Proof, without a Poſſibility of Perjury or Miſtake in the Matter, that ever was made of any Fact whatſoever. And therefore,

It is to little Purpoſe that the Priſoner has aſked, Did no other Perſon than himſelf make a Will ſuch a Day? Did no other Perſon go in a Canoe? Was no other Perſon out at ſuch an Hour of the Night? Did no other Perſon fire at a Mark with Piſtols? For were theſe Queſtions ſingly aſked, there is no Doubt but there might be many Perſons, of whom each of theſe Matters might with Truth have been ſeparately affirmed: But, alas! that is not the Matter! For of what Avail were this to the Pr ſoner's Defence, unleſs there were other Perſons of whom all theſe together might be alſo affirmed? And therefore, the only Way of aſking theſe Queſtions materially to this Purpoſe, were in this Manner: Was there any other Perſon who had Words of Heat with the Deceaſed on the 7th of *November?* Who made ſuch a Declaration on the 10th? Who was firing at a Mark with Piſtols on the 12th? Who haſtily made a Will at a Tavern, and delivered it out of his own Cuſtody on the 18th? Who the ſame Night left his Bed and Houſe at Midnight; and the next Morning was ſeen flying from the Place where the Deceaſed was murdered, juſt after he was ſo? And then, if there be any one elſe, of whom only Half theſe Circumſtances can with Truth be affirmed, we may ſafely allow all theſe, in the Caſe of the Priſoner, to go for nothing.

And here, in ſpeaking of flying from the Place of the Murder committed, I cannot but obſerve how vaſtly ſtronger is the preſumptive Proof againſt the Priſoner, than that in the Caſe put by my Lord *Coke*, and which I juſt now read to you: For there was only that ſingle Circumſtance; but here is the ſame accompanied with twenty others, which of themſelves had availed to convince any reaſonable Perſon's Mind, who muſt have committed the Murder, even without the ſeeing him fly from the Spot.

Gentlemen, I ſhall but juſt add; the Priſoner cautioned you againſt ſuffering your Paſſions to be unduly worked upon by the Eloquence of the Counſel, and being miſled by their Rhetoric into a Belief of his Guilt. For my own Part, I pretend to no Maſtery over the Paſſions, or other Talent of the Sort; and did I even imagine I were poſſeſſed of ſuch, ſhould think myſelf not warranted to uſe it on an Occaſion like this. The preſent Caſe is a Caſe of Blood, where the Ornaments of Speech, and the Arts of Rhetoric, to inflame the Paſſions, and blind the Reaſon, however juſtifiable they may be in a Priſoner on his Defence, are certainly not candid or allowable on the Part of the Proſecution. The ſingle Queſtion in the Caſe is of mere Fact, to wit, whether the Priſoner committed the Murder? and therefore I have confined myſelf to ſuch Reaſonings and Arguments only, as I thought conduced to the better finding out the naked Truth of that; and can truly ſay, I have urged nothing to your Conſciences, which did not ſeem right and juſt to my own. For,

I ſhould think the offering to miſlead or abuſe yours, were doing my own the greateſt Injury.

You will therefore, Gentlemen, conſider the Whole together; and if, upon the whole, you believe *in your* Conſciences the Priſoner did not commit this Murder, God Almighty forbid you ſhould condemn him; and if you believe in your Conſciences he did commit it, God Almighty forbid you ſhould acquit him.

Mr. *Kerr*. May it pleaſe your Honours,

Mr. Sollicitor, in his Reply, has ſo fully anſwered every Objection of the Priſoner, that it were needleſs to trouble your Honours further on this Occaſion. I ſhall only beg Leave to obſerve one Thing which has been omitted by *Mr. Sollicitor*, and that is, that the Caſes which have been quoted by the Priſoner, I will venture to affirm, are not in any Book of Authority now extant; ſo that I am really inclined to believe they are Caſes of Mr. *Frye*'s own making.

Mr. *Preſident*. Gentlemen of the Jury, this Trial has taken up a great deal of Time, and been attended with a Variety of Circumſtances. I ſhall therefore, as briefly as poſſible, ſum up the Evidence, and make ſuch Obſervations as occur to me, with as much Perſpicuity as I am able.

The firſt Witneſs produced by the Counſel for the King, was Mr. *Carew*, who ſays, that at the Sale of the Eſtate called *Bridgwater*'s, on the 7th of *November* laſt, the Priſoner and the Deceaſed being preſent, he heard the Priſoner ſay to the Deceaſed, *that he expected to be treated like a Gentleman*, or Words to that Effect. Theſe Words, the Witneſs ſays, were ſpoke, he believes, in Anſwer to ſomething the Deceaſed had ſaid to the Priſoner, which the Witneſs did not hear.

The next Witneſs is Mr. *Thomas Mills*, who was alſo preſent at the Sale of *Bridgwater*'s Eſtate. He ſays, that the Priſoner objected to the Conditions of Sale, and that the Deceaſed (apprehenſive that he did it with Deſign to protract the Time 'till Sun-ſet, after which the Eſtate could not be ſold on that Day) ſaid to the Priſoner, *Mr.* Barbot, *the Conditions of Sale are very fair, why will you cavil about them?* To which the Priſoner replied, *I expect to be treated like a Gentleman*, or Words like theſe; that to this the Deceaſed made no other Anſwer, than *that he ſhould always treat him and all Mankind as ſuch.* This Witneſs ſays alſo, that the Priſoner's whole Behaviour appeared to be calculated to delay the Sale. He ſays too, that he verily believes the Priſoner and the Deceaſed never ſaw each other from the Day of the Sale, 'till that of the Murder; for that he either ſaw the Deceaſed, or heard from him, every Day after the Sale, 'till he was killed; but he does not know whether they had any other Converſation the Day of the Sale; for he left them together in the Room where the Eſtate was ſold. You will obſerve, Gentlemen, that the Teſtimony of Mr. *Carew* and Mr. *Mills* corroborate each other.

The next Witneſs is Mr. *Armour*, who ſays, that between the 3d and the 7th of *November* laſt, he was in Company with the Priſoner at Mr. *Conſtantine*'s Door, and heard him ſay, that Mr. *Mills* had treated him in ſuch a Manner as ought never to be forgiven. Mr. *Armour* indeed ſays, that the Priſoner did not particularly mention which of the *Mills*'s it was that had treated him thus; but he underſtood that it was the Deceaſed he meant. I would make one ſhort Remark here. The Priſoner himſelf has declared he never had any Difference with either Mr. *Thomas Mills*, or Mr. *William Mills*; and as there was no other Man of the Name of *Mills* in this Iſland but the Deceaſed, you

you will judge from the Event, who it was the Prisoner meant in that Conversation with Mr. *Armour*.

The next Witness that is called on the Part of the Crown is *Patience Dorset*: She tells you, that on the King's Birth-day she saw the Prisoner standing under the Gallery at *M'Cabée's Tavern*, talking to two Persons whom she does not know, and in passing by she heard him say, *There was a certain Gentleman in this Island, that within a Fortnight he would either kill or be killed by.* She is very positive that it was on the King's Birth-day she saw the Prisoner, and heard him say these Words, from two Circumstances; the first, That Mrs. *M'Cabée* sent for her that Day to assist in providing an Entertainment for the *Lieutenant-General* and his Company; and the other, That she heard a great many Guns fired. The King's Birth-day, you all remember, (I suppose) was celebrated on the 10th of *November*. Now, if you will compare what the Prisoner said to Mr. *Armour* before the 7th, his Behaviour to the Deceased upon the 7th, and the Declaration he made on the 10th, in the Hearing of *Patience Dorset*; I think there is too much Reason to imagine it was the Deceased he meant, when he threw out that Menace.

Dr. *James Webbe* is then called. Before this Gentleman was examined, I confess, I expected he would have fully proved the Fact upon the Prisoner; for, from the close Connexion and Intimacy between them, I thought it highly probable he might have known something, if not the Whole of this Matter. And from the Character of the *Doctor*, his Education, and Rank in Life, I took it for granted he would have candidly and ingenuously related all that he knew concerning this unhappy Affair. But, I own, I was no less surprized than concerned, to find that every Thing which came from him, tending to bring this Matter to Light, was extorted with seeming Violence; and that he readily told all that he thought would obscure and hide the Fact. He says, That he has known the Prisoner between four and five Years; that he has frequently employed him as an Attorney; and that he lives in great Intimacy with him. That he was present at the Sale of *Bridgwater*'s Estate on the 7th of *November* last, where the Deceased and the Prisoner also were; that the Estate then belonged to himself, and was sold for his Debts. He does not know what were the Conditions of Sale; but he remembers to have heard the Prisoner say, We will be bound as far as by Law we can be bound. He does not recollect any other Words passing at the Sale, only hearing the Deceased say to the Prisoner, *Let us have no School-boy's Play*, or something to that Effect. He did not hear the Prisoner make any Answer to this; for he was at that Time, he says, so distracted and confused at having his Estate sold, that he gave very little Attention to what passed. He tells you, that the Prisoner, at his Request, purchased the Estate for him. This really seems strange and unaccountable, that a Man whose Estate was then selling, and who had procured a Friend to purchase it for him, should be so inattentive, as not to recollect what the Conditions of Sale were; and it is as extraordinary, that a Man should buy an Estate without knowing on what Conditions. He says, he does not know how long the Deceased stayed at *Nevis* after the Sale, or whether the Prisoner ever saw him after. That the Day after the Sale he saw the Prisoner, but does not recollect that any Conversation passed between them on the Business of the preceding Day, or that the Name of the Deceased was mentioned by the Prisoner. This is very amazing, that a Man, in an Affair so near his Heart, and which had thrown him into such Confusion and Distraction of Mind, should not the next Day, on seeing his Friend who purchased his Estate for him, make some Enquiry about the Event of the preceding Day. But this Gentleman's Memory is fatally treacherous to him; for he, in almost the same Breath, says, he thought the Terms of Sale hard *too*, and advised the Prisoner not to sign them. From hence it plainly appears, that Dr. *Webbe* was well acquainted with the Conditions of Sale, and must have had some Conversation with the Prisoner about them, or he could not have thought them hard, nor have advised the Prisoner not to sign them. He tells you, that the Prisoner came to his House on the 16th of *November*, and stayed there 'till the 18th, on which Day they dined together at *Jacob Saunders*'s, and executed a Bond of Indemnity to *Saunders*, for having indorsed the Prisoner's Bills for the Deposit of the Purchase-Money of the Estate; that from thence, in the Evening, he went with the Prisoner to *O Donnell*'s Tavern, where the Prisoner sat down to write; that the Prisoner desired him to get three Witnesses to attest the Paper he was writing; and that he did procure three Witnesses, which were *Potts*, *O Donnell*, and *Springett*, in whose Presence the Prisoner executed the Paper he was writing; and immediately after delivered it to him *(Webbe)*. He tells you, that he neither read the Paper while the Prisoner was writing it, nor since it has been in his own Custody: and that he is quite ignorant of the Contents of it. In this he is manifestly contradicted by his own Deposition which you have heard read, and which, as has been proved to you, was taken before Judge *Herbert*, at *Nevis*. In that Deposition he swears, that the Prisoner made his Will at *O Donnell*'s on the 18th of *November* in the Evening, and delivered it to him *(Webbe)*, informing him at the same Time that he had made him a Legatee in it. He tells you, that after this Paper (for he will not now call it a Will, though it has been fully proved he knows it to be so) was executed and delivered to him by the Prisoner, they both went Home together to this Witness's House; that the Prisoner at about Nine o'Clock went to Bed; that having Occasion to get up at about One o'Clock, as he was passing through the Hall, the Prisoner called to him, and asked him what o'Clock it was; but that he did not see the Prisoner from the Time he went to Bed, 'till the next Morning, at about Nine o'Clock, he saw him riding up to the House on one of his *(Webbe*'s) Horses, attended also by his Negro Boy *Pope*; that he had on a white Coat, a dark-coloured Waistcoat, and a silver-laced Hat; that he did not ask the Prisoner, nor does he know, where he had been; but thinks there was Time enough, from the Hour he spoke to him the Night before, 'till the next Morning that he saw him riding up, to have been at *St. Christopher*'s and back again; that he knew nothing of the Prisoner's taking his Horse and Boy, but that it was very customary for him to take them whenever he wanted them, without asking his Leave. He remembers the Prisoner having a red Trunk, which he brought from Mrs. *Dasent*'s on the 16th of *November*; that he did see the Prisoner's Boy *Nero* bring a red Trunk to his House the Morning of the 19th, at the same Time that the Prisoner was riding up to his House; but he does not know whether that Trunk was the same the Prisoner brought from Mrs. *Dasent*'s on the 16th, or whether the Trunk now produced to him is the same. He tells you, that on the *Sunday* before the Murder, the Prisoner and he were firing at a Mark with a Pair of Pistols that belonged to Mrs. *Dasent*; that Mrs. *Dasent*, on missing a Pair of her Pistols, sent to him, to desire he would come to her House; that he did go and assist her in searching for the Pistols; that he found them under the Bed in a Pair of Holster Caps; but he knew not of their being in that Place, nor who put them there: That at the Time he was searching for the Pistols in the Chamber, he observed a red Trunk, which he believes belonged to the Prisoner, and which he saw opened afterwards by Judge *Herbert*; in which were found, he says, a Coat, Waistcoat, and some Linen, which were moist; that he cannot tell whether the Cloaths found in the Trunk were the same the Prisoner had on the 19th in the Morning, when he rode up to his House; that he believes the Trunk and Cloaths now produced to him, are the same which he saw at Mrs. *Dasent*'s the Morning after the Murder. He tells you, that on the 19th the Prisoner dined at Mr. *George Webbe*'s senior, and he himself dined at Mr. *Maynard*'s; that in the Afternoon, while he was at Mr. *Maynard*'s, a Negro came to him, and told him the Prisoner had killed the Deceased; that he went soon after to Mr. *Symmonds*'s; that he did not mention there what the Negro had told him, though he had a very good Opportunity to do it; for while he was there, he says, Mr. *Symmonds* received a Letter, giving an Account of the Prisoner's having killed the Deceased; that he himself also received a Note from the Prisoner, pressing him to come immediately to him at *John Herbert*'s; that he did not mention at Mr. *Symmonds*'s, having received such a Note from the Prisoner, though he heard Mr. *Symmonds* say, he would go and assist the *Posse* in Pursuit of him; that he went immediately after to *John Herbert*'s, where he found the Prisoner drinking Tea; that the Prisoner immediately took him out into the Necessary-house, and asked him if he had heard the Report of his having killed Mr. *Mills*; that he answered, Yes; that the Prisoner replied, he should not fly for it, for he knew nothing of it. He tells you, that this was all the Conversation that passed between them at that Time; that while they were in the Necessary-house, the Officers of Justice apprehended the Prisoner; that the Prisoner took him aside in Mr. *Herbert*'s Hall, after he was apprehended, and desired him to get ten Pistoles from his Uncle *Webbe* for him; that he saw the Prisoner while he was in Goal at *Nevis*; that all the Conversation he had with him there was, desiring him to make over *Bridgwater*'s Estate to him. He tells you, that he never knew that the Prisoner had any Resentment against the Deceased; that he knew nothing of his Boy *Pope*'s having been at *Bridgwater*'s Estate the Night before the Murder; that he did not send *Pope* out any where that Night, and did not know that he was gone out; that he himself was not sent for by any of his Patients that Night; and that it was so boisterous a Night, as he should not have gone out in for Pleasure.

Upon the Whole of Dr. *Webbe*'s Evidence, his Inclination to serve the Prisoner very plainly appears: But from his Want of Candour and Ingenuity, from the many Prevarications he has been guilty of, and the manifest Contradiction between his Deposition at *Nevis*, and his Examination on the Trial; his Evidence, instead of answering the Intention of his giving it, serves rather to fix a strong Suspicion of Guilt on the Prisoner.

Mr. *O Donnell*, who was the next Witness, says, that the Prisoner and Dr. *Webbe* came to his House between Seven and Eight o'Clock in the Evening on the 18th of *November*; that the Prisoner called for Pen, Ink, and Paper, and sat down to write; that while he was writing, he called Dr. *Webbe* to him several Times, and they spoke together in a low Voice; that Dr. *Webbe* looked over the Prisoner frequently while he was writing; that as soon as the Prisoner had finished what he was writing, he went with Dr. *Webbe* into an inner Room; that after some little Time Dr. *Webbe* returned, and desired him, with *Potts* and *Springett*, to go in and witness a Paper; that the Prisoner did execute a Paper in the Presence of *Potts*, *Springett*, and this Witness; that he knows not what the Paper was, but believes it was a Will, because there were three Witnesses to it; that the Prisoner, after he had signed the Paper, put his Thumb on the Seal, and pronounced some Words, but so inarticulately, that he could not distinguish what he said; that the Prisoner covered with his Hand the Place where the Attestation is usually written, so that he could not see it. He tells you, that as soon as the Prisoner had executed this Paper, he delivered it to Doctor *Webbe*.

Charles Potts is then called. He says, that on the 18th of *November* last, being at *O Donnell*'s in the Evening, somebody called to him, and told him he was wanted in the inner Room; that he went in, and the Prisoner desired him to witness an Instrument of Writing; that he, together with *O Donnell* and *Springett*, did witness a Paper, to which he saw the Prisoner sign his Name; that the Prisoner put his Thumb on the Seal, and took it off again, but does not recollect that he heard him say any Thing; that he took the Instrument of Writing to be some Deed to secure *Jacob Saunders*, because he met the Prisoner and Dr. *Webbe* coming from *Saunders*'s that Day. I cannot help observing, that this is a very weak Reason for supposing it to be a Deed to secure *Saunders*; for had it been really so, there could be no Necessity for keeping it such a profound Secret; and, in the next Place, it is very natural to suppose, they would have executed any Deed of that Kind at *Saunders*'s House, when they executed the Bond of Indemnity to him. He tells you, that he never knew that the Prisoner had any Resentment against the Deceased, but that, on the contrary, he has heard him often express great Regard for him.

The next Witness that is called is *Thomas Hobson*. He tells you, that on *Saturday* Night, the Night before he heard the Deceased was murdered, Dr. *Webbe*'s Boy *Pope* came with a Horse of his Master's at Midnight, to the House where he *(Hobson)* lives, on *Bridgwater*'s Estate, and said he had been round the Island looking for his Master; that *Pope* and the Horse were both wet; that *Pope* put the Horse in the Stable, and stayed there all

Night. He tells you, that about Eight o'Clock the next Morning (which was the Day on which he heard of the Murder) he saw a little Man coming up to the House in a white Coat, and silver-laced Hat; that as soon as he came up to the Steps, he called for *Pope*, and ordered him to saddle the Horse; that he asked *Pope* which Road he should take; that *Pope* shewed him the shortest Way to Mr. *Pinney*'s, where Dr. *Webbe* lives; and that he got on Horseback, and rode away: He believes he came from the Bay; and that his Shoes were wet. He tells you, that the Prisoner at the Bar is the very Man who came to his House on the 19th in the Morning, and whose Dress and Person, with the other Circumstances, he has described to you.

Sarah Hobson, the Sister of *Thomas Hobson*, is called next; but as her Evidence agrees in every Particular with that of her Brother, I think it is needless to repeat it to you.

The next Witness on the Part of the Crown is *John M'Kenley*. He tells you, that between Four and Five o'Clock in the Morning on the 19th of *November*, as he was lying on his Bed, *Coomy*, a Negro belonging to the Deceased, rushed into his Chamber, and, in great Fright, told him, that his Master was fighting at *Frigate-Bay*, with a Gentleman from *Nevis*; that he immediately got up, and ran down to the *Bay*, where *Coomy*, being on Horseback, had got before him; that he found *Coomy* supporting the Deceased; that he went up to him, and took hold of his Hand, and spoke to him; that he made him no Answer, nor had no Pulse; that he found then he was dead, though still warm, and was but just expired. He tells you, that on enquiring of *Coomy* who it was that had killed his Master, *Coomy* told him it was the Prisoner, and that he was just gone off in a Canoe; that he immediately ran down to the Sea-side, and saw a Canoe, with four Oars and a Paddle, making very fast from the Shore, and somebody in white sitting in the Stern of it, but he could not distinguish whether it was a white Person or a Negro; that the Deceased had on his great Coat and Gloves; that his Pistols were in the Holsters on his Horse; and his Sword in the Scabbard, wrapped in the Belt, at some Distance from him.

The next Witness is *William Johnson*. He tells you, that about Six o'Clock in the Morning, on the 19th of *November* last, as he was coming down from the *Salt-Ponds*, he saw the Prisoner in a Canoe, with four Oars and a Sail, between forty and fifty Yards distant from him; that the Canoe seemed coming from *Frigate-Bay*, and was rowing towards *Nevis*; that the Prisoner had on a white Coat, a silver-laced Hat, and a dark-coloured Waistcoat; that he knows the Prisoner very well; that he could see all the Way between the Place where he met the Prisoner, and *Nevis*; and that no other Canoe was in the Channel, but that in which the Prisoner was. The Prisoner and his Counsel have attempted to discredit the Testimony of *Johnson*, by saying he was publickly whipt for Petty Larceny at *Montserrat*; and that he could not positively swear before the Coroner's Inquest, that it was the Prisoner he saw in the Canoe. But they should, to have effected their Purpose, have produced the Record of *Johnson*'s Conviction, without which, a bare Assertion of his Guilt ought to have no Weight with you. With regard to his refusing to swear positively to the Prisoner before the Coroner's Inquest, I think he swore as every cautious Man ought to do, that he verily believed it was the Prisoner he saw in the Canoe; but after he had, for his better Recollection, seen him in Goal, he was certain, and has now, as you have heard, positively sworn it was the Prisoner he saw in the Canoe. And besides, Mr. *Wilson*'s Evidence does entirely acquit *Johnson* of any ill Design against the Prisoner, and does certainly strengthen his Evidence; for Mr. *Wilson* swears, that *Johnson* brought him a Letter from *Montserrat* the Morning the Deceased was murdered; that having heard the Report of the Murder, he told *Johnson*, that the Deceased was killed by the Prisoner; at which *Johnson* expressed a good deal of Surprize, and said, that he had met him that Morning in a Canoe going to *Nevis*. From this Circumstance, I think, *Johnson*'s Evidence ought to receive its full Credit.

Jasper Thomas, and his Son *John Thomas*, are next called. They both agree in their Evidence, and tell you, that between Six and Seven o'Clock in the Morning, on the 19th of *November* last, they saw a Canoe belonging to *John Cribbe* land under the Manchioneal Trees, just under *Lowland-Church*, at *Nevis*; that as soon as the Canoe struck the Shore, the Prisoner jumped out of it; that a little yellow Negro Boy jumped out at the same Time, with a small red Trunk on his Head, and went towards the Town; that *Hulburd*'s *Peter*, and *Deverade*'s *Joe*, were in the Canoe; that the Prisoner had on a whitish Coat, and a silver-laced Hat; that they saw the Canoe above fifteen hundred Yards before she came to Land; that she was under Sail, and did not strike Sail 'till she landed; and that she seemed coming from the *Salt-Ponds*.

William White is then called. He tells you, that on the 19th of *November* in the Morning, as he was at Work at Mr. *Woodley*'s Estate, he saw a little Man in a brown Coat and a laced Hat, which he knew to be the Prisoner, walking up the Road that leads to *Bridgwater*'s Estate; that he believes he came from the Bay; that he knows the Prisoner very well, and is certain he is the Person he saw.

The next Witness is Mr. *Bridgwater*, who tells you, that between Nine and Ten o'Clock in the Morning, on the 19th of *November*, he saw the Prisoner, on a sorrel Horse belonging to Dr. *Webbe*, going the nearest Way to Dr. *Webbe*'s House; that on the same Day in the Afternoon he went to Mr. *Symmonds*'s; that while he was there, Dr. *Webbe* came in; that presently after, Mr. *Symmonds* received a Letter, giving him an Account of the Prisoner's having killed the Deceased; that as soon as Mr. *Symmonds* mentioned it, Dr. *Webbe* changed Countenance, and said that the Prisoner had lain at his House the Night before; that Mr. *Symmonds* asked Dr. *Webbe* if he had seen the Prisoner that Morning; that Dr. *Webbe* said he had not seen him since the Night before; at which this Witness expressed a good deal of Surprize, and said he had seen the Prisoner that Morning riding towards his (*Webbe*'s) House, on one of his Horses; that to this *Webbe* made no Answer, but, in about five Minutes, went away, and said he was going up towards the Mountain.

John Cribbe is then called, who tells you, that on the *Friday* before the Deceased was killed, the Prisoner hired his Canoe to carry some Letters to *St. Kitt*'s; that she returned the next Day in the Afternoon, and the Negroes that belonged to her, took her (as he thought) to go a-fishing; that he did not see them again 'till about Eight o'Clock the next Morning, which was the Day he heard the Deceased was killed; that he went to *Peter*, one of the Negroes belonging to the Canoe; and asked him, *What Luck?* (supposing he had been fishing;) that *Peter* answered him, *Poor Luck!* and seemed very melancholy and thoughtful; that upon enquiring the Reason of it, *Peter* told him he had been to *St. Kitt*'s with Mr. *Barbot*, who, he was afraid, had done a great deal of Mischief, for he believed he had killed Mr. *Mills*. He tells you, it was about Ten o'Clock in the Morning when he had this Conversation with *Peter*; that at that Time he had not heard, either by common Report, or otherwise than from *Peter*, of the Death of the Deceased; and indeed from the Evidence of *Quin*, which immediately follows, he could not have heard it from common Report; for *Quin* tells you, he was the first that carried the News to *Nevis*, and that he did not arrive there 'till Eleven o'Clock. This makes it highly probable, that what *Peter* said was too true.

Mrs. *Dasent* is then called. She tells you, that on the 19th of *November* last, hearing that the Magazine was broken open, and of the Murder of the Deceased, she ordered all the Arms in her House to be searched for; that missing a Pair of Pistols, she sent to Dr. *Webbe*, who came to her, and after searching a good while, at last found the Pistols under the Bed; that the Prisoner's Trunk was in the Room where the Pistols were found, but she knew not of its being there 'till that Day, nor how it came there; that she saw the Trunk opened, in which were found a brown Waistcoat and a Pair of black Breeches, which she believes belonged to the Prisoner; that she believes the Trunk and Cloaths now produced to her, are the same she saw opened at her House by Judge *Herbert*.

Judge *Herbert*, who is the next Witness, tells you, that the Day after the Murder he went to Mrs. *Dasent*'s, where he saw the Pistols, with the Trunk and Cloaths which have been produced to him; that the Cloaths were wet, and he believes with Salt-Water; for, on touching the Waistcoat with his Tongue, he found it salt. He also tells you, that being at Mr. *Colhoun*'s, where the Body of the Deceased was brought on the Day of the Murder, he searched the Pockets of the Deceased, and found in his Breeches Pockets three Bullets.

Mr. *Pringle* and Mr. *Baker* are then called, who tell you, that being at Mr. *Colhoun*'s on the Day the Deceased was killed, they examined his Pistols, which they know to be the same that are now produced; that they could not, upon the most careful Examination of them, perceive the least Stain of Powder on either of them, except about a Grain or two, which they supposed to have been bruised by the Hammer; that they are convinced neither of the Pistols had been lately discharged; for Mr. *Baker* having put his Finger into the Barrel, there came off on it a rusty Dirt, which he tells you would not have been there, if the Pistols had been lately fired out of. They also tell you, that upon examining the Cloaths of the Deceased, they found on the right Flap of his Coat, and the Inside of his great Coat, on the right Side, a Stain of dry Powder.

The Counsel for the Crown, to corroborate and support the Evidence of *Patience Dorset*, have produced *Martha Scooper*, *Mary Sutton*, and *Mary Cockade*, with whom they conclude their Evidence. The two last swear positively that the Prisoner was on this Island on the King's Birth-day, and are so very circumstantial in their Evidence, that I think they cannot be mistaken. For *Sutton* has very particularly described his Dress to you, and *Cockade* has also sworn to some particular Words she heard him say in *M'Cabée*'s *Tavern* on the King's Birth-Day. The Evidence of *Scooper* is not so positive as that of the other two, but it serves to strengthen and give Weight to what they have sworn.

The Prisoner, in his Defence, positively denies his having had any Resentment against the Deceased; says, it was very easy for him to have made his Escape, if he had been guilty of the Crime laid to his Charge, and that it was natural to suppose he would have done so; that the firing the Pistols the *Sunday* before the Murder, was merely accidental, and to amuse himself; that he was not on this Island on the 10th of *November*. He then calls his Witnesses, the first of which is Mrs. *Lowman*. She is positive that the Prisoner was at her Father's on the 10th of *November*; that in the Morning of that Day he went with *Daniel* to Mr. *Ottley*'s, and returned and dined at her Father's; that on that same Day she herself dined at her Brother *George Webbe*'s, in Company with Mr. *William Herbert*. In the first of these Circumstances she is contradicted by the Evidence of Mrs. *Ottley* and Miss *Anne Herbert*, who tell you, that it was on the 9th of *November* the Prisoner and *Daniel* came to Mrs. *Ottley*'s; in the other she is also contradicted by Mr. *William Herbert*, who tells you, that it was on the 9th of *November* he dined at young *George Webbe*'s, in Company with Mrs. *Lowman*, and on the 10th he dined at Mr. *Cole*'s; so that Mrs. *Lowman* must be mistaken in the Day. Mr. *Josiah Webbe*, the Brother of Mrs. *Lowman*, is next called. He cannot swear positively; but he believes the Prisoner was at his Father's on the 10th of *November*.

John Cornelius is the next Witness. He is positive that the Prisoner was at old Mr. *Webbe*'s on the 10th of *November*; but the contrary has been proved by so many Witnesses on the Part of the Crown, supported with such strong Circumstances, that *Cornelius* must certainly be mistaken in the Day.

Mr. *Julius* was also called upon by the Prisoner to prove that *Johnson*, one of the Witnesses against him, could not swear positively to him before the Coroner's Inquest; but the Observations I have already made on that Part of *Johnson*'s Evidence, will be sufficient, without repeating to you that I think *Johnson*'s Evidence a good one, and ought to have its proper Weight with you.

These are the Witnesses produced by the Prisoner, that seem to be any ways material in his Favour: He has, indeed, called many others to prove his being at *Nevis* on the *tenth of November*; but they have all failed in this Circumstance, which would have been of great Consequence to him, if he could have established it; as it would have effectually invalidated the Evidence of *Patience Dorset*, and the rest, who swore to his being in this Island on that Day.

I have, as well as I have been able, Gentlemen, given you the Substance of the Evidence on both Sides, in which I hope I have omitted nothing material.

I must observe to you, that in Cases of Murder, and the like atrocious Crimes, the Law has relaxed much of its Severity and Scrupulousness in the Proofs, and does not so absolutely require such positive Proof as in Matters of *meum* and *tuum*, where

they may be had, but in theſe cannot: For no Man who knows, or even imagines, that his Life muſt anſwer for the Perpetration of a Deed, will call Eye-witneſſes to it; but will, with as much Secrecy as his Invention can ſupply, execute his Intention; and to admit none but poſitive ocular Proof, would be rejecting all, and proclaiming Impunity.

It has been juſtly obſerved to you by the Counſel for the Crown, that the Law, where the Circumſtances are ſo cloſely connected and linked together, as in this Caſe, and amount ſo fully to what is called a *violenta præſumptio*, admits this as full Proof, and in my Opinion, more ſo than any one poſitive Evidence, whoſe Memory may be deceitful, or who may poſſibly be ſuborned; but in Facts made appear from Circumſtances which are dumb, we cannot be deceived; nor they falſly charge, or partially excuſe.

The Circumſtances of this unfortunate Affair hang ſo cloſely together, that they carry too glaring a Proof to admit of much Doubt, by whoſe Hand Mr. *Mills* fell.

Mr. *Armour* declares, that he heard the Priſoner ſay, between the 3d and 7th of *November*, that Mr. *Mills had treated him cruelly, and in ſuch a Manner as ought never to be forgiven:* The Priſoner has acknowledged, he had never any Difference with Meſſieurs *Thomas* and *William Mills*, it then could have been none but the Deceaſed he meant: Though this the Priſoner denies, and ſays, Mr. *Armour* muſt have miſunderſtood him.

Patience Dorſet ſwears, that ſhe heard the Priſoner declare, on the 10th of *November*, that *he would either kill or be killed by a Perſon of Diſtinction in this Iſland, in the Courſe of ten Days.* Mr. *Mills* is found dead in a remote Part of the Iſland on the 19th, within the Time limited; and by the Evidence now given in Court, by the Gentlemen who opened the Body before the Coroner's Inqueſt, it appears that he had been killed by a Bullet, or ſome other Subſtance diſcharged from a Fire-Arm. From the Evidence of *Armour* and *Dorſet*, a prepenſe Malice appears; and a Life taken away through ſuch Malice prepenſe, in the Eye of the Law and Man, is deemed Murder in the higheſt Degree.

The Priſoner too, in a precipitate Manner, and in a Tavern, the Night before Mr. *Mills* was found dead, executed his Will; in his Defence he acknowledges the Deed executed at *O Donnell*'s to have been ſuch: Had he not been conſcious that he might have ran ſome Riſk of loſing his Life the next Morning, why in ſuch a Place, and in ſuch a Manner, draw and execute a Deed of ſo nice a Nature, and of ſuch Conſequence, as his Will? But the Time, by Mrs. *Dorſet*'s Evidence, which it appears he had limited to his own Life, or a Perſon's of Diſtinction in this Iſland, was near expired, therefore neceſſary ſuch a Deed ſhould be executed.

The next Morning Mr. *Mills* is found dead. The Priſoner is declared by *Coomy* to be the Perſon by whoſe Hand his Maſter fell: And though by Law this is not Evidence; yet by Mr. *M'Kenley*'s Evidence, who declares he ſaw a Perſon rowing in a Canoe, from the Place from whence *Coomy* had told him the Priſoner embarked, deſcribing his Dreſs; which Perſon is immediately after met by *Johnſon*, who perſonally knows him, deſcribes him to be dreſſed in the ſame Manner, and declares that no *Canoe* was then at Sea, but the one in which was the Priſoner; that he could diſtinctly ſee the whole Paſſage from *Frigate-Bay*, the Place where Mr. *Mills* then lay dead, to *Nevis*, where the Priſoner was ſeen to land by *Jaſper Thomas* and his Son, who declare that they ſaw the *Canoe* coming from *St. Chriſtopher*'s, deſcribe his Dreſs to be the ſame as *M'Kenley* and *Johnſon*: *Jaſper* is ſo particular as to name two of the Negroes who rowed the *Canoe*, one of which *(Peter)*, as appears from *Cribbe*'s Evidence, and which ſtrengthens and is ſtrengthened by *Coomy*'s Declaration, ſays, That he had been that Morning to *St. Kitt's* with Mr. *Barbot*, *who he feared had done a great deal of Miſchief, for he believed he had killed Mr.* Mills. And as this Declaration of *Peter*'s was made to *Cribbe*, before the Account of Mr. *Mills*'s Death had reached *Nevis*, as appears from *Quin*'s Evidence, who was the Expreſs ſent up in ſearch of the Priſoner, and the two Slaves were four or five Leagues aſunder, and could not have ſeen each other from the Time of the Commiſſion of the Fact, to this Declaration of *Peter*'s; this could not have been by them concerted, and of itſelf carries ſo much Weight, as to merit ſome Attention. Again, *Thomas Hobſon* and Siſter declare, that in the Morning of the Day on which they heard the Account of Mr. *Mills*'s Death, they ſaw a little Man, whom they know to be the Priſoner, coming up from the Bay; that he came to their Houſe, and aſked for Dr. *Webbe*'s Boy *Pope*: When the Boy appeared, he did not aſk if he had got *a Horſe*, but ordered him to ſaddle *the Horſe*: From this then it is evident that he knew the Horſe and Boy were there, or he would not have called ſo immediately for *Pope*, and ordered ſaddling *the Horſe*. Dr. *Webbe* too proves, that the Horſe and Boy muſt have been taken out of his Stable by the Priſoner; for he declares, that he himſelf had not that Night been called out by any Patient, nor had he ſent that Boy on any Meſſage. Theſe Evidences deſcribe the ſame Dreſs as the preceding ones. Other Evidences have been produced by the King's Counſel, who deſcribed the ſame Dreſs, and traced the Priſoner to Dr. *Webbe*'s, where the Doctor acknowledges his Arrival, dreſſed alſo in the ſame Manner, as every other Evidence had.

From ſuch a Chain of Evidences, who were ſeparated from each other in different Iſlands, Perſons noways connected, and ſo exactly tallying with each other, little Room, as I ſaid before, can be left to doubt.

It was eſſentially incumbent on the Priſoner, for his own ſake, to prove where he was, from the Time he went to Bed at Dr. *Webbe*'s, on the 18th of *November* at Night, to the Time he was ſeen to land at *Nevis*, on the 19th in the Morning; but this he has not attempted to do.

Leſt you ſhould have entertained a Notion, that the killing a Perſon in a Duel is not Murder in the Eye of the Law, as the Life of each in ſuch an Encounter runs an equal Riſk; I aſſure you, Gentlemen, the Law makes no ſuch Diſtinction, even in Caſes of fair Duels. If from the Evidences you are ſatisfied, that Mr. *Mills* fell by the Hands of the Priſoner, and that he had a malicious Intent, the Law makes it Murder as much in this Caſe as any other. The Priſoner in his Defence to clear himſelf, ſays, from his known and paſt Conduct in Life, there is no Reaſon why he ſhould be even ſuſpected of engaging in a Duel: But from the Evidences of Meſſieurs *Pringle* and *Baker*, that the Piſtols of the Deceaſed had never been diſcharged, or even were they loaded; and from his Sword's Belt being buckled round the Hilt, and at a Diſtance from him, as appears from *M'Kenley*'s Evidence; and from the Direction of the Ball or Subſtance which pierced the Body of the Deceaſed, which entered ſo far backwards, and ſtruck on the oppoſite Side ſo far forwards; and of which Meſſieurs *Hamilton* and *Edwards* declare, to the beſt of their Knowledge and Belief, Mr. *Mills* died, and that he could not have received the Wound in a Poſture of Defence: From theſe Circumſtances it muſt be left to you, upon the Evidences, to conſider whether this was even a fair Duel.

I ſhall detain you, Gentlemen, with but one more Obſervation, which is, that no Perſon but the Priſoner has been proved or known to have declared a Reſentment to Mr. *Mills*; the Deceaſed; no Perſon but the Priſoner was ſeen going from the Place where Mr. *Mills* was found but juſt expired; and no Perſon of Diſtinction in this Iſland killed but Mr. *Mills*.

All Circumſtances of Perſons, Time, and Place, muſt be well conſidered. It is alſo your Duty to weigh the Evidences that have been offered to you, and to judge from thence, whether the Priſoner is guilty of the Murder wherewith he ſtands charged, or not guilty; and in conſidering this Matter, let me recommend to you, that you diveſt yourſelves of any Impreſſions that may have been made on you from the Relation of this Fact out of Doors, and that you conſider merely the Evidence given you here on the Trial.

If, upon the whole, you believe in your Conſciences, that the Priſoner committed the Fact of which he ſtands indicted, you will find him guilty: But if, upon the whole, you do not believe in your Conſciences that he committed it, you are to find him not guilty.

Then the Jury withdrew, and in about Half an Hour returned.

Cl. of Arr. Gentlemen, are you all agreed on your Verdict?

Jury. Yes.

Cl. of Arr. Who ſhall ſay for you?—*Jury.* Our Foreman.

Cl. of Arr. John Barbot, hold up thy Hand. (*Which he did.*) Gentlemen of the Jury, look upon the Priſoner: How ſay you, is *John Barbot* guilty of the Felony and Murder whereof he ſtands indicted, or *not* guilty?———*Jury.* Guilty.

Cl. of Arr. What Goods or Chattels, Lands or Tenements, had he at the Time of the ſaid Felony and Murder committed, or at any Time ſince, to your Knowledge?———*Jury.* None.

Cl. of Arr. Hearken to your Verdict as the Court hath recorded it. You ſay that *John Barbot* is guilty of the Felony and Murder whereof he ſtands indicted; and that he had not any Goods or Chattels, Lands or Tenements, at the Time of the ſaid Felony and Murder committed, or at any Time ſince, to your Knowledge; and ſo you ſay all.

Cl. of Arr. John Barbot, hold up thy Hand. You have been indicted of Felony and Murder. You have been thereupon arraigned, and pleaded thereto Not Guilty, and for your Trial you have put yourſelf upon God and your Country, which Country have found you guilty. What have you now to ſay for yourſelf, why the Court ſhould not proceed to give Judgment of Death upon you according to Law?

Priſ. May it pleaſe your Honours, there is a Fault in the Indictment. The Fact is laid to have been committed at *Frigate-Bay*, in the Pariſh of *St. George Baſſeterre*; and *Frigate-Bay* is in the Pariſh of *St. Peter*.

Mr. Sol. Gen. May it pleaſe your Honours, the Priſoner, admitting it were as he ſays, is too late in his Exception. That is a Matter of Fact, and if it had been material, (which it was not) ought to have been ſhewed on Evidence; but cannot be made uſe of in Arreſt of Judgment. However, the Truth is, there is no ſuch Miſtake as he mentions in the Indictment; for *Frigate-Bay* is actually in the Pariſh of *St. George*, and if it were neceſſary we could prove it.

Priſ. May it pleaſe your Honours, I have nothing more to ſay.

Mr. *Preſident. John Barbot*, you have been indicted for the Murder of *Matthew Mills*, Eſq. and for your Trial have put yourſelf upon God and your Country: That Country has found you guilty.

You have had a long and a fair Trial. You have challenged many who were called up as Jurors, though not the whole Number you were intitled to by Law; ſo that I may with Juſtice ſay, you have been tried by a Jury, to which you yourſelf had no Exception.

I am ſorry it falls to my Lot to acquaint you, that I am no longer at Liberty to ſuppoſe you innocent.

You are convicted of a Crime the moſt horrid and dreadful in itſelf: A Crime attended with the moſt aggravating Circumſtances. You have deprived the World of one of its moſt worthy and uſeful Members; and rendered unhappy Numbers of Perſons, who drew the Means of Subſiſtence immediately from the Bounty and Benevolence of the unfortunate Gentleman deceaſed.

It is hard to conceive what Provocation you could have received from a Gentleman of ſo mild and gentle a Diſpoſition as the Deceaſed was, to induce you to perpetrate an Act ſo ſhocking. But I would adviſe you, as ſome Kind of Atonement for the Crime you have been guilty of, to make a full Confeſſion of the whole Matter. Let me recommend to you alſo, to employ the little Time you are likely to continue in this World, in endeavouring to make your Peace with that great God, whoſe Mercy is equal to his Juſtice.

Nothing now remains, but to pronounce the Sentence of the Law upon you, which is,

That you are to be carried to the Place from whence you came, and from thence to the Place of Execution, where you are to be hanged by the Neck until you are dead: And may God of his infinite Mercy receive your Soul!

The Priſoner then addreſſed himſelf to the Court in this Manner:

May it pleaſe your Honours,

Since it can no longer avail me to conceal the Fact, I will make a frank Confeſſion of the Whole.

That I did kill Mr. *Mills*, is moſt true.----That I killed him fairly, is equally true----fairly according to the Notions of Honour prevailing among Men. From theſe falſe Principles of Honour I was induced to engage in the unhappy Duel, which in its Conſequences deprived

deprived the World of so worthy a Gentleman, and has involved me in these unhappy Circumstances. False I am convinced they are, notwithstanding the Countenance they receive from the daily Practice of the World.

I make no Doubt but that the Words which Mr. *Carew* and Mr. *Mills* have sworn, did pass between the Deceased and myself at the Sale of *Bridgwater*'s Estate, though I cannot now recollect that they did. But this was not the Cause of the Duel.

The Provocation I received from Mr. *Mills* was this:

After I was declared the Purchaser of the Estate, I sat down to draw the Bills of Exchange for the Deposite. While I was about them, Mr. *Mills* came and looked over me, and observing that I had made them payable at ninety Days Sight, he objected to them, and asked me if I knew what I was about, and insisted on having the Bills drawn at a shorter Sight: To which I answered, That I was sure he must know it was usual for Bills of so large a Size to be drawn at a long Sight. I told him further, that I apprehended he had no Right to object to the Bills at all, if the Marshal agreed to accept them as they were drawn. To this Mr. *Mills* replied, *Sir, you are an impertinent Puppy.* I took no Notice of this 'till after I had finished the Bills, and then I took him aside, and spoke to him to this Effect: That I little expected to receive such Treatment from a Gentleman of his known Politeness and Good-breeding; that, as I was not conscious of having deserved it, I desired he would make me some Apology for it. He replied, That he would not make me any Apology; but that, if I thought myself injured, he was at my Service when properly called upon. I made him no Answer, but immediately left him; and, on the *Thursday* following, I wrote him a Letter, telling him, that since he had done me the Honour to assure me he would be at my Service whenever I should call upon him, I expected he would meet me by Dawn of Day the next Morning, near *Lowland-Church*, armed with a Case of Pistols only. Mr. *Mills* sent me an Answer to this; and there were six Letters in all passed between us, three from him, and three from me, which I do not now recollect, for I destroyed them *, though I believe I shall be able to remember the Substance of them. The last I received from him was, that he would meet me at the Time and Place appointed, which was *Frigate-Bay*. The Night before the Duel, I made my Will at Mr. *O Donnell*'s, and delivered it to Dr. *Webbe*. The Doctor put it in his Pocket without reading it, and we immediately went Home to the Doctor's House, where I went to Bed soon after I arrived. At about One in the Morning I heard the Doctor up, and called to him: He answered me, and went out; and as soon as he came in and returned to Bed, I got up, and went with *Pope* to the Stable, and saddled one of the Horses, which I immediately mounted, directing the Boy to follow me; and rode very fast 'till I passed Mr. *Pinney*'s, where I was overtaken in a very hard Shower of Rain, that wet me through all my Cloaths. I rode with all the Speed I could 'till I came to *Molton's-Bay*, where I had ordered a Canoe to wait for me. At first I could not perceive the Negroes; but on looking round, I saw them lying under a Sail. They immediately got ready, and I jumped into the Canoe, and ordered *Pope* to carry the Horse to *Bridgwater*'s Estate. The Night was very tempestuous, and the Canoe was several Times near filling with Water. I had a Phial of Rum with me, which I had filled at Dr. *Webbe*'s, and finding myself excessive cold and chilly, I drank a Dram of it. When I got to *Frigate-Bay*, I jumped out of the Canoe, and ordered my Boy to follow me with my Trunk, in which were my Pistols. I then seated myself under a Privet-hedge, and sent my Boy to the Entrance of the *Basseterre* Road, to wait for Mr. *Mills*'s Arrival. In the mean Time I examined my Pistols, and fresh primed one of them. I had no sooner done this, than I heard the Footsteps of a Horse. I arose immediately, and saw Mr. *Mills* riding fast up to me. As soon as he came near, we saluted each other; after which he immediately alit, and took his Pistols out of the Holsters, and primed them. While he was priming his Pistols, his Horse's Head being between me and himself, I told him, I had, as I had wrote to him, brought down the Letters he had wrote me, and I doubted not he had likewise with him those I had wrote him. I then took out the Letters from my Pocket-book, and offered them to him: He made me no Answer, but hastily ordered his Boy to lead away his Horse, and putting himself in a Posture of Defence, presented his Pistol at me. I gave his Letters then to my Boy, and ordered him, in case I should drop, to give them to Mr. *Mills*. I immediately then presented my Pistol at him; which he observing, cried out, Stay, stay! I instantly dropped my Pistol, and Mr. *Mills* said to me, Stay, let me give the Letters to the Boy; which he immediately did; and then recovering his Posture again, himself on one Side the Road, and I on the other, we presented our Pistols at each other. I observed Mr. *Mills* drew his Pistol near his Eye, from which I imagined he was near-sighted. About four or five Seconds after I had presented, I fired; and Mr. *Mills* cried, Sir, you have killed me, you have killed me, Sir. I was extremely shocked to see him fall, and I went up to him and said, Sir, I am heartily sorry, I pray God to bless you, but I can stay no longer here. I then ordered his Boy to take Care of him, and immediately went down to the Canoe and jumped in, and ordered the Negroes to row as fast as ever they could. I asked my Boy, when we were in the Canoe, whether Mr. *Mills*'s Pistol had snapped. He told me it had; but for my own Part, I neither heard it snap, nor saw the Flash.

The Letters Mr. *Mills* wrote me on this unhappy Occasion were extremely polite; and those I wrote him were in as respectful Terms as I was Master of. It was Mr. *Mills*'s Character, his Rank and Distinction in Life, that engaged me in this unfortunate Business; for I should not have accepted a Challenge from any Man inferior to him.

For myself, my Concern for the unhappy Fate I shall soon meet with is little, compared to that I feel for the Sorrow and Affliction it will bring on a tender Parent; and the Grief and Anguish the Consequences of this unfortunate Duel will occasion to an unhappy Lady, when she hears the shocking News of her Husband's Death.

I must, in Justice to Dr. *Webbe*, acquit him of any Concern in the Matter. He is perfectly innocent of the Cause of my Quarrel with Mr. *Mills*; neither did he know any thing of the Duel, either before or after it. One Gentleman was acquainted with it; a Gentleman whom I asked to be my Second, which he refused. I beg to be excused mentioning his Name, but he is neither of this Island, nor of *Nevis*.

I am obliged to your Honours for the Candour and Impartiality you have shewn in the Course of my Trial. You, Gentlemen of the Jury, I must acknowledge, have acted like upright honest Men. Had I been in your Place, I should have found the same Verdict you have done.

I have nothing now to ask of your Honours, but that you would please to allow me a little Time to settle my Affairs, and to make my Peace with God.

To which Mr. President *replied,*

To be sure, you shall have a proper Time allowed you.

On *Saturday* the 20th of *January*, 1753, the Prisoner was executed at the Town of *Basseterre*, according to the Sentence pronounced against him.

At the Place of Execution he delivered the following Paper to the Provost-Marshal.

My Friends and Fellow-Subjects,

" You see me this Moment a dreadful Instance, how much the human " Mind may be led away and imposed on by false and empty Notions " affecting Reputation in the Estimation of weak and fallible Men; " even so far as to commit the highest Crimes in the Sight of God, " and daringly to violate all human Laws, calculated for the Good and " Safety of Society. Let my Example be a Means to teach Men to " act more consistently with their Reason; and let my Punishment deter " them from the Commission of Crimes like mine. And then my Death, " and that of the unhappy Gentleman who fell by my Hand, will, I " hope, by the Benefit the World will receive from the Example, make " some Amends to the Community for the Loss of two Subjects, who " might, had it not been for the unhappy Fate which attended them, " have lived not unuseful Members of Society."

Mr. *Barbot* was born in *London*, where his Father, who is a Working Silversmith, (a Man of some Substance in the World, and, as it is said, of a good Character) still lives. At about fourteen Years of Age, he was put Clerk to Mr. *Delaport*, an Attorney in *Staples-Inn* in *London*; with whom he served a Clerkship for the usual Term of five Years. After that Time expired, he came from *England*, in the Year 1746, in Character of Clerk to a Gentleman of the Profession of the Law in *Antigua*. With this Gentleman he lived near two Years; and then, having not been very prudent in his Conduct, and having besides contracted some Debts there to the Amount of 2 or 300 *l.* Currency, he came to *Nevis*; where he made a very close Acquaintance with the Family of the *Webbes*. Having for some Time lived a very idle Life there; and given away, and otherwise unprofitably disposed of, a considerable Part of a small Cargo of Goods, of about the Value of 4 or 500 *l. Sterling*, which his Father had sent him to sell, and spent the Produce of the rest of it; and being at length reduced to extreme Necessity, he came, about three Years ago, to this Island; where, by a critical Scarcity of Attornies at Law, he got himself admitted one in the ordinary Court of Common Law; and in the very first Year, had such a Run of Business, as to enable him to clear off what Debts he owed in the *West-Indies*; which amounted to near 400 *l.* Currency; and to put a handsome Sum of Money in his Pocket besides. The first Year of his being here, he behaved with Industry and Fairness; but soon after, from a natural Dislike to Business, and too great a Disposition to get Money by the most likely Means that offered, he greatly neglected his Clients Affairs, and fell into a Way of buying up desperate Debts; which he commonly found Means so to turn and twist about, as to make them good in the End; by getting still better and better Security for them every Time he sued for them, and by adding each Time the Interest and Costs: By which means he made them at once larger and more secure. Thus, by the Dissatisfactions of many who employed him, and some small Imputations he drew on his Character; as also by Persons of less questionable Reputation, and more Industry, coming to practise as Attornies in the same Court, his Practice was greatly reduced: And yet, by one Means or another, he became at length worth, as he says, (and, I believe, truly) about 800 *l. Sterling*. His Age, by the Plate on his Coffin, appeared to be but twenty-five: Though I should think he must have been two or three Years older: But of this I have no Certainty.

For the rest, he had a good School Education; and knew *Latin*, and spoke *French*, very well. He had made some Progress in the Mathematics; and knew, and was very apt in, Figures; and was a tolerable Proficient in Music. He had a pretty good Taste of Literature in general; and a good deal of general light Reading: But his Judgment was by no Means solid; and his Mind of a romantic Cast; though not without something of ingenious in it, and some considerable Sprightliness of Parts. To which I must add, he was a very ready Writer, in either Sense of the Word; having both great Freedom and Quickness of Hand, and Fluency of Expression. He was remarkably courteous in his common Behaviour; but his Politeness and Deportment were of that Sort, which is usually distinguished by the Name of Priggism: which the Littleness of his Person (a Circumstance well worthy the Attention of Persons of the same Size and Turn) contributed to make much more observable, and thereby to set him in a more ridiculous and contemptible Light; as a certain Pertness in his Manner, and Forwardness in his Behaviour, with a Vanity conspicuous in all he said and did, rendered him often very troublesome and disgusting.

* The Prisoner, in a Conversation he had with the Publisher, while he was under Condemnation in Goal, told him, That he had destroyed the Original Letters which passed between Mr. *Mills* and himself; but that he had preserved Copies of them, which Copies he had put in a Bottle, and buried in Mr. *Pinney*'s Garden (where Dr. *Webbe* lives) at *Nevis*. So remarkable a Circumstance as this, had it been true, one would think could hardly have escaped him on his Confession in Court. The Omission of this Circumstance therefore very justly calls in Question the Genuineness of the Letters, and inclines one too reasonably to believe, from that and some other Observations, that the Letters which he has given for those that passed between Mr. *Mills* and himself, are the Effect of an After-thought, and were probably *formed*, during his Condemnation in Goal, and sent up by him with Directions to bury them at *Nevis*.

L. *The*

L. *The* TRIAL *of* Timothy Murphy, *for Felony and Forgery, on* Saturday *the* 13*th Day of* January, 1753, *before the Right Hon. Sir* Criſp Gaſcoyne, *Knt. Lord-Mayor of the City of* London, *the Right Hon. the Lord Chief-Baron* Parker, *and others of his Majeſty's Juſtices,* &c. *at* Juſtice-Hall, *in the* Old-Bailey, *for the City of* London *.

Clerk of the Arraignments.

CRYER, make Proclamation.

Cryer. Oyez! Oyez! Oyez! You good Men of the City of *London*, ſummoned to appear here this Day, to try between our Sovereign Lord the King, and the Priſoners that ſhall be at the Bar, anſwer to your Names as you ſhall be called.

Then the Jury were called over.

Cl. of Arr. Set *Timothy Murphy* to the Bar. *(Which was done.)*

Cl. of Arr. How ſayeſt thou, *Timothy Murphy*, art thou guilty of the Felony whereof thou ſtandeſt indicted, or not guilty?

Priſoner. Not guilty.

Cl. of Arr. Culprit, how wilt thou be tried?

Priſ. By God and my Country.

Cl. of Arr. God ſend thee a good Deliverance.

You, *Timothy Murphy*, the Priſoner at the Bar, hearken to what is ſaid to you.

Theſe good Men, who are now called, and do here appear, are thoſe that are to paſs between our Sovereign Lord the King and you, upon your Life and Death; if therefore you will challenge them, or any of them, you muſt challenge them as they come to the Book to be ſworn, before they are ſworn; and you ſhall be heard.

Cl. of Arr. Call *Thomas Batten. (Who appeared.)*

Cl. of Arr. Crier, give the Book to Mr. *Batten.*

You ſhall well and truly try, and true Deliverance make, between our Sovereign Lord the King, and the Priſoner at the Bar, whom you ſhall have in Charge, and true Verdict give, according to your Evidence: *So help you God.*

In like Manner the other Eleven were ſworn, *viz.*

Robert Holaday,	*James Callings,*	*Richard Pargiter,*
Thomas Godenough,	*Edward Pope,*	*Robert Naſh,*
Peter Bredal,	*William Bitberny,*	*James Elliot,*
John Goldſmith,	*Gilpin Ruſſell,*	

Cl. of Arr. Count theſe. *(They were counted.)*

Crier. Are you all ſworn, Gentlemen?----*Jury.* Yes.

Cl. of Arr. Make Proclamation.

Crier. Oyez! Oyez! Oyez! If any of you can inform my Lords the King's Juſtices, the King's Serjeant, the King's Attorney-General, or this Inqueſt now to be taken, of the Felony and Forgery of which the Priſoner at the Bar ſtands indicted, let them come forth, and they ſhall be heard, for now the Priſoner ſtands at the Bar upon his Deliverance.

Cl. of Arr. Timothy Murphy, hold up thy Hand. *(Which he did.)*

Gentlemen of the Jury, look upon the Priſoner, and hearken to his Cauſe: He ſtands indicted by the Name of *Timothy Murphy*, late of *London*, Yeoman, for that he, after the 29th of *June*, 1729, *to wit*, on the 9th of *February*, in the 24th Year of his preſent Majeſty's Reign, with Force and Arms, at *London*, *viz.* in the Pariſh of *St. Benedict*, near *St. Paul's* Wharf, in the Ward of *Caſtle-Baynard*, in *London* aforeſaid, felonioufly did falſely make, forge, and counterfeit, and cauſe and procure to be falſely made, forged, and counterfeited, and willingly act and aſſiſt in the falſe Making, Forging, and Counterfeiting, a certain Will and Teſtament, purporting to be the laſt Will and Teſtament of *John Wilkinſon*: The Tenor of which ſaid Will and Teſtament is as follows, that is to ſay,

In the Name of GOD, Amen. John Wilkinſon, *late of the* Princeſs Amelia, *being of ſound and diſpoſing Mind and Memory, make this my laſt Will and Teſtament; firſt and principally commend my Soul into the Hands of the Almighty God, hoping for Remiſſion of all my Sins, through the Merits of Jeſus Chriſt, my bleſſed Saviour and Redeemer, and my Body to the Earth or Sea, as it ſhall pleaſe God; and as for ſuch worldly Eſtate and Effects which I ſhall be poſſeſſed of, or tilled* (meaning entitled) *unto at the Time of my Deceaſe, I give and bequeath the ſame followeth, that is to ſay, unto my loving Friend* John Daunt, *of* Liſbon, *in the Kingdom of* Portugal, *Victualler, all ſuch Salary or Salaries, Prize-Money, Bounty-Money, Wages, Tickets, Short-Allowance-Money, Smart-Money, and all other Sum or Sums of Money that ſhall be due to me at my Deceaſe: And I do hereby grant the ſaid* John Daunt, *whole and ſole Executor of my laſt Will and Teſtament, and I do hereby revoke and diſannul other Wills, at any Time by me before made: And I do hereby nominate, conſtitute, and appoint the ſaid* John Daunt, Exctu^or (meaning Executor) *of this my laſt Will and Teſtament; and I do give and bequeath unto my ſaid Executor, all the reſt and of my Eſtate whatſoever, both real and perſonal, hereby revoking and making void all others and former Wills by me heretofore made as aforeſaid, declare this to be my laſt Will and Teſtament. In Witneſs whereof, I have hereunto ſet my Hand and Seal, this 5th Day of* May, *in the Year of our Lord,* 1747. Jo^n. Wilkinson.

L. S. *Signed, ſealed, publiſhed, and declared, by the ſaid* John Wilkinſon, (meaning by the ſaid *John Wilkinſon*) *as and for his laſt Will and Teſtament, in the Preſents* (meaning Preſence) *of us who have hereunto ſubſcribed our Names, as Witneſs, in the Preſents* (meaning Preſence) *of the Teſtator.* Thomas Carty, Dinish Collins.

With an Intent to defraud *Thomas Noads*, againſt the Form of the Statute in ſuch Caſe made and provided. There are ſeveral other Counts in the Indictment for publiſhing the ſaid forged Will; with the like Intention to defraud the ſaid *Noads*, &c.

Upon this Indictment he hath been arraigned, and thereunto hath pleaded Not Guilty, and for his Trial hath put himſelf upon God and his Country, which Country you are; your Charge is to inquire whether he be guilty of the Felony and Forgery whereof he ſtands indicted, in Manner and Form as he ſtands indicted, or not guilty.

Mr. *Bamber Gaſcoyne* having opened the Indictment,

The Honourable Mr. *Hume Campbell* (Brother to the Earl of *Marchmont*) ſpoke as follows: May it pleaſe your Lordſhip, and you, Gentlemen of the Jury, I am Counſel on the Side of this Proſecution. You have heard from the Indictment, that the Perſon who now ſtands a Priſoner before you, is charged with the Forgery of a pretended Will of one *John Wilkinſon*, in order to defraud *Thomas Noads* of a conſiderable Sum of Money. And, Gentlemen, was there nothing more requiſite in this Caſe, than to open the Evidence which ſhews the Priſoner's Guilt; had no Artifice been uſed, no extraordinary Attempts been made, to prevent or to prejudice this Trial, I ſhould ſcarce have appeared here to give you any Trouble at all. And now I am here, I ſhould have been glad, if the Conduct of a Perſon acting for the Priſoner, and who now hears me, had permitted me to ſtate only ſuch Facts, as prove the Juſtice of the Proſecution. But from what happened this Seſſion as well as the laſt, in relation to this Trial; from an Intimation that the baffled Attempt to try the Proſecutor on the Evidence of the Priſoner, would be turned into an Endeavour to avoid or diſcredit the Teſtimony of that Proſecutor; it becomes neceſſary for me to relate Facts of an earlier Date than I ſhould otherwiſe have done, and Circumſtances I ſhould have wiſhed not to mention: Theſe will prepare you for what may ariſe in the Courſe of the Trial, and enable you to underſtand what, I gueſs, the learned Gentlemen I ſee here on the other Side will inſiſt on.

You all, doubtleſs, have heard, that ſome Years ago, in the Time of War, ſeveral Privateers, four in Number, were fitted out by the Merchants of *Briſtol* and *London*, by the Name of the *Royal Family*: On Board one of theſe Ships (the *Princeſs Amelia*) one *John Wilkinſon* entered as a Midſhipman: The Ships put to Sea, and having taken Prizes of great Value, Mr. *Henry Caſamaijor* of *Briſtol* was appointed Agent for the Payment of the Sailors, for whom it was thought moſt convenient they ſhould be paid at *Briſtol*; but as ſome Perſons might have Occaſion to call for their Money in *London*, Mr. *Caſamaijor* employed a Perſon in Town, who was to write to him, that Money might be remitted to pay them; that Perſon was *Thomas Noads*, a Gentleman who has unfortunately, by that Situation, brought his Name into Queſtion in this Place, and is become (God only knows why) the Object of the Reſentment of a Man whoſe Name I muſt preſently mention to you, though much to his Diſcredit and Diſhonour.

Mr. *Noads* being thus employed, and in *Auguſt* 1750 Notice having been given that all the Sailors might receive their Prize-Money of the proper Agent; in the *February* following the Priſoner at the Bar conceived he might get Money by ſetting up the forged Will and Power of a Perſon he probably thought would never appear to call it in Queſtion, or at leaſt that he had ſo much Art as to avoid a Diſcovery, or evade the Juſtice and Laws of his Country.

The Priſoner happened to be at a Houſe near *Charing-Croſs*, a Houſe of bad Fame, with a Man whoſe true Name now comes out to be *Thomas Williams*: To him the Priſoner applied, and deſired he would co-operate with him, telling him he would get him Money enough; that he ſhould wear a Sword, and live like a Gentleman: The Man did not very well underſtand in what Manner this was to be contrived; but *Murphy*, who it ſeems is pretty ready at Invention, diſcloſed his Method of executing his Scheme in this Manner: If you will, ſays he to *Williams*, appear as the Executor, I will forge the Will of *John Wilkinſon*: We ſhall go together, you as recently arrived from *Portugal*, and I as your Acquaintance: We ſhall get the Money without Suſpicion. *Williams* was a Novice, and terrified at that which might reach his Life, he did not care to join in what the Priſoner propoſed. You don't know, ſays the Priſoner, how many there are in *London* that live by forging Wills and Powers: Why, you may dreſs like a Gentleman, appear in good Company, and wear a Sword. Go down Stairs, continues the Priſoner, and I'll make a Will and Power for this *John Wilkinſon*, that ſhall intitle you to his Prize-Money: Your Name ſhall be *John Daunt*. *John Daunt!* Who is *John Daunt?* replied *Williams*. He is a Man, anſwers the Priſoner, whom I knew when at *Liſbon* with the Privateers; he kept a Public-Houſe there, where *Wilkinſon*, myſelf, and others, uſed to reſort; this will make the Story tell; for we will ſay, that you, *John Daunt*, of *Liſbon*, a Houſe-Keeper, are come over with this Will and Power of *Wilkinſon*, in order to get the Money, and that he made his Will to you on the Account of a Debt of about Seventeen Moidores; and I'll go along with you as a Friend, and ſhall get the Money. By this Artifice, and ſome Threats, *Williams* was prevailed on to aſſent, and left *Murphy* to do as he pleaſed. Soon after, *Murphy* called him up, and read over to him the Will he had made. The Will, Gentlemen, is here to be ſhewn to you, with two Witneſſes Names to it. Then *Murphy* ſaid to *Williams*, Now, you are *John Daunt*, the Executor. After he had read over

* Taken with Leave of the Court by *T. Gurney*, Short-Hand Writer, at the Seſſions-Houſe in the *Old-Bailey*.

both the Will and Power, freſh forged, he conducted him to the Lodgings of Mr. *Noads*, where the Money was to be received. The Letter of Attorney was firſt produced. Mr. *Noads* aſked a very natural Queſtion, *viz.* Where is this *Wilkinſon?* Here *Murphy* made a Miſtake, by producing the Power firſt; but, I ſuppoſe, they thought to get it upon the Letter of Attorney; but finding that would not do, *Murphy* anſwered, *Wilkinſon* went from *Liſbon* to the Coaſt of *Guiney*, and there he died. Then, ſays *Noads*, I can't pay the Money on a Letter of Attorney. But we have his Will as well as Power, replies *Murphy*; and then the Will in Queſtion was produced, and *Williams* paſſed at this Time for *Daunt* the Executor. Mr. *Noads* told them, the Will was nothing 'till proved. *Daunt* was to paſs for a Stranger, and as unacquainted with what was to be done in this Country: and therefore the Priſoner took upon himſelf the Conduct of the Whole, and aſked *Noads* where they were to go to prove the Will, who recommended them to Mr. *Creſpigny*, (a Gentleman of very great Character in his Profeſſion, and employed by the Managers as their Proctor); therefore they deſired Mr. *Noads* to write the Name on the Back of the Will, and he wrote *Creſpigny* accordingly; then *Murphy*, and *Williams*, by the Name of *Daunt*, (for at this Time neither Mr. *Creſpigny* nor Mr. *Noads* had the leaſt Suſpicion that he bore any other Name) went to Mr. *Creſpigny*, where they produced this Will again as the Will of *John Wilkinſon*, who, they ſaid, was dead on the Coaſt of *Guiney*. Mr. *Creſpigny*'s Clerk wrote it down, and went with them before a learned Doctor, where *Williams* (as *Daunt*) took the Oath uſual on ſuch Occaſions, and the Probate was granted; but not being able to pay for the Probate, they told Mr. *Creſpigny*'s Clerk, that they were poor Sailors, and had nothing but what they were to get by the Will, and therefore they could not pay him then; but if he would be ſo good to ſend the Probate to Mr. *Noads*, the Money ſhould be paid out of the Prize-Money. After this they came again to Mr. *Noads* to receive the Money. The neceſſary Form was to give Mr. *Noads* a Letter of Attorney, to receive it in the Name of *Daunt*, and then he was to pay it to them: Mr. *Noads* wrote to Mr. *Caſamaijor* at *Briſtol*, to let him know of the Application made to him; and as Mr. *Caſamaijor* was always deſirous to avoid Clamour, on Account of detaining any Prize-Money, he immediately remitted to Mr. *Noads* what was due for *Wilkinſon*'s Share; but the Letter of Attorney made to *Noads* not being executed before a Magiſtrate, *Murphy*, with *Williams*, by the Name of *John Daunt*, went before the then Lord-Mayor of this City, and *Williams* (as *Daunt*) there re-executed the Letter of Attorney, to which *Murphy* was a Witneſs: They then returned to *Noads*, and received the whole Money due to *Wilkinſon*, amounting to thirty-ſeven Pounds; and having given *Noads* a Guinea for his Trouble, and paid Mr. *Creſpigny*'s Clerk his Bill for the Probate of the Will, a Receipt was given, and ſigned *John Daunt*, Executor, in the Preſence of *Murphy*. Dated the 20th of *February*, 1750-1. It is in theſe Words:

Received of Thomas Noads 37*l.* 12*s.* 6*d.* *being ſo much he received from Mr.* Caſamaijor, *per Probate of the Will of* John Wilkinſon, *in full Balance of his Account.* *Signed* John Daunt, *Executor.*

You will obſerve the Date, it is the 20th of *February*, 1750-1. Thus the Matter reſted without Suſpicion. Mr. *Noads* had paid the Money, little imagining what he had been thus tranſacting as a Servant, was paying 37*l.* out of his own Pocket, in his own Wrong, or that he ſhould, by the Artifice of any Man, be called in Queſtion, not only for his Character, but even for his Life; yet ſuch a Man there is in this Country: But I truſt in God it will not be long before Vengeance overtakes him.

There was not a Suſpicion of the Tranſaction 'till *January* 1752, or thereabouts, when *John Wilkinſon*, whoſe Will was proved as dead, and his Prize-Money paid, arrived in *England*. Then Mr. *Noads* found he had been cheated, and therefore he determined to do, what every body will commend him for, to diſcover and bring to Juſtice the Contrivers and Perpetrators of this Iniquity, little imagining, that he ſhould by that Means incite a capital Proſecution againſt himſelf. *Murphy*, at the Time of the Tranſaction, in order to impoſe upon *Noads*, pretended that he acted only as a Friend to aſſiſt a Stranger from *Liſbon*, and therefore, in the Preſence of *Noads*, demanded Half a Guinea of *Daunt* for his Trouble. You perceive, Gentlemen, the Artifice of the Priſoner: From this ſmall Demand it was natural for Mr. *Noads* to think that Mr. *Murphy* acted as a Friend and Aſſiſtant only; but as ſoon as he got out of *Noads*'s Houſe, he made a very different Demand; he inſiſted upon Half the Money received, beſides two Guineas for making the Will, and he threatened *Daunt* with Hanging, if he refuſed to pay it.

Mr. *Noads* was now endeavouring to find out the Men, and bring them to Juſtice. He inquired of all the Sailors whom he knew. *Murphy* had gone by his own Name, but *John Daunt* had imported his from *Liſbon*; therefore it is plain, *Murphy* might be diſcovered, though *Daunt* might long lie hid: Accordingly, Mr. *Noads* having got Information that *Murphy* was in *London*, (this was about two Years after the Forgery) he inſtantly applied to one of the worthy Aldermen of this City for a Warrant to take him up; but the Bird was flown, not to be found in that Juriſdiction. He got at laſt Intelligence that he was in *Surry*, and immediately had the Warrant backed by a Juſtice of the Peace of that County, put it into the Hands of a Conſtable, who with other Aſſiſtants ſecured him. *Murphy* knew not at firſt for what he was taken; perhaps he flattered himſelf that this Iniquity, committed ſo long ago, was not diſcovered; but as ſoon as *Noads* appeared, which was after he was in Hold, his Conſcience ſtruck him; he then knew what the Matter was, that it was a capital Offence, and therefore broke from the Officer and ran away; but he was ſoon taken again, and brought before the Sitting Alderman at *Guildhall*; and upon the Oath of Mr. *Noads*, upon his Charge, and at his Proſecution, he was committed for the Forgery now to be tried. The Defence he then made, was not that he was perſuaded by his Proſecutor to commit this Forgery, but that he was innocent, and went only as a Friend of *John Daunt*'s, whom he knew at *Liſbon*, to receive of *Noads* what *Daunt* pretended to be due to him as Executor of *Wilkinſon*; that he knew nothing at all of any Forgery, and therefore it was a very cruel Caſe, and hard upon him. However, he was committed to the *Compter*. He had not long been there, before a Perſon got Acceſs to him, whoſe Profeſſion I know not, but his Buſineſs was to perſuade *Murphy*, that it was in his Power to pervert the Laws, to ſcreen the Guilty, and ſpill Innocent Blood. This Perſon's Name is *Goddard*. What was the Artifice made uſe of? It makes me tremble to think of it; it was an Attempt to make the Priſoner a Witneſs againſt his Proſecutor, and puniſh him for the other's Guilt. If this ſhould be ſuffered to prevail, farewell all Proſecutions for Iniquity. If ſuch a Perſon can have the Ear of a Magiſtrate, and get a Priſoner admitted an Evidence againſt his Proſecutor; if a Felon may be allowed to charge his Proſecutor with the very Felony he ſtands committed for, the Law is made in vain, and Magiſtracy will only be a Terror to the Injured.

This Attempt *Goddard* conceived and perpetrated. He procured the Priſoner to be carried from the Gaol to turn Evidence againſt Mr. *Noads*. One would ſcarce believe any Juſtices could be found to join in ſuch a Scheme; yet he impoſed on two Juſtices ſo far, that they not only admitted the Information of the Felon, but went in Perſon to the Grand Jury to procure a Bill to be found to hang that Man who had been injured, who had ſeized and proſecuted that Evidence. Shocking as this is, yet ſuch was the Attempt, and it is this ſtrange Iniquity which calls me to this Place.

Thus far Iniquity proſpered: But there is a ſuperintendent Power, and we may thank the Almighty for it, who here ſtopped its Progreſs.

Mr. *Noads* continued his Inquiry after *Daunt*, for *Murphy* never would inform him who he was: At laſt he providentially diſcovered, that *John Daunt*'s true Name was *Thomas Williams*, and that he was confined in the Gaol of *Corke* in *Ireland*: From thence he has been brought, and is now here to be produced as a Witneſs before you.

After *Goddard* and his Aſſociates had got Information that *Williams* was diſcovered, and might be produced; that Mr. *Noads* was a Perſon whoſe Character could be eſtabliſhed beyond the Power of any Stain from *Goddard*, (though I am informed he has attacked many higher Characters) the next Contrivance was to defeat all the Evidence; and for this Purpoſe a Bill of Indictment was procured againſt Mr. *Noads*, the original Proſecutor; againſt *Williams*, a Witneſs they knew for the King; and againſt another Man, who knew nothing of the Offence; but Conſcience told them he might be a Witneſs, as he was acquainted with *Murphy*'s Hand; he was therefore clapped into the Indictment. Having effected this Stratagem, of putting the King's three Witneſſes into one Indictment, for the identical Offence with which the Priſoner is charged, they endeavoured to impoſe upon this Court, and ſtruggled hard to get theſe three Men tried firſt upon the Evidence of *Murphy*.

It came before the Court the laſt Seſſions, and the Court did that which was juſt. The preſent Indictment was ordered to come on firſt, that you, Gentlemen, might have the Whole of this Caſe laid before you by thoſe who were the original Proſecutors, and who brought this Tranſaction to Light. And it will be proved to you, with this additional Circumſtance, that when the other Indictment was found againſt *Noads*, *Williams*, and *Carter*; the Will being produced from *Doctors-Commons*; and *Murphy* having declared before *Goddard*, and other Perſons then preſent, that it was all of his own Hand-Writing; *Goddard* ſoon after had the Aſſurance to apply to *Peter Edwards*, (who brought the Will from the Prerogative-Office, and heard *Murphy*'s Declaration) and importuned him to conceal that Part of his Evidence.

This, Gentlemen, is the Nature of the Caſe. You are only to try whether the Priſoner forged the Will of *John Wilkinſon*, with Intent to defraud Mr. *Noads*, whom he has defrauded of 37*l.* We ſhall produce the Will, and prove the actual doing of it by the Priſoner, his Confeſſion of its being his own Hand-writing, and that *Wilkinſon* is now alive.

When that is done, I make no Doubt but you will be ſatisfied that you ought, according to your Oaths, to find the Priſoner guilty.

I have ſaid nothing, I hope, to bear harder upon him than the Facts will warrant.

As to that Man *Goddard*, whom I have ſo often named to you, I could not do leſs than place him in the Light I have done: If I gueſs right, the Queſtion will not be, whether the Priſoner is guilty or not, but whether the Artifices which *Goddard* has uſed ſhall be ſufficient to ſtifle the Evidence, and prevent its being offered for your Conſideration. For that Reaſon I have ſtated the Caſe at large.

My Lord will give us an Opportunity, I doubt not, to ſupport the Character of Mr. *Noads*, if they attack it, I have not the leaſt Doubt but they will repent it, if they do, as I hope they will every Part they have acted in this Affair. We ſhall now proceed to call our Witneſſes.

Peter Edwards ſworn.

Edwards. I am an Officer in the *Commons* in the Prerogative-Office.

[*He produces a Will of* John Wilkinſon.]

Coun. Where had you that?

Edwards. I had it out of the Prerogative Office, it was filed there.

Coun. Who delivered it to you?

Edwards. It was delivered to me by the Record-keeper's Clerk; he has them Wills in his Cuſtody always.

Coun. for the Priſ. Did you ſee the Record-keeper's Clerk take it off the File?

Edwards. Yes, I did. [*It is read in Court to this Purport.*]

'In the Name of God, *Amen*. *John Wilkinſon*, late of the *Princeſs Amelia*, 'being of ſound and diſpoſing Mind, *&c. as ſet out in the Indictment.* In 'Witneſs whereof I have hereunto ſet my Hand and Seal, this 5th Day 'of *May*, in the Year of our Lord 1747. *John Wilkinſon.*'

'Signed, ſealed, publiſhed, and declared, by the ſaid *John Wilkinſon*, 'as and for his laſt Will and Teſtament, in the Preſents of us who have 'hereunto ſubſcribed our Names, as Witneſſes, in the Preſents of the 'ſaid Teſtator.

Thomas Carty, Diniſh Collins.'

Coun. Has the Priſoner ſeen this Will?

Edwards. He ſaw it the laſt Seſſions, I was preſent, it was at the Coffee-houſe in the *Old-Bailey*.

Coun. Who delivered it to him?

Edwards. I gave it to Mr. *Goddard*, and Mr. *Goddard* handed it to him.

Coun. Did he read it over?

Edwards. He looked it over, and owned he wrote the Body of the Will.

Coun. What were his Words?

Edwards. He said he wrote the Body of the Will, but that *Noads* either signed the Name *John Wilkinson*, or one of the Witnesses Names.

Coun. Did he say *Thomas Noads?*

Edwards. He said *Noads*, I cannot be positive whether he mentioned *Thomas*.

Coun. Did Mr. *Goddard* come to you afterwards, and what was the Conversation?

Edwards. He came to the Office some Time afterwards, I believe the next Week after, and told me not to take any Notice of what passed: That I only attended with the Will as an Officer of the Court; and he desired me not to take in the Conversation at any time.

Coun. Did he give you any Reason?

[*Here his Lordship interposed, because what* Goddard *said, was not Evidence to affect the Prisoner.*]

Cross-Examination.

Coun. for the Pris. Did you attend as an Officer of the Court last Sessions?

Edwards. I did, I attended with the Will before the Grand Jury, when the Prisoner at the Bar was there as a Witness.

Coun. for the Pris. What did you attend for?

Edwards. To produce the Will as I have done now.

Coun. for the Pris. Was it before or after you went to the Grand Jury, you heard the Prisoner own he wrote the Body of the Will?

Edwards. Before I went to the Grand Jury, the Prisoner spoke to *Goddard*, and then he confessed writing the Body of the Will.

Coun. for the Pris. Which Name did he confess he wrote?

Edwards. I cannot be certain; if I could, I would tell it.

Coun. for the Pris. How do you know that a Probate has been granted?

Edwards. Here is a Memorandum of a Probate being granted on the Back of it.

Coun. for the Pris. What is the other Mark on the Back for?

Edwards. It is that the Testator was late belonging to his Majesty's Ship the *Amelia*.

Coun. for the Pris. Have you seen the Probate?

Edwards. No, I have not.

Coun. for the Pris. Whose Hand-writing is that Memorandum?

Edwards. It was Mr. *Crespigny*'s Clerk. That is filled up by the Proctor's Clerk, in order to fix the Seal. Before it is sealed, there is an Entry made by some Officer, to shew that this is a Person that died beyond Sea.

Coun. for the Crown. What is that Entry made on the Back of it for?

Edwards. That is the Foundation of granting out the Administration.

Thomas Noads called.

Prisoner's Counsel, Mr. (afterwards Serjeant) Nares.

My Lord, though I am of Counsel in this Case with the Prisoner at the Bar, I shall think myself no farther bound to defend him, than he shall actually appear to be, or at least may be presumed to be, innocent of this Accusation. On which Side soever the Villainy is, I sincerely wish it may be detected; and if I knew, or was at Liberty to presume, that the Facts now stated by Mr. *Hume* are as he represents them, I would throw up my Brief directly.

But every Man, my Lord, is by Law presumed to be innocent, 'till he is proved to be guilty; therefore it would ill become me, who am of Counsel with the Prisoner, to presume him otherwise; and therefore your Lordship will excuse me, if I take such Objections in point of Law, in the Course of this Trial, as either are, or at least my weak Judgment induces me to believe, may be of Service to the Prisoner.

In the first Place, my Lord, *Noads*, who is now offered as an Evidence on Behalf of the Prosecution, stands indicted for the same Crime for which the Prisoner at the Bar is now on his Trial. The Indictment is found, and principally, if not solely, upon the Prisoner's Evidence; therefore I must first desire the Indictment may be read. [*It is produced.*]

I must submit it to your Lordship, that *Noads* in this Case is not a Witness. I will not take upon me to say, that no Accomplice can be a Witness; to be sure it is laid down in many Cases that he may, and it is often absolutely necessary he should be so; therefore I shall not take up your Lordship's Time in insisting on a Point which seems now to be settled: But it seems to me by no Means settled, that an Accomplice, against whom an Indictment is found, is admissible as a Witness; therefore I beg Leave to state what are my Reasons why the Law appears to be doubtful in this Particular.

I shall very candidly own, that in *Hawkins*'s *Pleas of the Crown*, it is said, that although an Accomplice be indicted, he may be a Witness; but then it is likewise said, in the same Paragraph, that he may be a Witness, *if he is not indicted*; and that Mr. Serjeant *Hawkins* seems to lay down in the first Place as Law, and cites Authorities for it; and from the Expression, *if he be not indicted*, this Conclusion seems plainly to be deduced, that *if he is indicted* he cannot be a Witness.

Supposing then the Authorities are both Ways, I shall think myself justified in saying, there is a Doubt in the Case; and if it should remain a Doubt with your Lordship, I dare say your Lordship will determine on the merciful Side, in Favour of Life.

My Lord *Hale*, in his first Volume of his *History of the Pleas of the Crown*, 305, takes Notice of the same Doctrine that is laid down by Mr. Serjeant *Hawkins*, and after stating the several Instances in which an Accomplice may be admitted, he goes on and says, "But that Person "must never be indicted;" and speaks of his Capacity of being a Witness, in case he is indicted, with so much Diffidence, that he seems to have a great Doubt whether he is to be admitted or not; and I cannot help saying, that there is, in point of Reason, great Weight in such an Objection; for it seems exceeding strange to me, if not absurd, to say, that in point of Law, the most minute pecuniary Interest in the World, though ever so remote, shall take off a Man's Testimony, and render him incapable of being a Witness, as not being unbiassed and impartial, and at the same Time to say, a Person can be an unbiassed and impartial Witness, who is indicted for the same Crime, and is swearing to save his own Life (which must necessarily be the Consequence in the present Instance), for if the Prisoner is convicted, there can be no Evidence against the Witness.

As to the Minuteness of a pecuniary Interest to take away a Person's Capacity of being a Witness, I shall only mention one Instance, which I have known in Practice; which is, that on an Indictment for stopping up or obstructing an Highway, which is laid to be used for Carts and Carriages, no one of the Inhabitants, who are bound to repair, can be admitted as a Witness to prove it is not a Way for Carts and Carriages, but only for Horses; because it is to diminish an Expence to which he is liable. And this Rule holds, though the Number of Inhabitants who contribute to the Repairs amount to ten thousand.

But supposing your Lordship should think that the View of saving Life, or securing personal Safety, though immediate, is not considered, in point of Law, as having the same Influence on a Witness, as so small and so remote a pecuniary Interest as I have mentioned, there is an Objection to *Noads*'s being an Evidence arising from such an Interest.

It has been opened by Mr. *Hume*, and *Noads* is now called to prove, that he hath been defrauded of 37 *l.* which Sum he paid out of his own Pocket, by an Imposition put upon him by the Forgery of this Will, it being produced to him as the Will of *John Wilkinson*, who was on Board the *Amelia* Privateer, by his pretended personal Representative; and it is likewise laid in the Indictment to be to *Noads*'s Damage.

And I must submit it to your Lordship, that 'tis a Rule of Evidence, that no Person can possibly be admitted as a Witness to overturn a Fact, the Overturning of which may be anyways beneficial to himself.

In order to state this Objection as fully as I can, I beg Leave to mention the Words of *Hawkins*'s *Pleas of the Crown*, 433, and apply what is there said to the present Objection.

It is there laid down as a good Exception against a Witness, that his Interest is concerned; "That he is either to be a Gainer or a Loser by "the Event of the Cause, whether such Advantage be direct and immediate, or consequential only: And this seems to be the Reason, why "he who is Bail for the Defendant cannot be a Witness for him without "Consent. Also upon the same Ground it is agreed, that he who borrows Money upon an usurious Contract, cannot be a Witness upon an "Information for the Usury, unless he hath paid the Money, whether "such Information be brought by himself, or any other; for, if in such "case a Man might be a Witness, he would in effect swear for himself, "by proving a Matter which may avoid his own Contract. And upon "the like Reason it hath been ruled, that he who has been imposed upon "by a Sleight, to set his Hand to a Note for more Money than he intended, is no Witness on an Information for the Cheat, because a "Conviction may be a Means to avoid the Note, by being made use of "as a Motive to influence the Jury: And for the like Reason it is generally agreed, that he whose Property may be prejudiced by a Forgery, "is no Evidence to prove it: And it hath been adjudged, that he, "against whom a Verdict is given, cannot be a Witness to prove Perjury "in the Evidence; so that, if there be but the remotest Possibility even "of its being thrown out to a Jury, that the Witness can avail himself "by his Testimony, he can be no legal Witness."

These are the Words of the Book: Let us then apply the Doctrine here laid down to the present Case.

It is very plain, *Noads*, as it has been opened, has paid 37 *l.* upon this Will being produced to him as a real Will. This certainly was an Imposition on him. Now the Question is, how far any Advantage can arise to *Noads* one Way or the other, from the Consequence of this Conviction: The Money was paid to *Williams*, who personated one *Daunt*, the pretended Executor of *Wilkinson*'s Will: *Noads* might bring an Action for the Money against *Williams*, as Money had and received to his Use, being procured by a Deceit: In order to prove the Deceit, it may be necessary to shew the Will, of which *Williams* pretended to be Executor, and by Colour of which he received the Money, was forged; and though I will not contend that Verdicts in criminal Prosecutions are in general to be given in Evidence in Actions, yet I cannot see why the Copy of the Indictment, in which the Will is set forth, and of the Conviction in consequence of it, might not be a proper, if not necessary Evidence to prove the Deceit; if not, the mentioning it to the Jury would have a great Influence on them; and if that is Law which is laid down in *Hawkins*, an Advantage, even of that Sort only, would be sufficient, in point of Law, to take away a Man's Testimony.

For these Reasons, my Lord, I beg Leave to insist that *Noads* is not a proper Witness, as being an Accomplice indicted; and if he is as such, yet if he hath that Interest or Advantage arising to him from the Consequence of this Trial, in respect of the Money he has paid, as I have hinted at, that will be sufficient to destroy his Testimony.

Second Counsel for the Prisoner, Mr. (afterwards Serjeant) Davy.

I do assure your Lordship, the Matter hinted at by Mr. *Hume* is entirely new to us, and if we had any Reason to believe it to be Truth, your Lordship would not have been troubled with the Appearance of either of us here; and without doubt, we cannot be justified in deserting the Prisoner, as he is to be tried for his Life, so he may be sure of all the Assistance we can give him under your Lordship's Directions.

Where a Man is at all influenced in the Evidence he is to offer to your Lordship, by any Interest he may receive, either pecuniary, or any Advantage he may have in escaping Punishment, or what not, it will be such a Bias, that will take off that Credit to his Testimony, and therefore be the Cause of his Rejection.

The first Objection is, that he himself stands indicted. I take this to be a Rule, that if he had been indicted in the same Indictment, he might come in as a Witness, supposing he would confess himself guilty, as in Sir *Peter Crosby*'s Case, 1 *Hale*'s *P. C.* 303. It was held in the Star-Chamber, That if two Defendants be charged for a Crime, one shall not be examined against the other to convict him of an Offence, unless the Party examined confess himself guilty, and then he shall be admitted.

This will account for the Distinction made by my Lord Chief Justice *Hale*, mentioned by Mr. *Nares*; for my Lord *Hale*'s Idea of it is, that no Man can turn Evidence for himself; if that is so, your Lordship will see whether there is any Distinction in the Case, when there are two Indictments in the same Case.

This will come still stronger, when it is considered that the Prisoner stands as an Accuser on the Back of that Indictment which is found against

Noads,

Noads, and that which *Noads* is by and bye to be tried for. If he can give Evidence againſt *Murphy*, and convict him, he will prevent that: No Intereſt can be more immediate, than that he ſhould give Evidence to take off the Teſtimony of another Man from convicting him of a capital Crime immediately.

The Order was, *Murphy* being firſt indicted, ſhould be firſt tried: Your Lordſhip will obſerve who ſqueaked firſt. This Indictment againſt *Murphy* was never found 'till ſuch Time that there was a Charge againſt *Noads* for this very Forgery: And, my Lord, this Objection comes in ſome meaſure ſtronger by the Evidence of Mr. *Edwards*: He has been called in to prove a Kind of Confeſſion of the Priſoner of this Forgery. Now all Confeſſions muſt not be taken in Part, but together: The ſame Evidence proves *Noads* alſo to have a Hand in it, becauſe *Murphy* confeſſed he wrote the Body of it, and *Noads* either the Atteſtation or another Name. An Objection will come here in Point of Intereſt: Mr. *Noads* is the Perſon charged in the Indictment to have been defrauded by this *Murphy*; for ſo it has been opened by the Gentlemen on the Part of the Proſecution: Can't he avail himſelf of this afterwards? And as he is immediately concerned in this to ſave his own Life, he will diſable *Murphy* by his Conviction, who is Proſecutor againſt him in the other Indictment; and under ſuch a Bias he ought not to be received as a Witneſs.

The Caſe in *Hawkins*, about a Woman who had indicted her Son for fraudulently obtaining from her a Note of 100 *l.* intending to give her 50*l.* Lord *Hardwicke* in the Caſe of the King and *Bray* mentions that Caſe; my Lord *Hardwicke*'s Words are, That nothing but that great Authority could ſupport it; but he ſays this too in that Caſe of the King and *Bray*, That nothing is more unſettled than the Rule of Evidence: The Determinations often turn upon ſome right or wrong Application of that Rule I have mentioned, and that is, the Bias Witneſſes are under when they come to give Evidence.

Whether *Noads* is not under ſuch a Bias, is not the Queſtion; but whether that Bias is not ſo ſtrong, that it is a material Objection to his being received as a Witneſs, I leave to your Lordſhip.

Mr. Hume Campbell's *Reply.*

My Lord, I ſhould ſcarce think it juſtifiable to take up any of your Lordſhip's Time to anſwer the Objections, which the Gentlemen, by ſtating with ſo much Candour, have really anſwered themſelves, was it not that the preſent Queſtion is of the utmoſt Importance to Futurity, in the Attainment of the great Ends of Protection and Juſtice. We are now to conſider it as a Matter of Doubt, whether every Criminal by turning the Charge againſt his Proſecutor, may not evade Juſtice, and prevent the Court from having any Evidence produced on the Part of the Crown.

There are always two Ways in which Objections to Evidence are made; one is to the Competency of a Witneſs, which is a total Rejection of his Teſtimony; and the other is to his Credit, which is proper only for the Conſideration of the Jury.

In the preſent Caſe, the Gentlemen don't chuſe their Objection ſhould be directed at Mr. *Noads*'s Credit; that would not anſwer their Purpoſe, becauſe we can eſtabliſh his Credit beyond a Doubt. Their Attempt, therefore, is totally to reject his Teſtimony; nothing leſs can afford a Poſſibility of ſupporting the Scheme of turning the Priſoner's Evidence againſt his Proſecutor, or of making the extraordinary Behaviour of the two Juſtices, to bring this Matter about, of any Effect.

I have watched to hear if they could produce an Inſtance, wherein it was ever held, that a Proſecutor's Teſtimony ſhould be rejected, to receive that of a Priſoner charged and committed originally upon ſuch Proſecutor's Oath; and my learned Friends have not offered to ſtate to your Lordſhip a ſingle Authority for it: The Authority quoted out of *Hawkins* is ſtrongly againſt them: My Lord Chief Juſtice *Hale* puts it rightly; it may go to his Credit, and may be weighed by the Jury, but it never can go to the total Rejection of his Evidence. There is no Colour therefore, why your Lordſhip ſhould not hear the Witneſs.

The next Objection is very ſingular; it is, that becauſe, by a forged Will of a living Man, *Williams* has defrauded *Noads* of 37 *l.* and *Noads* may bring an Action againſt him for impoſing upon him, therefore *Noads* cannot be a Witneſs to prove *Murphy* guilty of forging that Will, which, whether counterfeit or genuine, leaves Mr. *Noads* equally defrauded.

I ſubmit it to your Lordſhip, that there is not a ſufficient Foundation to ſupport either of the Objections, which, your Lordſhip obſerves, may be attended with thoſe perilous Conſequences which I pointed out, and endeavoured to prepare the Court for, in the Opening of the Caſe.

Mr. (afterwards Lord Chief Juſtice) Pratt's *Reply.*

In a common Caſe, I think, I ſhould hardly have thought it worth while to give your Lordſhip any Trouble; but the preſent Objection is of the laſt Conſequence to the Juſtice of this Kingdom; for, if it prevails, it will teach every Criminal a Method how to ſkreen himſelf from the Law, and no Proſecutor will ever be able to apprehend a Felon, without running the Riſque of putting his own Life in Danger.

This therefore is a Point which deſerves a very ſerious Conſideration. *Murphy*, who appears now the Priſoner on this preſent Indictment, was, upon hearing Counſel on both Sides, ordered to be tried firſt in favour of Mr. *Noads*. Now, if the Objection prevails, it will not only go to *Noads*, but likewiſe to *Williams* and *Carter*, who are both indicted with Mr. *Noads* by the Priſoner, and theſe are all the Witneſſes who are capable of proving the Forgery upon him; the Conſequence then will be, that not only the preſent Priſoner muſt be acquitted for want of the King's Evidence being heard, but Mr. *Noads* muſt be tried immediately after, and this very Priſoner's Evidence muſt be admitted againſt him. Your Lordſhip will obſerve, what ſtrange perverted Proceedings there would be upon theſe Occaſions, if, where two croſs Indictments are depending, one brought by the Proſecutor, and the other by the Criminal himſelf, it ſhould be held juſt to render the Proſecutor's Teſtimony incompetent upon the firſt Indictment that comes to be tried. If this be the Caſe, Mr. *Noads* would have done right to have come to the Court, and deſired to have been firſt tried; becauſe then, the Priſoner being ſet aſide as having been indicted for the ſame Offence, Mr. *Noads* would have been clearly acquitted; and upon the ſecond Indictment, being clear of Objection by the Acquittal, muſt have convicted the Priſoner.

But to conſider the Principle of Law upon which this Kind of Teſtimony ſtands. This then I take to be a clear Maxim and Ground of Law, and is univerſal, That every Man in this Kingdom is a competent Witneſs on an Indictment in Behalf of the Crown, unleſs he is convicted or attainted of ſome ſcandalous Offence. There muſt be a Conviction before the Witneſs can be diſqualified; which proves that a mere Accuſation or Indictment cannot render him incompetent, however it may affect his Credit; for, in point of Law, every Man is preſumed innocent 'till he is proved guilty: Nor is this denied, but admitted by my Lord Chief Juſtice *Hale*, though what has been cited upon the preſent Occaſion, is confined to Caſes of confeſſed Accomplices and joint Indictments; as to which his Words are, that ſuch Perſons, though indicted, may be admitted as Witneſſes if they confeſs themſelves guilty, but their Teſtimony is not concluſive to the Jury; for they may as well conſider the Credibility or not Credibility of the Witneſs, as the Matter he ſwears. And this is all the Diſtinction he makes even in this Caſe, that though one be indicted, it is not an Objection to his Competency, but may be to his Credit. Nay, in Caſes of Treaſon, he is clear, that ſuch a Perſon is not barely a competent Witneſs, but may be one of the two Witneſſes required by the Statute to an Overt-Act of Treaſon. The only Qualification to the Rule is this, that ſuch a Witneſs, ſo indicted, ſhould confeſs himſelf guilty of the Crime for which he ſtands indicted, which undoubtedly is right; for, if the Court was to admit him a Witneſs to prove his own Innocence, that would be a clear Objection to him; but, if he confeſſes, he comes only to charge another, and not to clear himſelf. But theſe are not like the preſent Caſe. What is the Caſe here?

Mr. *Noads* is the original Proſecutor, and preferred the firſt Indictment. The Priſoner afterwards indicts the ſame Mr. *Noads*, by a ſeparate Indictment, for the ſame Offence. Mr. *Noads* does not come here to give Evidence that he in Conjunction with the Priſoner forged this Will; he does not come under the Light of an Accomplice, but inſiſts upon his Innocence, and muſt at this Time be deemed in Law as innocent, with regard to this Fact, as any Man in Court. This then is a material Difference between joint and ſeparate Indictments; to which Purpoſe my Lord *Hale* in that very Book puts this Caſe, that if *A*, *B*, and *C*, are ſeparately indicted, *A*, one of the Perſons indicted, may be Evidence for *B* and *C*, and they may both be acquitted on his Teſtimony. Mr. *Noads* is indicted in one ſeparate Indictment, and the Priſoner in another. Can there be any Ground to ſay, that Mr. *Noads*, the Perſon defrauded, and the firſt Indictor, ſhall be no Witneſs againſt the Priſoner, for this Reaſon only, becauſe he has been afterwards indicted by him? Was ever a Caſe like this before? That ſix Weeks after the Priſoner had been committed he ſhould be permitted to turn Evidence againſt Mr. *Noads*, who was the only Perſon defrauded, in the firſt Inſtance, by the Forgery; who took him up, and confronted him before the the Alderman; who charged him upon his own Oath with this Offence uncontradicted; who cauſed him to be committed, who indicted him? Shall this Priſoner now, to ſave his own Life, give Evidence againſt his Proſecutor (for the ſecond Indictment is the Evidence of the Priſoner), to ſet aſide that Indictment upon which he himſelf is to be tried? If this be the Caſe, the Lord have Mercy upon every Man that attempts to proſecute a Felon for the ſake of Juſtice! for, if this ſhould be allowed, no Man, except the Proſecutor, will ever be convicted.

[*Mr.* Moreton *was going to enforce what had been ſaid, when his Lordſhip declared it was unneceſſary, and that the Court was clearly of Opinion, Mr.* Noads *ought to be admitted a Witneſs, and therefore over-ruled the Objections to his Competency.*]

Thomas Noads ſworn.

Noads. The Priſoner at the Bar was one of the Sailors on board one of the *Royal-Family* Privateers; he came to me in the Beginning of *February* 1750-1, about the 3d or 4th, with a Perſon by the Name of *John Daunt*.

Q. Where did you live then?

Noads. I lived then in the *New-Buildings, Coleman-Street*.

Q. What is your Buſineſs?

Noads. I act as a Book-keeper or Clerk to the Managers of the *Royal-Family* Privateers.

Q. Had you ſeen the Priſoner before *February* 1750-1?

Noads. He has been frequently at our Office: I was by when he received his own Part: The firſt of his coming was to ſollicit for 20*l.* before the Accounts were ſettled.

Q. Had you ever ſeen that Perſon before, that came in the Name of *John Daunt*?——*Noads.* No, I never had.

Q. What did they come about?

Noads. The Priſoner brought *Daunt*, and a Will and Power, and told me it was the Will and Power of *John Wilkinſon*. I knew by our Book there was ſuch a Perſon on board. The Priſoner told me that *Daunt* kept a Public-Houſe in *Liſbon*, and that he had frequently drank at his Houſe at *Lisbon* with *Wilkinſon*; and ſaid it was a Houſe that he and ſeveral other Sailors uſed while the Ships lay there; and that he knew *Daunt* to be a very honeſt and worthy Man: He deſired I would write to Mr. *Caſamaijor* of *Briſtol*, (who was the Agent appointed to pay the People for their Services on board) for the Money due to *John Wilkinſon* for his Service on board the *Royal-Family* Privateers. I aſked him ſome few Queſtions with regard to the Ships: Both of them told me, that *John Wilkinſon* lodged with *John Daunt* at *Lisbon*, at the Time the Ships were fitting out for a ſecond Cruize. I aſked them, what was become of *Wilkinſon*, that I had heard nothing of him for upwards of two Years; *Murphy* replied, he died on the Coaſt of *Guiney*: I ſhould otherwiſe have paid them the Money on the Power of Attorney, which they had firſt produced; but as I underſtood the Man was dead, I could not then pay the Money upon the Power. *Murphy* then immediately propoſed to go to the *Commons* to prove the Will, ſaying, at the ſame Time, he knew very well how to go about it; for that he had proved the Will of one *Miles Maſterſon*, I think the Name was; he then mentioned ſome Proctor's Name, I think it was *Hughes*; I then told him he might as well go to Mr. *Creſpigny*.

Q. Do you know the Day of the Month you had this Converſation?

Noads. I believe this was the 9th of *February*. They were ſeveral Times with me from the Beginning of *February* to the 9th, In the Afternoon the

the ſame Day they returned to me, and told me that the Will was proved, and deſired me to make out a Power of Attorney for me to receive the Money of Mr. *Caſamaijor*, he living at *Briſtol*. I made one out accordingly, *Murphy* was a Witneſs to it. (*He produces it.*) They went away from me, and came in two Days after. I believe this was on *Saturday*, and they returned on the *Monday*, and brought it re-executed before the then Lord Mayor. I then wrote to Mr. *Caſamaijor*, and he remitted me the Money on the 18th or 19th of *February:* They both called again on the 20th, and on that Day I paid the Money to *Thomas Williams*, the Man who calls himſelf *John Daunt:* I took a Receipt for it; (*He ſhewed a Receipt*) This is it. *Thomas Williams* ſigned it by the Name of *John Daunt*, and *Murphy* was preſent at the Time. I paid down the whole Money on the Table, 37 *l.* 12 *s.* 6 *d.* They paid back the Deductions, which was about forty Shillings, for proving the Will; they had not Money to pay for the proving the Will, ſo Mr. *Creſpigny*'s Clerk ſent the Will to me, to take the Money for him.

Q. What did they give you for your Trouble?

Noads. I believe they gave me about a Guinea; it was not more than twenty-five Shillings, for the Trouble I had in writing Letters, paying Poſtage, and drawing the Letter of Attorney.

Q. Who received the Money of you?

Noads. It was received by the Perſon who went by the Name of *Daunt*, in the Preſence of *Murphy*. *Murphy* at that Time deſired that *Daunt* would give him ſomething for his Trouble in ſhewing him the Way to *Doctors-Commons*, ſo *Daunt* gave him Half-a-Guinea; *Murphy* muttered and grumbled, and ſaid it was too little; then they went out of the Houſe.

Q. Had you ever ſeen the Will of *Wilkinſon*, or Power of Attorney, before that Time they brought it in *February?*—*Noads.* No, I had not.

Q. Who wrote *Creſpigny* at the Back of the Will?

Noads. I might write it very likely, but it is ſo much erazed that I can't ſay. I ſhould have in courſe ſent them to Mr. *Creſpigny*; I ſent every Body that came to have any Thing done in his Way to him; he is the Perſon employed by the Gentlemen as their Proctor.

Q. Have you ſeen *Wilkinſon* ſince that Time?

Noads. I have: I believe him to be the ſame that was on the Books.

Q. Has there been any Demand by him for this Money ſince?

Noads. No, there has not, neither by him or any body elſe.

Q. When did you firſt hear that *Wilkinſon* was living?

Noads. I heard it when the Cauſe came on in Chancery about a Year ago, then he appeared.

Q. Have you ſeen him?—*Noads.* I ſaw him in this Court in the Parlour with Mr. *Goddard*, the Seſſions before laſt.

Q. Did you ever ſee him before?

Noads. I have ſeen him at *Liſbon* among the Ships Crews, and I talked with him ſince about his being there, and about two or three of the Ships, and believe him to be the Man.

Q. How long was it after you paid the Money, when you ſaw him firſt?

Noads. It was a Year and an half after, and that was at this Court, as I mentioned before.

Q. To which Ship did he belong?

Noads. He was one of the Crew of the *Princeſs Amelia*.

Q. Upon your hearing he was alive, and you having paid the Money, what was the firſt Thing you did?

Noads. I made Inquiry after this *Daunt*, but could not find him. I then began to inquire for *Murphy*; and one *Carter*, who had been intimate with *Murphy*, and was on board the Privateers commanded by Commodore *Talbot*, was the firſt Perſon that gave me any Information of him: He at firſt thought I wanted to arreſt him, 'till I told him the whole Affair. *Carter* went to ſeveral Places to make Inquiry after him. When we got an Account of him, which was in about a Fortnight, I got a Warrant from Mr. Alderman *Ironſide*, and then I heard he was at *Tooting*; I got the Warrant backed by Juſtice *Clarke*, and went there, and found he had been there, but was gone: Then I heard he was at *Dulwich*; there I got the Warrant backed by another Juſtice, and found he had been at the *Green-Man* there, but was gone a few Days: I applied to the Maſter of the College, and, by the Aſſiſtance of a Servant to that Gentleman, he was taken at *Newington* on that Side the Water. After he was taken, I appeared. As they were bringing him round the Corner, the Priſoner made his Eſcape from the Conſtable, and ran, but was taken again in a few Minutes after. We took him into a Publick-Houſe there: He aſked what he was taken up for: I told him he might well imagine for what; I ſaid it was for forging ſuch a Will, and that I was very confident it was his Hand-writing, I had compared it with ſome of his. He took me to one Corner of the Room, and ſaid, *Dear Sir*, (lifting up his Hands) *do you think I had any Thing to do with it?* But upon my telling him I was confident it was his Hand-writing, and that ſeveral People knew it, he ſaid he threw himſelf at my Feet, and hoped I would not take away his Life, or to that Purpoſe.

Q. What were his Words, as near as you can recollect?

Noads. He ſaid, *I beg my Life.* I told him I did not want to take his Life away, I only wanted to have common Juſtice done.

Q. Did you underſtand him to mean he wrote the Will and Letter of Attorney?—*Noads.* I did underſtand him ſo; he allowed he wrote it, but did not immediately ſay he did.

Q. During all this Converſation which you had with him, did you inquire after *John Daunt?*

Noads. I aſked him, if it was not one *Thomas Williams* that perſonated *John Daunt*, becauſe I underſtood from *Carter* that it muſt be him; and he ſaid but very little afterwards, and called for ſome Water, and was ready to faint; he never made me any Anſwer to that, whether it was he or not. We then took him before Juſtice *Clarke*, and he ſent him to *Guildhall*; there he was committed to the *Poultry-Compter* by Mr. Alderman *Chitty*, the Sitting Alderman.

Q. Was you by at his Examination before the Alderman?

Noads. I was.

Q. Who made the Charge againſt him?—*Noads.* I did.

Q. Did you make it upon Oath?—*Noads.* I did.

Q. What was the Charge?

Noads. It was with the Forgery for which he now ſtands indicted. I had ſeveral Opportunities of comparing Hand-writings of his that I had got during the Time of my knowing it was a Forgery, and the Time I took him up; and by ſeveral Compariſons, I believe the whole to be his Hand-writing. When we had him before the Alderman, he was aſked after *Daunt*; he ſaid he could prove he lived at *Liſbon*, but ſaid he could not tell where he then was; afterwards he inſiſted upon his Innocency, and ſaid he knew nothing of the Matter; he did own he met *Daunt* in the Street, and ſaid he had ſeen him at *Liſbon*, and that *Daunt* told him he had a Right of receiving that Money from that Will.

Q. When did you prefer a Bill of Indictment againſt him?

Noads. I did the very next Seſſions, which was in *September*.

Q. Were Mr. *Wilkinſon* and Mr. *James Goddard* there at that Time?

Noads. They were: I believe that to be *Wilkinſon*.

Q. Who elſe were there?——*Noads.* There were *Peter Edwards* and *Anthony Devoyer*. That Bill was not found.

Q. How long have you been informed that the Perſon who called his Name *John Daunt* was *Thomas Williams?*

Noads. *Carter* would have it to be him; but I was not confident 'till I went over to *Ireland*, after that Bill was thrown out, to ſee whether a Man, who I was informed was in *Corke* Gaol, was the Man that I paid the Money to; I found him to be the ſame Perſon, I remembered him immediately, and am ſure he is the ſame Man that I paid the Money to by the Name of *John Daunt*, who was recommended to me by the Priſoner as an honeſt Man.

Croſs-Examination.

Coun. for the Priſ. Who was you Agent to?

Noads. I was Agent under Mr. *Henry Caſamaijor*, I tranſacted Buſineſs for him.

Coun. for the Priſ. Did you know *Murphy* before?

Noads. I had ſeen him frequently before he came with that Perſon who called his Name *Daunt*; he was one of the Seamen on board the *Royal-Family* Privateers; he at laſt got to aſſiſt the Captain's Steward as a Kind of Cabbin-Boy.

Coun. for the Priſ. You ſay he came to receive his own Money, what was it?

Noads. The Balance of the Account came to about 7 or 8 *l.* a Share was 36 *l.* 8 *s.* 1 *d.* each, and I believe he had a Share and an Half.

Coun. for the Priſ. Did he produce the Will and Power of Attorney both together?---*Noads.* He did; I believe he took them out of the other Man's Hand, and gave them to me.

Coun. for the Priſ. Did you direct them to make Uſe of your Name to Mr. *Creſpigny?*---*Noads.* No, I did not.

Coun. for the Priſ. Pray recollect yourſelf, did you write that Name on the Back of the Will or not?---*Noads.* I might, but I don't know; that which is not erazed looks like my Writing.

Coun. for the Priſ. Do you know how it came to be ſcratched out?

Noads. No, I do not, nor when it was ſcratched out.

Coun. for the Priſ. Did you read over the Probate?

Noads. No, I did not, I only looked to ſee whether the Name *John Wilkinſon* was there.

Coun. for the Priſ. Is it not uſual to read the Probate over?

Noads. I don't know that ever I read over one in my Life, I don't know that it is cuſtomary.

Coun. for the Priſ. Is this the Probate produced here?

Noads. This is the very Probate.

Coun. for the Priſ. Had you ever ſeen *Williams* before that Time he came with the Priſoner, as you ſay, in the Name of *Daunt?*

Noads. I never did, as I know of: The firſt Time I ſaw him was in the Beginning of *February* 1750-1.

Coun. for the Priſ. Have you ſeen him ſince?——*Noads.* I have ſeveral Times; I was with him eight or ten Times in *Ireland*.

Coun. for the Priſ. What was your Buſineſs when you went to *Ireland?*

Noads. I went on purpoſe to find him out.

Coun. for the Priſ. How came you to miſtruſt him being the Perſon?

Noads. I ſhewed the Receipt to *Carter*, and he ſaid he was very confident the Name *John Daunt* was his Hand-writing.

Coun. for the Priſ. Have you no other Witneſs to prove that than *Carter?*

Noads. No, I have not.

Coun. for the Priſ. Did you make uſe of any Threats?

Noads. No, I did not.

Coun. for the Priſ. Did you mean the Will and Power was the Hand-writing of *Murphy?*

Noads. The Will and Power, Signing and all; I mean all in general.

Coun. for the Priſ. Did you think the Name *Diniſh Collins* is of a different Writing to the other Names?

Noads. I think it is all the Writing of one Hand.

Coun. for the Priſ. What is *Carter?*---*Noads.* He was on board the Privateers, not the ſame Cruize, but the Cruize before.

Coun. for the Priſ. Did you ſhew him the Will?

Noads. I did, and he ſaid the Name *John Wilkinſon* in particular was *Murphy*'s Hand-writing.

Thomas Williams ſworn.

Mr. *Hume Campbell* to *Noads.* Do you know this Witneſs?

Noads. This *Thomas Williams* is the ſame Man that came to me, and received the Money in the Name of *John Daunt*.

Mr. *Hume Campbell* to *Williams.* Do you know *Timothy Murphy?*

Williams. I do, it is the Priſoner at the Bar.

Q. How long have you been acquainted with him?

Williams. I was acquainted with him about a Month or five Weeks before the Beginning of *February* 1750-1. I met him near *Charing-Croſs* in the Street; we went to a Houſe of ill Fame there; I believe the Man of the Houſe his Name is *Mullings*, he is a *Scotchman:* This was the Month of *January*; he took me a-walking round the Park, and to ſeveral Places, and told me he had ſomething to relate to me, and if I would be ruled by him, he would do for me, and in the Park he ſwore me to Secrecy (not by Book, but by Word). He firſt ſwore, then I ſwore; I told him, if it be any thing except Robbery or Murder, I'd ſtand true to him; the next Day in the Morning we came to this *Mullings*'s Houſe again.

Q. Can you recollect what Time in *January* 1750-1 this was?

Williams; It was about the latter End of *January*. Then he ſaid, Come, *Williams*, God, I'll do for you now. He took me up Stairs into a large Room, and called for a Bowl of Punch, ſaying, This is cold Weather, we muſt drink ſomething that will make us warm; he made me drink pretty heartily. At laſt he pulled out a whole Parcel of Papers, ſome of them were Prints, ſome with Stamps, and ſome without; he began to laugh and ſmile; he ſaid, I told you, I had ſomething to do for you, now I'll do for you, ſaid he; there's one *Wilkinſon* that belongs to the *Princeſs Amelia* private Ship of War, that is dead on the Coaſt of *Guiney*, and his Money can be taken by any Body; and ſaid, I will go for it; ſaid I, I don't underſtand that way of getting of Money; ſaid he, D—n it, what a Fool you are, not to conſent to get Money at ſo ſafe a Rate! There are ſeveral of my Acquaintance (if you were to know as well as I) that get Money enough in forging Seamen's Wills and Powers, and receiving Wages and Prize-Money due to them; and if you'll be ruled by me, you ſhall not want Money, for you ſhall dreſs like a Gentleman, and wear a Sword; then he rubbed his Hands, and ſaid, Drink t'other Glaſs, and go down and warm yourſelf by the Fire: I went down, and left him with Pen, Ink, and Paper; and in a ſhort Time after he called me up Stairs again, and told me he had Writings drawn up, purporting to be the Will and Power of *John Wilkinſon*; he made them to me in the Name of *John Daunt*, and he called for a Candle, which was brought lighted; he took a Piece of Sealing-Wax, and clapped the Seal on it, before the Name *John Daunt* was wrote; then he wrote *John Wilkinſon*, *Thomas Carty*, and *Diniſh Collins*; then he put a Seal on them.

Q. How many Seals were there?

Williams. I believe there were more than one; there was one to each Paper, that is, the Will and the Power. After he had ſealed them, he aſked for a Penknife; I lent him one; he made two or three different Pens, and ſaid, that this will not do well, to have theſe Witneſſes all of one Hand-writing. The Names *Thomas Carty* and *Diniſh Collins* were for two ſubſcribing Witneſſes.

Q. What were theſe Pens made for?

Williams. To write the Names with different Pens, that they ſhould not look alike.

Q. Did he write all, both on the Will and Power?

Williams. He wrote it all over, every Word, both the Will and Power, and then took and ſealed them up, and put them into his Pocket.

Q. Did he ſay any Thing about *Wilkinſon* owing *Daunt* any Money?

Williams. He ſaid *John Wilkinſon* owed *John Daunt* ſeventeen Moidores; theſe were the Reaſons which he gave to me for my going by the Name of *John Daunt*, ſaying, if a Reaſon ſhould be required why it was left to me, it ſhould be repreſented, that this *Wilkinſon* was indebted to me theſe Moidores. After this, we went to ſome other Houſe of his Acquaintance, where we drank that Afternoon, and I went to Bed pretty merry; the next Morning early he came and called me out of Bed, and deſired me to come along with him to the Houſe of *Thomas Noads* in *Coleman-Street*. I ſaid, I had not got my Breakfaſt. He ſaid, Come along; what a Block-head you are! We will get a Pint of Purl, and go about our Buſineſs: Then he hurried me out. After we had had a Draught of Purl at the *Caſtle* and *Horſe-ſhoe*, *Charing-Croſs*, we took Boat at *Whitehall* Stairs, we landed at the *Old Swan*, and went to the Houſe of Mr. *Noads*; there the Priſoner introduced me by the Name of *John Daunt*, and ſaid I was a very honeſt Man, and that he had known me a great while to keep a Houſe at *Liſbon*, and that he had drank at my Houſe ſeveral Times in Company with *John Wilkinſon*; then he produced this forged Will and Power, and deſired he'd pay the Money due to *John Wilkinſon*, for his Services on board the *Princeſs Amelia*, a private Ship of War, to me, in the Name of *John Daunt*. Mr. *Noads* and he talked a little while together; he told the Priſoner, I believe I can't pay it upon this Power; then the Priſoner ſaid, This *Wilkinſon* is dead. How long has he been dead? ſaid the other: Said *Murphy*, I believe he has been dead two Years, he died upon the Coaſt of *Guiney*: Then *Murphy* propoſed to go to the *Commons* (I think he ſaid to a Proctor) to prove the Will; but Mr. *Noads* told him to go to Mr. *Creſpigny* to do it; we went, and on our Way thither I ſtopped, and ſaid, *Murphy*, I don't underſtand what you are about, I believe you are going to play the Rogue with me, I'll not go a Step farther; I'll return back, and tell Mr. *Noads* my Name is not *Daunt*; I'll divulge the whole Affair to him. With that he ſwore vehemently, and took up a great Stick, and ſaid, he'd daſh my Brains out, or have me hanged, if I did not go that Minute, and prove the Will in the *Commons*.

Q. Where were you when you had this Converſation?

Williams. It was in a little Alley not far from *Coleman-Street*.

Q. Did you go?

Williams. By the Fright I went along with him, and by his Deſire and Directions, and there in his Preſence I proved the Will.

Q. To what Proctor did you go?

Williams. To Mr. *Creſpigny*; there the Will was produced and proved.

Q. Look at this Paper, do you know it?

Williams. That is the very Will; the Hand-writing is *Murphy*'s; if I was to die this Minute, I am ſure no Man wrote it but he; here are the Names, I ſaw them wrote; he wrote this Name *John Wilkinſon*, with a fine Pen, which he made with my Knife; he wrote alſo the other Names, *Thomas Carty* and *Diniſh Collins*, and I am ſure I ſaw him have ſuch a Seal in his Pocket as is here put on the Wax.

Q. What did you do after the Will was proved?

Williams. Then he came back to Mr. *Noads*'s Houſe, and told him, the Will was proved at the *Commons*.

Q. Who told him ſo?

Williams. *Murphy* did; then there was a Letter of Attorney made by *Murphy*'s Deſire, for Mr. *Noads* to have Power to receive the Money of Mr. *Coſamaijor*, who he told us was in *Briſtol* at that Time.

Q. Who ſigned that Power?

Williams. I did, and *Murphy* was the only ſubſcribing Witneſs to it; then we took it along with us, (this was I believe on *Saturday* Afternoon) and on the *Monday* he called me very early, and by his Deſire, I went along with him to my Lord-Mayor's Office, and there I think this Letter of Attorney was re-executed; then we went again to Mr. *Noads*'s Houſe, and gave him the Power of Attorney, to receive the Money of Mr. *Coſamaijor*; then we went away, and went again two or three Times between that and the 19th or 20th of *February*: On one of them Days we received the Money, he ſaid, he had from Mr. *Coſamaijor*, and then he paid me 37 *l.* 12 *s.* or thereabouts, in the Name of *John Daunt*, in the Preſence of *Murphy*, and took a Receipt for the Money, ſigned by me; I wrote *John Daunt*; if you'll pleaſe to look, you'll ſee a Sort of a Boggle, there is a Letter not made right; inſtead of the Letter *a*, I was going to write *o*, and was forced to make it an *a* afterwards; I did not know how to write *Daunt* cleverly. [*His Lordſhip, Jury, and Counſel, looked at it; and it appeared as he ſaid.*] *Murphy* ſaid to Mr. *Noads*, I have taken a d——d deal of Trouble, he ought to give me ſomething for my Trouble (we had made that Bargain before we came there, that I was to give him Half a Guinea in the Preſence of Mr. *Noads*, to induce Mr. *Noads* to believe he was only to have that for his Trouble). I gave him Half a Guinea in Mr. *Noads*'s Houſe, then we went away, and at a little Diſtance he ſaid to me, Don't you remember you are to give me two Guineas for my Trouble in making the Writings, over and above the Half of the Money? I was very much diſheartened, and ſaid, *Murphy*, I'll go back and give him the Money back, ſaying, It is a very unjuſt Thing, I will not carry it any farther; he ſwore Damnation to his Soul, if I ſhould go a Step farther, he'd give a Judge or Jury no Trouble, but he'd daſh my Brains out if I did not go forward, and had a great Stick in his Hand at the Time, he puſhed me along before him; I was afraid of my Life, for he threatened me both one Way and t'other, either to kill me or get me hanged: Then I ſaid, Take all the Money, and gave it him all in his Hand, I'll have nothing to do with it: He anſwered to that, No, no, I have revealed all my Secrets to you, and now you are going to have me hanged; he ſaid, I'll take two Guineas, and Half the whole Money; which he did, and gave me the Remainder of it.

Q. When was the firſt Time you ſaw Mr. *Noads*?

Williams. I never ſaw him 'till I went with the Priſoner to his Houſe, nor never ſaw *Wilkinſon*, or knew that there was ſuch a Man living.

Q. When did you hear *Wilkinſon* was alive?

Williams. I never heard it 'till Mr. *Noads* came to me in *Corke* in *Ireland*, where I was a Priſoner for Debt.

Q. Had you ſeen Mr. *Noads* between the Time you took the Money and the Time you ſaw him in *Corke*?

Williams. No, I never did.

Croſs-Examination.

Counſ. for the Priſ. How much Punch might you drink at the Houſe near *Charing Croſs*, when you ſay this Will was made?

Williams. I believe we drank about three Shillings-worth.

Counſ. for the Priſ. Did you call for a ſecond Bowl?

Williams. No, we did not.

Counſ. for the Priſ. What had you been drinking before?

Williams. We had been drinking a Dram each, and a Pint of Purl.

Counſ. for the Priſ. Then you was a little in Liquor, was you not?

Williams. I was tolerably warm.

Counſ. for the Priſ. Was there a Fire above Stairs?

Williams. No, there was not.

Counſ. for the Priſ. What Time of the Day was it that you was there?

Williams. It was in the Morning.

Counſ. for the Priſ. Did either of you ſmoke Tobacco?

Williams. No, we neither of us did.

Counſ. for the Priſ. What did you do with your Candle then?

Williams. That was brought up by the Priſoner's Deſire, after he had drawn the Writings up.

Counſ. for the Priſ. How long had you been in the Houſe before the Candle was brought you?

Williams. We might have been in the Houſe two Hours before the Maid brought it up.

Counſ. for the Priſ. How long had you been in the Houſe in all?

Williams. I believe we might have been in the Houſe two Hours and an Half in all.

Counſ. for the Priſ. How long was you in the Houſe before you went above Stairs?

Williams. It might be above Half an Hour before I went up, which was when he called me.

Counſ. for the Priſ. When did you hear the Name of *John Daunt* firſt?

Williams. I never heard it before that Day.

Counſ. for the Priſ. Where did he get the Wax?

Williams. He had Wax in his Pocket, and I believe a Seal too.

Counſ. for the Priſ. Did you ſee him put the Seal to the Wax?

Williams. I did, he put it to one of them before he wrote the Name.

Counſ. for the Priſ. Did he to the other, do you remember?

Williams. I can't ſay whether he wrote the other firſt or not.

Counſ. for the Priſ. Which did he ſeal before he wrote the Name?

Williams. It was the Will.

Counſ. for the Priſ. What Sort of a Table were they wrote upon?

Williams. It was a Table big enough for Half a Dozen Men to dine at.

Counſ. for the Priſ. Did you ſee him write all the Will?

Williams. I ſaw him write Part of it, that is the latter End, that is Part of one Side, where the Witneſſes are; he had not finiſhed it when he called me up.

Counſ. for the Priſ. Had he Ink of his own, or was there any other that he made uſe of?

Williams. There was a Pewter Ink-ſtand in the Room?

Counſ. for the Priſ. Are you ſure you ſaw him write the Name to the Will?

Williams. I ſaw him write them three ſame Names on it.

Counſ. for the Priſ. Was there but one Ink-ſtand?

Williams. No, there was but one Diſh with Ink.

Counſ. for the Priſ. Were theſe three Names wrote with the ſame Ink?

Williams. They were, but with different Pens.

Counſ. for the Priſ. How long do you think you might be above Stairs?

Williams. We might be there about an Hour.

Coun. for the Prif. Where did you beſtow your Time the other Part of the Day?

Williams. We went and walked, and ſmoked, and drank moſtly, for it was very cold Weather.

Coun. for the Prif. Then you muſt go near being fuddled, was you not?

Williams. I went to Bed brave and heavy, I know.

Coun. for the Prif. Where did you live then?

Williams. I lodged near Mr. *Manning*'s at *Charing-Croſs*, at the *Thiſtle* and *Crown*: *Bob Carter* lodged over-againſt me.

Coun. for the Prif. You ſay you never ſaw Mr. *Noads* 'till that Time the Priſoner and you went to his Houſe the Beginning of *February* 1750-1; recollect yourſelf whether you had not ſeen him before?

Williams. I had not.

Coun. for the Prif. Did not he once lend you Half-a-Crown on your *Chatham*-Cheſt Ticket?—*Williams.* No, he never lent me any Thing.

Coun. for the Prif. Do you know one *Margaret Williams?*

Williams. I lodged at her Houſe ſeveral Nights; but my proper Place of lodging was at Mr. *Fox*, on the Back of the *Haymarket*.

Coun. for the Prif. Did you ever pawn your *Chatham* Ticket?

Williams. No, I never did; I might, but I don't remember I did; I am almoſt ſure I never did; it is a 4*l.* Ticket, that is, 4*l.* a Year for my Life.

Coun. for the Prif. Upon your Oath, did you, or did you not borrow Money on your Ticket of Mr. *Noads?*

Williams. Upon my Oath, I never did, nor never let it go out of my Poſſeſſion to any body.

Coun. for the Prif. In your Way going along, you ſay your Conſcience ſeized you, and you told the Priſoner you would not go a Step farther; was that the firſt Remorſe you felt?

Williams. No, I had a Remorſe of Conſcience that Morning, when he deſired me to go.

Coun. for the Prif. Did you believe he would be as good as his Word, when he ſaid he'd knock your Brains out, and threatened you?

Williams. I did by his Countenance.

Coun. for the Prif. Was he with you all the Time you was proving the Will?—*Williams.* He was.

Coun. for the Priſoner. Did not you go into a particular Office to prove it by yourſelf?----*Williams.* No.

Coun. for the Prif. Were there any Threats made uſe of in *Doctors-Commons?*—*Williams.* No, there were not.

Coun. for the Prif. Was you under any Surprize when you was there?

Williams. I was under much Fear.

Coun. for the Prif. How many People were there in the Room?

Williams. There was but one Gentleman there.

Coun. for the Prif. Why did you not tell the Gentleman the Affair, that he might aſſiſt you?

Williams. I was ſhocked ſo, that I did not know what I had beſt to do.

Coun. for the Prif. Did you ſwear there that your Name was *John Daunt?*

Williams. I did, by the Priſoner's Directions and Deſire.

Coun. for the Prif. Was any body with you and *Murphy*, when you were with Mr. *Noads?*—*Williams.* There was not a Soul with us.

Coun. for the Prif. Why did not you tell Mr. *Noads* that it was a Forgery?

Williams. I did not indeed; I did not know what to do, I was ſo confounded.

Coun. for the Prif. Who wrote the Word *Extor*, after the Name *John Daunt*, on the Receipt?

Williams. I wrote the Name *John Daunt*, but I don't know who wrote the Word *Extor*, either *Murphy* or *Noads*.

Coun. for the Crown. Which do you believe wrote it?

Williams. I believe *Murphy* did.

Coun. for the Prif. Whether your Remorſe and Threatening to go back again was not becauſe he demanded two Guineas of you?

Williams. No, it was not.

Coun. for the Prif. Did he demand two Guineas of you before, or after you ſaid you'd go back?

Williams. I told him I'd go back, and return the Money, before he demanded the two Guineas, and after too.

Coun. for the Prif. How long did you ſtay in *England* after this Tranſaction?

Williams. But a very little Time, about a Fortnight; I was obliged to go down to *Chatham* to receive my Penſion-Money that was due to me there.

Coun. for the Prif. In this great Remorſe of Conſcience that you had before and after you had received the Money, how came you to remain a Fortnight out of the Power of *Murphy*, and did not make a Diſcovery of it?

Williams. I was afraid to go about it myſelf, and I had no Opportunity to do it 'till Mr. *Noads* came to me in Goal in *Ireland*; I thought the very Stones would fly in my Face about it, and he hunted me out of the Way as faſt as he could.

Q. from his Lordſhip. Why did not you open the Affair before my Lord-Mayor?

Williams. I had not the Senſe to do it; I was directed and led like a Child by him, as he pleaſed.

[*The Receipt read to this Purport*].

Received the 20*th of* February 1750-1, *of* Thomas Noads, 37*l.* 12*s.* 6*d. being ſo much he received of Mr.* Caſamaijor, per *Probate of the Will of* John Wilkinſon, *in full Balance of his Account.*

£. 37 12 6 John Daunt, *Extor.*

Coun. for the Prif. to *Noads.* Who added the Word *Extor* to the Receipt, after the Name *John Daunt?*

Noads. I did.

Prif. I deſire Mr. *Noads* may be put out, while I aſk *Williams* a Queſtion or two.

[*It was granted, and he went out.*]

Q. from the Prif. How came *Williams* to be ſo perfect as to the Day of the Month that he mentions of the Money being paid? Whether the Papers were not ſhewn to him by *Noads* ſince?

Williams. No, they never were ſince I came to *England*; I have not ſeen one of them 'till I ſaw them now, nor Mr. *Noads* never told me what Day of the Month the Money was paid.

Q. from the Prif. Whether that Witneſs ever went to Mr. *Noads* with Mrs. *Williams?*

Williams. No, I never did.

Q. from the Prif. Whether he ever heard *Margaret Williams* ſay her Dependance was upon Mr. *Noads?*

Williams. I heard her ſay there was ſome Prize-Money due to her.

Q. from the Prif. Did you ever hear her mention one *Jones?*

Williams. I don't know that ever I heard her mention the Name of *Jones.*

Q. from the Prif. Did not he borrow Money on your Ticket? Where did you get the Money you paid her?

Williams. I pawned my Watch in *St. Martin's-Lane.*

Q. from the Prif. Where did he and I agree upon this?

Williams. At *Mac Mullins*'s, a Bawdy-houſe.

Q. from the Prif. Did I pay for the Punch there?

Williams. No, the Priſoner took Care of that, he made me pay.

Q. from the Prif. Where did he get the Money?

Williams. The Priſoner found rogueiſh Money for me.

Noads called in.

Coun. for the Prif. to Noads. Whether or no you ſhewed either the Power of Attorney or Will of *Wilkinſon* to *Williams* ſince he came to *England?*

Noads. No, I have not.

Coun. for the Prif. Whether or no you told him the Month in which you paid the Money to him?

Noads. I ſhewed it him in *Ireland.*

Coun. for the Prif. Whether you have not ſince he came to *England?*

Noads. No, I have not.

Coun. for the Prif. Did ever *Thomas Williams* come to your Houſe along with one Mrs. *Williams?*

Noads. No, never.

Q. from the Prif. Do you know Mrs. *Williams?*

Noads. She came to me two or three Times, and told me the Priſoner had robbed her of her Prize-Money.

Q. from the Prif. When did you ſee her laſt?

Noads. I believe I ſaw her in the Court-Yard this Morning.

Coun. for the Prif. Do you know where ſhe is now?

Noads. No, I don't know that.

Q. from the Prif. Was not this Mrs. *Williams* at your Houſe in *Bell-Alley?*—*Noads.* She never was, to my Knowledge.

Mr. Alderman *Cokayne* ſworn.

[*He is ſhewed a Letter of Attorney made to Mr.* Noads.]

Mr. Alderman. This was re-executed before me; here is the Name *Timothy Murphy*, a Witneſs; I believe the Priſoner is the Man that wrote it. [*It is read to this Purport:*]

"Know all Men, by theſe Preſents, that I *John Daunt*, Executor of "*John Wilkinſon*, deceaſed, late of the *Princeſs Amelia* Privateer, for cer-"tain good Cauſes and Conſiderations me hereunto moving, have, and do "hereby name, make, and in my Stead and Place, put and conſtitute *Tho-"mas Noads* of *London*, Gentleman, my true and lawful Attorney, re-"vocable, for me, in my Name, and to my Uſe, to aſk, claim, demand, "recover, take, and receive of and from the Agent for the *Royal-Family* "Privateers, or whom elſe it may concern, all and ſingular ſuch Salary, "Wages, Tickets, Bounty-Money, Prize-Money, Short-Allowance-"Money, Smart-Money, Penſions, and all other Sum and Sums of Mo-"ney whatſoever, as now is, or at any Time or Times hereafter ſhall be "due, payable, and belonging unto me, for my own, or any other Per-"ſon's Service, or otherwiſe, in any of his Majeſty's Ships, Frigates, or "Veſſels, or any Merchant-Ship, or Ships; and alſo of all other Perſon "or Perſons whatſoever, all and ſingular ſuch other Sum and Sums of "Money, Salary, Wages, Goods, Wares and Merchandize, Freight, "Profits, Rents, and Arrears of Rent, Debts, Dues, Duties, Claims and "Demands whatſoever, which now is, or at any Time or Times here-"after ſhall be due, owing, payable, and belonging unto me by any "Ways or Means, Right or Title whatſoever or howſoever; giving, and "hereby granting unto my ſaid Attorney, his Subſtitutes and Aſſigns, "all my Authority and lawful Power in the Premiſes, for receiving, re-"covering, obtaining, compounding and diſcharging the ſame, as fully "and effectually as I myſelf might or could do, being perſonally preſent, "and Acquittances, Releaſes, or any other Diſcharges in my Name, to "make, ſeal and deliver; and one Attorney, or more, to make, ſubſtitute, "and at Pleaſure to revoke; ratifying, and hereby confirming all and "whatſoever my ſaid Attorney, his Subſtitutes and Aſſigns, or any of "them, ſhall lawfully do, or cauſe to be done in and about the Pre-"miſſes by Virtue of theſe Preſents. In Witneſs whereof I have here-"unto ſet my Hand and Seal, the 9th Day of *February*, in the twenty-"third Year of the Reign of our Sovereign Lord *George* the Second, by "the Grace of God, of *Great-Britain*, *France*, and *Ireland*, King, De-"fender of the Faith, and in the Year of our Lord one thouſand ſeven "hundred and fifty-one."

John Daunt. +

Sealed and delivered (being firſt duly ſtamped) in the Preſence of Timothy Murphy.

London, re-executed the 11th Day of *February*, 1750, before me,

F. Cokayne, Mayor.

Anthony Devoyer ſworn.

Anthony Devoyer. I am Clerk to Mr. *Creſpigny* the Proctor; in *February* 1750-1, I don't remember the Perſons, but there were two Men applied to me in the Abſence of Mr. *Creſpigny*, to prove a Will of *J. Wilkinſon.*

Q. What was the Executor's Name?

Devoyer. It was *John Daunt*; the Perſon pretending to be ſo was one of the two that deſired me to get a Probate of the Will. We always do inquire where the Teſtator died, and when, and we write that under the Jurat, that it ſhould be paſſed to the Seal. The Deſcription of the Teſtator was, that he was a Batchelor, and belonged to ſome Ship, I don't remember the Name; that he died on the Coaſt of *Guiney*, within the Time there limited.

[*He is ſhewed the Will.*]

Devoyer.

Devoyer. This is my Hand-Writing on it, and this is the very Will brought to me at that Time; I attended the Perſon who called his Name *John Daunt* before the Surrogate, who ſubſcribed his Name.

Q. Was he ſworn?

Devoyer. He was, I think, in my Preſence, as Executor to the Will, as is uſual on ſuch Occaſions, and upon that the Probate was put under Seal afterwards, which is now upon it.

Croſs-Examination.

Coun. for the Priſ. You ſay, you can't ſwear to the Perſons of the two Men that came?——*Devoyer.* No, Sir, I cannot.

Coun. for the Crown. Can you recollect what paſſed at the *Compter*, when you ſaw the Priſoner there?

Devoyer. I was at the *Compter*; the Priſoner there told me he remembered me; he there told me, while I was gone to get the Executor ſworn, he was in Converſation with Mr. *Creſpigny*.

Coun. for the Crown. Did he mention any Thing of his being the Perſon that came along with the pretended Executor?

Devoyer. Yes, Sir, he did.

Coun. for the Priſ. When was this Converſation?

Devoyer. This was the Day that the firſt Bill was thrown out.

Coun. for the Priſ. When you carried *Daunt* in to be ſworn, did that other Perſon go with you into the Room?

Devoyer. I believe we left him in the Office.

Thomas Dyer ſworn.

Dyer. I was Conſtable. Mr. *Noads* applied to me to take the Priſoner at *Newington* on the other Side the Water; I was at my Houſe over-right the *Black Prince*, and Mr. *Noads* was at the *Black Prince*, and one *Frith* brought me the Warrant. On the *Saturday* Morning *Murphy* had been with me to Juſtice *Hammond* to aſſiſt me with a Priſoner; I promiſed to pay him; he came on the *Monday* Morning for his Money; I ſaid, I'll pay you preſently, but I have got a Warrant againſt you: He ſaid, For what? and wanted to ſee the Warrant: I told him, I would not ſhew it him. The other Man *(Frith)* ſaid, it was for Forgery, and aſked him if he knew Mr. *Noads*; he ſaid, Yes. This was as we were going along: He deſired to walk by my Side. *Frith*, at the ſame Time, went out to fetch Mr. *Noads* from the *Black Prince*; the Priſoner turned on his Heel and ran away, and kept calling out, A poor Debtor! A poor Debtor! I ran after him, and called, Stop Thief! knock him down!

Q. Was Mr. *Noads* in Sight when he turned to run away?

Dyer. I cannot ſay whether he was or not; but if he was at the *Black Prince* Door, the Priſoner might ſee him very well.

Q. How far did he run?

Dyer. He ran into a Brick-Field; there we took him again, and we carried him to the *Black Prince*; then I went to get my Breakfaſt 'till they were ready to go; then we took him before 'Squire *Clarke*, and from thence to Alderman *Chitty*. I delivered him up to Mr. *Ward* on *London-Bridge* as we were going, and went with him before the Alderman as an Aſſiſtant; then the Priſoner was charged by Mr. *Noads* for forging a Seaman's Will; the Priſoner ſaid, he knew nothing of it.

Q. Do you recollect he ſaid any Thing about Half a Guinea?

Dyer. Yes; he ſaid he had Half a Guinea for ſigning a Letter of Attorney.

Croſs-Examination.

Coun. for the Priſ. Had he been told what he was taken for, before he ran away?——*Dyer.* He had.

Coun. for the Priſ. He ſoon ſtopped, I ſuppoſe, did he not?

Dyer. He ſtopped when he could run no farther; there was one *Fielder* went to ſtop him, and he ran againſt him to knock him down, and turned him round.

Coun. for the Crown. When he ſtopped, did he ſurrender; or what did he do?——*Dyer.* No, he then took up a Brickbat, and ſwore he'd kill the firſt Man that oppoſed him.

John Frith ſworn.

John Frith. I am Servant to the Maſter of *Dulwich* College; I was applied to by Mr. *Noads* to endeavour to diſcover and take up *Timothy Murphy*, the Priſoner at the Bar; and was by when the Conſtable, Mr. *Dyer*, took him at *Newington*.

Q. Was Mr. *Noads* by at the Time?

Frith. No, he was not; the Priſoner aſked, what he was taken up for? Mr. *Dyer* would not tell him: He ſaid, Pray, Gentlemen, what am I taken up for? I deſire to know: Then ſaid I, If you muſt know, it is for Forgery; ſaid he, Upon what Account? I ſaid, I can't tell, but I'll go to a Gentleman hard by, and he'll tell you. Then I went for Mr. *Noads*; and when I was at a little Diſtance, I heard the Conſtable call out, Stop Thief! then I turned again, but I was too far behind; he was taken and ſecured before I came up.

Q. How far was you from the Place where Mr. *Noads* was, when he ran away?——*Frith.* I was about 200 Yards from him.

Q. Where was Mr. *Noads* when you heard the Cry, Stop Thief?

Frith. He was at the *Black Prince*.

Q. Was he within or out of the Houſe?——*Frith.* I can't tell which.

Q. Did he attempt to break away 'till you had informed him it was for a Forgery?——*Frith.* No, he did not.

Mr. *Woodman* ſworn.

Woodman. I am Keeper of the *Poultry-Compter*.

[*He is ſhewed a Commitment.*]

Woodman. I remember this being brought to me with the Priſoner on the 27th of *July* laſt, the Day it bears Date, to the *Poultry-Compter*.

Q. What is he charged with in that Commitment?

Woodman. He is charged before Alderman *Chitty*, by the Oath of *Thomas Noads*, upon a violent Suſpicion of being concerned with one *John Daunt*, not yet taken, in publiſhing and uttering a falſe, forged, and counterfeit Will. It is ſigned, *Thomas Chitty*.

Mr. *Hume Campbell.*

My Lord, In the general Courſe of Buſineſs, Witneſſes are not produced to ſupport the Character of a Proſecutor, unleſs his Character is impeached either by Evidence or the Nature of the Tranſaction itſelf; in the preſent Inſtance, the Gentlemen have taken an Objection to Mr. *Noads*'s Competency as a Witneſs; it has been, with great Juſtice, over-ruled in that Reſpect, but left to operate on his Character with the Jury: The Indictment againſt him has been read in Evidence: It is an Indictment againſt him, together with the other Witneſs to the Fact, and upon the Back of it ſtand Mr. *Goddard* and two or three more. This being admitted Evidence againſt his Character, we are proper to produce Evidence in Support of Mr. *Noads*'s Character, and I hope your Lordſhip will be of Opinion we are regular in ſo doing.

Lord Chief Baron. You have a Right to it under the Circumſtances of this Caſe.

To the Character of Thomas Noads.

Nicholas Magens, Eſq. ſworn.

Mr. *Magens.* I have known *Thomas Noads* ever ſince he came to *London*, which is about ſeven or eight Years: it was about the Beginning of the breaking-out of the *Spaniſh* War.

Q. What is his general Character?

Magens. I have always known him for a very diligent, ſober, promiſing young Man; I have all the Reaſon in the World to believe him ſo, and don't doubt his Integrity in the leaſt.

Croſs-examined.

Coun. for the Priſ. Do you think he would not ſay what is falſe to ſave his own Life?——*Magens.* I can't anſwer to that.

James Laroche, Eſq. ſworn.

Mr. *Laroche.* This is the ſecond Time I have come from *Briſtol* to *London* to ſpeak to Mr. *Noads*'s Character: I have known him eight Years. I knew him at *Briſtol*, where he was under the Direction of a Gentleman there (that Gentleman is ſo infirm he can't come up). Mr. *Noads* behaved ſo well there, that the Gentleman recommended him to my Brother-in-Law, Mr. *Henry Caſamaijor*, to tranſact his great Affairs, being Agent for very rich Prizes; he behaved diligently through the whole Tranſaction. I have heard many ſpeak well of him in *Briſtol*, and never heard any Thing reflecting on his Character in my Life. I don't think he'd be guilty of a Forgery.

John Ellis, Eſq. ſworn.

Mr. *Ellis.* I have known Mr. *Noads* theſe ſix Years; I believe him to be as honeſt a Man as any Man whatſoever; I don't think he'd do a ſcandalous Thing; I don't think he is capable, for any lucrative Views whatſoever, to be guilty of a Forgery.

Mr. Alderman *Ironſide* ſworn.

Mr. Alderman *Ironſide.* I have known Mr. *Noads* about ſeven or eight Years; he has been concerned in an Affair where I am intereſted, in which he has always acted with great Diligence and Prudence; I have truſted him with large Sums of Money; it has been in his Power to have injured us, but I never had any Occaſion or Room to doubt his Honeſty; I don't believe he'd be guilty of a Forgery on any Conſideration.

Henry Caſamaijor, Eſq. ſworn.

Mr. *Caſamaijor.* I have known Mr. *Noads* I believe ten Years.

Q. What is his general Character?

Mr. *Caſamaijor.* As good as any Man's in Being, both for Honeſty and Induſtry; I have had great Experience of him; he was with me from a Child: I, from my good Opinion of him, recommended him to my Brother; he might have wronged me of large Sums of Money; I never found a Diſpoſition in him either to wrong me or any body elſe.

Mr. *Nares.* I deſire the firſt Part of the Will may be read.

[*It is read*]

"In the Name of God, Amen. I *John Wilkinſon*, late of the "*Princeſs Amelia* Privateer."

Coun. for the Priſ. Now read in the Probate.

[*It is read.*]

"The laſt Will and Teſtament of *John Wilkinſon*, of his Majeſty's "Ship the *Princeſs Amelia*."

Coun. for the Priſ. There is a Difference between his Majeſty's Ship and a Privateer.

Lord Chief Baron. The Probate being a wrong Deſcription does not alter the Caſe; ſuppoſe there had been no Probate at all, the Priſoner is indicted for forging the Will.

The Priſoner being called upon to make his Defence, ſaid only, that they had ſwore as they thought proper.

Whereupon the Lord Chief Baron ſummed up the Evidence to the Jury, who, in leſs than a Minute, gave in their Verdict,

Guilty, Death.

Immediately after this Trial, Mr. *Thomas Noads* and Mr. *Robert Carter* were tried for this Forgery; but were honourably acquitted, and Copies of their Indictments granted them by the Court.

The Confeſſion of Timothy Murphy.

I WAS taken up in the Month of *July* by the Orders of *Thomas Noads*, Clerk to the Managers of the *Royal-Family* Privateers, for forging the Will of *John Wilkinſon*, late belonging to the *Princeſs Amelia* Privateer, being one of the Ships that compoſed the ſaid *Royal-Family*, and was committed to the *Poultry-Compter* for the ſaid Offence; and on that Day, and the Day after, one *Patrick Flanigan* came to me, and aſked what Motive induced me to ſign a general Releaſe for my Share of my Prize-Money, to the ſaid Managers? I made Anſwer, that Mr. *Belchier*, and the reſt of the Gentlemen, had long before that Time advanced me twenty Pounds, when I was in want of Money, and that they had behaved to me with the greateſt Honour. The ſaid *Flanigan* further aſked me, how came I to give a Receipt for 54*l.* and upwards, and inſinuated ſo much was not due to me, and deſired me not to conceal it from him, for that he was acquainted with the whole Affair: And ſaid, if I had a Million of Lives, unleſs I would do one Thing, I was a loſt Man. I then went on my Knees, and begged for Heaven's Sake he would let me know what that was. He made Anſwer, Not yet; and ſaid, I know you have been a Tool to Mr. *Noads* a long Time, and aſked me, who came to me from him or any of the ſaid Managers? I told him, I had not ſeen or heard from any of them. He then ſaid, Keep your own Mind from them: I commiſerate your preſent Situation, I will call at another Time. And gave me 18*d.* In a few Days after, he came again, and aſked me, whether the ſaid *Noads*, or any of the ſaid Gentlemen,

men, had been with me. I anſwered, They had not. He then gave me Half-a-Crown, and ſaid ſome of them would ſend to me with Directions to write to Mr. *Belchier*, and adviſed me not to anſwer that I would, and ſaid, Do not write at your Peril: And promiſed to come next Night, which he accordingly did, and adviſed me to get ſome Perſon in Priſon to write a Letter to Mr. *Belchier*, but not to have any Thing mentioned in relation to the ſaid Will (I ſo unfortunately forged of the ſaid *John Wilkinſon*). He went away, and promiſed to come again. He came again the ſame Night, when I ſhewed him the Letter I cauſed to be wrote, which he deſired I would ſend to Mr. *Belchier*; and after many Aſſurances of Friendſhip, he went away, and ſaid he would come the next Night. The Day after, Mr. *Robinſon*, Clerk to Mr. *Belchier*, came and ſhewed me the Letter I ſent, and aſked me, if it was not my Hand-writing; I told him, it was not. He deſired me to write my Mind freely to Mr. *Belchier*, in my own Hand-writing, which, after he went away, I accordingly wrote, with a full Reſolution to ſend to Mr. *Belchier*, in order to open the whole Affair, and rely on his Mercy. He the ſaid *Flanigan* called ſoon after, and told me Mr. *Robinſon* had been with me, and aſked what he ſaid: I told him, that he brought back the Letter he directed me to ſend, and aſked me, if it was my Hand-writing; I told him it was not; and that he had directed me to write in my own Hand; and that I had wrote ſuch, but had not ſent it. He then replied, Did not I tell you that was a dead Sett for you? That a Letter under your own Hand is what will caſt you in Court? And told me, that he had been with Mr. *Belchier*, and the reſt of the Gentlemen, the ſaid Managers, and that he was in great Friendſhip with them, and knew all their Secrets; and ſaid, I was a dead Man if I ſent ſuch Letter, or acted contrary to his Advice. Then I ſaid, The Lord have Mercy upon my Soul, I fear my Life is gone at any Rate. Replied *Flanigan*, If they can, you Fool, do you know how far it lies on them to do ſo? I ſaid, I did not; neither did I know what Service my Life could be to them: And ſaid, it was the general Character of Mr. *Belchier*, that he was merciful, and that the Gentlemen Priſoners in the *Compter* had ſo aſſured me. *Flanigan* then replied, What a great Fool you are! Take ſpecial Care of them; as ſure as Death, they are ſet upon to get Words out of your own Mouth; and adviſed me to keep my Room, and keep my Secrets, otherwiſe it would not be in his Power to have me ſaved. I then went down on my Knees, and prayed to the Almighty to have Mercy on my Soul, and that he *(Flanigan)* would aſſiſt me: He deſired me to get up, and aſſured me that I ſhould be ſaved, if I took his Advice, and that he had been that Day about me; and told me, I need not fear, for there was one of the Perſons was a Duke of very great Intereſt; and told me, he had cauſed a Letter to be preſented to the Duke, which he received, and declared he would ſtick to that Cauſe, and that he would acquaint his Majeſty thereof, and that I ſhould have his Intereſt: I deſired him to explain himſelf, what he meant by that Cauſe. He ſaid he would not then tell me, but again adviſed me to keep my Room, and avoid ſpeaking to any Perſons, and gave me one Shilling, and went away: Came again, and told me he had been at *Doctors-Commons*, and ſaw the forged Will, and that he knew the Name *Diniſh Collins*, ſubſcribed as a Witneſs to the ſaid Will, to be the Hand-writing of ſaid *Noads*, and ſaid it was in vain for me to deny it; and inſiſted it was ſo, and that he would ſwear it to be ſo, and that it muſt be ſo, and ſaid, You are now under no Reſtraint, and might and ſhould be admitted a King's Evidence, provided I would impeach the ſaid *Noads*; and ſaid, it was in vain for me to deny the Forgery, ſaying, I can and will prove the Body of the ſaid Will to be all of your Hand-writing, when ſubpœna'd on the Trial; but ſaid, If you impeach *Noads*, and are admitted an Evidence, you'll make him ſqueak; and aſſured me that nothing elſe could ſave my Life: And aſſured me afterwards, that all the Managers would be proſecuted by the King and Government, but did not explain for what; and ſaid, if I did not hang, they muſt; and if it coſt them ten thouſand Pounds, they would caſt me; and deſired me to give him one of the Buttons out of my Sleeve, and ſaid, The Man to whom this is to be given, is a Perſon whoſe Intereſt will ſave your Life; repeating at the ſame Time, that the Dependance of 78,000 *l.* was on the ſaid Will. I then ſaid, The Lord have Mercy on me, I am a loſt Man. He then ſaid, the Managers want you to ſubmit to be caſt; and they will promiſe to ſave you, (they will tell you ſo) I know it to be what they are upon, but for your Life don't ſend them a Scroll from under your Hand; if you do, it will be impoſſible to ſave you; and ſaid, he knew all their Secrets, and that they could do nothing without his Knowledge, and gave me Half-a-Crown, and went away. He came next Morning, and told me that one *Robert Carter*'s Hand-writing was procured, and compared with the Names to the ſaid Will, and that it appeared he the ſaid *Carter* was alſo concerned in ſaid Forgery; and ſaid, there was a Decree granted againſt the Managers for all the Money; and unleſs I was hanged, they never could get over the Decree: Now, ſays *Flanigan*, if you flinch, I ſhall be ſubpœna'd to prove the Will to be your own Hand-writing, and ſaid he would not perjure himſelf for any Man; and then inſinuated my Life was in his Hands. He then went away, and came the next Day, and produced me a Letter from Commodore *Walker*, giving me a ſtrict Charge to ſtand on my Defence, aſſuring me his Intereſt with the Duke of *Argyll* would ſave my Life; and *Flanigan* then gave me a ſtrict Charge to ſtick to whatever ſhould be preſcribed to me, and that he would let me know from Time to Time all the ſaid Managers Secrets. He then ſwore me on a Book not to make Uſe of his Name, or to diſcover what Converſation had or ſhould paſs between him and the Perſon who ſhould produce to him the ſaid Sleeve-button, and that I ſhould not call him by any other Name than Mr. *Friend*, and told me he had alſo ſworn that Perſon, meaning *Goddard*, not to mention his Name before me. That on the ſame Day, after *Flanigan* went away, Mr. *James Goddard* came to me, and introduced himſelf, and called for a Pint of Wine, and aſked me how I did; and bid me have a good Heart, and then preſented the ſaid Sleeve-button, and told me he was a Man of as good a Fortune and as great Intereſt as any of the Managers were; and ſaid, he thought it was a lucky Thing for me that he had purchaſed the Intereſt of the ſaid *Flanigan*, whom he named by the Name of Mr. *Friend*; and ſaid ſuch Purchaſe coſt him fifty Pounds, in order to get at all the Secrets of the ſaid Managers; and told me the ſaid *Friend* was very great with the ſaid *Noads*, and all of them, and without his Intereſt, my Life could not be ſaved. He ſaid, he was Maſter of all that paſſed between me and *Friend*, and ſaid that *Friend* could and would prove the Forgery againſt *Carter* and *Noads*, as well as I, and that I might freely ſpeak to him; and ſaid, that *Friend* was to be ſubpœna'd as an indifferent Perſon againſt *Noads*, and that he would ſwear that *Noads* wrote the ſaid Name *Diniſh Collins*, and that *Friend* had ſeen the ſaid Will in the *Commons*, and could prove the Body to be my Hand-writing; and expreſſed himſelf much in the ſame Manner as *Friend* had repeated, before he told me that *Friend* acted as Attorney for Commodore *Walker*: He gave me a Crown, and ſaid he would call again. He came the next Day, and expreſſed himſelf to the Purport aforeſaid, and ſaid he would call the Day after; and charged me at my Peril, not to write to the ſaid Mr. *Belchier*: Then went away, and neglected coming according to Promiſe, which made me very uneaſy in Mind, and induced me to write a Letter to the ſaid *Friend*, purporting, I thought it was a Scheme laid between him and *Goddard* to take away my Life; and that I would write to Mr. *Belchier*. Soon after, *Goddard* came to me, and told me of the ſaid Letter, and ſaid it frighted him and *Friend*, and deſired I would not write in that Manner any more, aſſuring me I need not be afraid, and requeſted I would not communicate to any body what paſſed; telling me I was ſafe. He then took a Paper out of his Pocket, which he read to me, purporting what I was to ſwear to; and told me I had no Buſineſs to deny it, for *Friend* knew it to be true, and that he would alſo prove it; and ſaid, the ſame Seal which was to the Will, *Friend* aſſured him was the ſaid *Noads*'s. He then took another Paper out of his Pocket, and got me to ſign it, purporting to be admitted an Evidence, and addreſſed to Alderman *Chitty*: He wrote ſomething more to the other Paper he brought, and ſaid my Irons ſhould be knocked off, and aſſured me it was by Mr. *Belchier*'s Directions that I was ironed, that I might eaſily judge by that what they were upon; aſſuring me of his Friendſhip, and went away. The next Morning he came, and told me I ſhould be ſent for to Sir *Joſeph Hankey*'s, and that my Irons ſhould be taken off, which accordingly were. He then read over the ſaid Paper he had ſo firſt produced as aforeſaid, and deſired me to recollect the Contents, when examined; and to ſtick to it, otherwiſe my Life would be loſt. I was carried to Sir *Joſeph Hankey*'s, and in the Preſence of Alderman *Chitty*, *Goddard* appeared, and Mr. *Lock*; *Goddard* took out the ſaid Paper, and aſked me ſeveral Queſtions, as did alſo the Juſtice, and ſent me back: *Goddard* came to me, and had me in private, and told me I ſhould be ſent for again to be examined the next Day, and then produced the ſaid Papers, and made ſome Amendments, and deſired me to ſtick to it. The next Day I was carried to Sir *Joſeph*'s, Alderman *Chitty* was there; *Goddard*, *Lock*, and the ſaid *John Wilkinſon*, attended; and *Wilkinſon* ſhewed me a Subpœna he was ſerved with by *Noads*, to proſecute me at the *Old-Bailey*; and *Goddard* there aſked me ſeveral Queſtions, as did alſo the Juſtice; and the Anſwers I gave, were calculated by the falſe Counſel, Inſtructions, and Advice the ſaid *Goddard* and *Friend* gave me, without doing which, they aſſured me, my Life could not be ſaved. I was ſent back. *Goddard* frequently came to me, and advanced me Money from Time to Time; and one Morning he told me he had thought of a Thing which would prevent the Bill being found againſt me, which he afterwards told me was, that the forged Will was proved at the *Commons*, as the Will of *John Wilkinſon*, who belonged to his Majeſty's Ship the *Princeſs Amelia*. The Day the Bill was thrown out by the Grand Jury, that was preferred againſt me, ſoon after *Goddard* came to me, and told me, that Alderman *Chitty* made it appear to the Grand Jury, I was admitted an Evidence, and that the Bill was thrown out; and told me, I ſhould be ſent for the next Day to *Guildhall*, to ſwear to a Paper that was drawn up, and prepared according to Form in Law, and ſaid, he would ſhew it me at *Guildhall*. The next Morning I was ſent for to *Guildhall*, where *Goddard* attended before the Sitting Alderman came, and called me into a Cloſet there, and took out a Paper, and gave me to read, and ſaid, he had got it drawn up, and that it was what I muſt ſwear to, in order to ſave my Life; and ſaid, I muſt ſtick to that Paper, or my Life would be loſt. He went out of the Room, and Mr. *Lock* came in, and ſaid, Mr *Murphy*, was you not afraid before the Bill was thrown out? I replied, I was. He then ſaid, You are a free Man, and deſired me to conſider what I was about. I had not Time to converſe with Mr. *Lock*, to know how I was free, before Mr. *Goddard* came in, and interrupted us; and *Lock* and *Goddard* went out, and *Goddard* ſoon returned, and deſired me not to ſpeak to Mr. *Lock*, or to the Alderman, but to ſwear to that Paper; and ſaid, he would give Mr. *Lock* Half a Guinea for his Trouble. I was ſoon after brought into the Room where Alderman *Chitty* was, and ſome other Perſon, and was ſworn to the ſaid Writing, which I never ſaw, 'till produced in the ſaid Cloſet, and declared ſuch Writing was calculated by the ſaid *Goddard*. I was ſent back. *Goddard* came to me, and produced a Paper ready drawn, which he deſired me to copy in my own Hand, which was of his Hand-writing, and directed me to give it to the Judge or Recorder at the *Old-Bailey*, the next Day, which he ſaid would clear up all to Satisfaction. I copied the ſame, and the Day after delivered it at the *Old-Bailey* to the Recorder, and was ſent back to the *Compter*. *Goddard* came there to me, and aſked me what paſſed: I told him I had delivered the Paper as he directed. That *Goddard* and Mr. *Woodman* had a Pint of Wine together, and had ſome Converſation in reſpect of having me detained in the *Compter*, and it was agreed a friendly Action to be laid, which *Goddard* aſſured me was in order to preſerve my Life, aſſuring me, if I went abroad, I ſhould certainly be knocked on the Head, poiſoned, or a Robbery ſworn againſt me, by the Contrivance of the ſaid Managers, to prevent my Evidence. *Goddard* put me on the Maſter-Side, for which he paid *Woodman*. I grew very uneaſy at not being at my Liberty. As the Bill was thrown out, and I admitted, as *Goddard* told me, a King's Evidence, being in a bad State of Health, of the Gaol-Sickneſs, of which many died, I requeſted *Goddard*, when he came again, to have me bailed out, and ſent into the Country, to the ſame Place where he kept the ſaid Mr. *Wilkinſon*; at which *Goddard* ſeemed uneaſy, and declared he knew of no Place in

England

England ſo ſafe to preſerve my Life as the Place where I was, and repeated, as aforeſaid, that if I went abroad before I was examined as a Witneſs, I ſhould certainly loſe my Life; and promiſed to get me on the Debtors Side, with the Aſſiſtance of Mr. *Woodman*, provided I could get a Friend that could be confided in to keep Things ſecret, who would bring a friendly Action againſt me, and promiſed he would allow me a Shilling a Day, and pay for my Lodging, till diſcharged; at which I was more reconciled to ſtay than I was before, apprehending what *Goddard* had ſo repreſented was intended in order to preſerve my Life. I then told him, that I believed *Timothy Mahony*, who was my Relation, and whom *Goddard* knew, and was in the Secret, would be the only proper Perſon to bring ſuch Action. Then *Goddard* took a Direction where the ſaid *Mahony* lived, and told me, he would go to him. The ſaid *Mahony* came to me in a Day or two after, and told me, Mr. *Goddard* had been with him, and addreſſed himſelf to him, by telling him, he had ſomething to ſay to him to ſave my Life, and wanted him to go and ſwear a Debt againſt me, in order to keep me on an Action in the *Compter*: And that he aſſured him, that though the Bill was thrown out againſt me, yet if I went abroad, I ſhould be knocked on the Head, poiſoned, or a Robbery ſworn againſt me, and that my Life would certainly be taken away, by the Party who were againſt me. The ſaid *Mahony* told me he ſaid to the ſaid *Goddard*, he would not take ſuch an Oath on any Account: And that *Goddard* aſked him, Would he not do ſuch a Thing as to take an Oath to ſave my Life, being my Relation? and ſaid, he told the ſaid *Goddard*, he would not take a falſe Oath for the World. And that *Goddard*, at length, by many fair Speeches, importuned him to go to take out ſuch Action, and had directed him to his Brother's Houſe in *St. Chriſtopher*'s Church-yard, for 15*s.* on that Account, and promiſed to leave Directions with his Brother to give the Money, and deſired *Mahony*, when he got the Money, to come to me, in order to take out ſuch Action. The ſaid *Mahony* alſo told me, he had received the 15*s.* which he offered to give me, and ſaid, he would not take out any ſuch Action, as I was not indebted to him in any Sum that amounted to an Arreſt: Then I preſſed and intreated the ſaid *Mahony* to bring ſuch Action, as it was intended to ſave my Life, and told him I would give him a promiſſory Note for as much as he was to take the Action for, and he would be ſafe in ſo doing, which he then complied with; and I drew a Note for 5 or 6*l.* which I antedated, payable to him or Order; and it being then too late to take out any Action, in a Night or two after *Mahony* came again to me, and I directed him to go to the Office and lodge ſuch Action, which he did; and he afterwards gave him 15*s.*—That the ſaid Mr. *Friend*, at different Times, came to me, and aſſured me he would attend at the Trial, and ſwear that *Noads* wrote the ſaid Name *Diniſh Collins*; and he alſo aſſured me, that if I went abroad before the Trial was over, I ſhould be murdered or poiſoned, or have a Robbery ſworn againſt me, by the Contrivance of the ſaid Managers. That *Goddard* frequently came to me, and kept me full of Spirits, aſſuring me I ſhould be an Evidence againſt *Noads* and *Carter*; and if *Thomas Williams*, who was the ſuppoſed Executor of the ſaid *Wilkinſon*, and went by the Name of *John Daunt*, ſhould not be produced on my Trial, the ſaid Mr. *Friend* was to ſwear falſely againſt the ſaid *Noads*. I do declare, that the ſaid Mr. *Noads* and *Robert Carter* were innocent of what I ſwore againſt them, relating to any Knowledge they had in any Forgery; and that I, and the ſaid *John Williams*, otherwiſe *Daunt*, were the only Perſons concerned in forging and publiſhing the ſaid Will of the ſaid *John Wilkinſon*. And I do alſo declare, that I never had any Intention whatſoever to charge the ſaid Mr. *Noads*, or the ſaid *Carter*, with the ſaid Forgery, until I was ſpirited and prompted up in the Manner aforeſaid, by the Art, Management, and Contrivance of the ſaid *Goddard* and *Flanigan*. And I do alſo ſolemnly declare, that the ſaid *James Goddard* has often, ſince my Conviction, ſent ſeveral Meſſages to me, to deſire I would not reveal any of the ſecret Tranſactions that paſſed between us as aforeſaid, and ſent, in his own Hand-writing, a falſe Paper to be publiſhed, which he requeſted I would ſign, but refuſed ſo to do. I had ſeveral Letters and Papers of Conſequence, which, being adviſed and requeſted, I burnt, leſt I ſhould be ſearched, which would have given a very full and ſatisfactory Diſcovery in this Affair. That Word was ſent to me laſt Night by *Goddard*, that if I kept it ſecret, in caſe my Life could not be ſaved, I ſhould be decently buried, provided I would ſend back to him ſigned the falſe Confeſſion, which he ſent me in his own Hand-writing, as alſo another Writing that would be ſent me. Mr. *Vicors*, Chaplain to the *Spaniſh* Ambaſſador, being my Father, this Day told me, that he dined with the ſame *James Goddard* Yeſterday, and that he had deſired him to bring back to him from me the ſaid Confeſſion, and propoſed to ſend by him another Writing to be ſigned by me, which the ſaid Mr. *Vicors* told me he informed the ſaid Mr. *Goddard* he would not be any wiſe concerned therein; but he ſaid he would charge me to make an open Confeſſion of the Truth before Life parted. And I declare the ſaid Mr. *Vicors* adviſed me ſo to do; and, as a dying Man, being deſirous to diſcharge my Conſcience, have made this Declaration, which is nothing but the Truth. Given under my Hand, from my Cell in *Newgate*, the 27th of *January*, 1753.

TIM. MURPHY.

Preſent,
William Hawkins,
Iſaac Dalſton.

He was executed at *Tyburn*, *Monday*, *Feb.* 12, 1753.

LI. *Proceedings againſt Dr.* ARCHIBALD CAMERON, *at the* King's Bench, May 17, 1753, *on the Bill of Attainder paſſed againſt him* 19 Geo. II. *for being in the Rebellion* 1745.

" THIS Dr. *Cameron* * was younger Brother to *Donald Cameron* of " *Lochiel*, and Son of *Evan Cameron*, who was in the Rebellion " in 1715, and was one of the Seven that came from *France* with " the Young Pretender, and who, on their landing in *July* 1745, went to " the Houſe of *Donald Macdonald* of *Kenloch-Moidart*, and from thence " Orders were iſſued for the Clans to join the Young Pretender: On which " *Donald Cameron*, after much Intreaty, waited on him, and expreſſed his " Surprize to ſee him ſo weakly attended, and refuſed to raiſe his Clan, " 'till the Young Pretender could produce in Writing the *French* King's " Reſolution to aſſiſt him with a proper Number of Forces, *&c.* and be- " ing aſſured that he would, he ſummoned his Clan, and ſet up his Stand- " ard with this Motto, TANDEM TRIUMPHANS, *At length Triumphant*; " though, at the ſame Time, he told the Young Pretender, that his " Scheme was ſo ill concerted, that he feared no Succeſs would happen " from it, and that the Iſſue of it would be the Ruin of his Friends; as in " the End it proved.

" Dr. *Cameron* was in himſelf of a quiet and peaceable Temper; and, " had he not been Brother to *Lochiel*, it is very probable he would never " have gone into the Rebellion.

" His Father gave him the beſt Education *Scotland* could afford, deſign- " ing him for the Bar; which Profeſſion he did not like, and applied " himſelf to the Study of Phyſic and Anatomy, and put himſelf under the " Direction of Dr. *Alexander Monro*, of the Univerſity of *Edinburgh*, a " Gentleman of eſtabliſhed Reputation; and when he had acquired a " competent Skill in Anatomy, he applied himſelf to Phyſic, and was " inſtructed therein by Dr. *Sinclair*, a Gentleman very eminent in the Fa- " culty; after which he travelled abroad, and ſtudied in thoſe Branches at " *Paris*; and after ſtaying ſome Time there, returned to *Lochaber*, and " married a young Lady of the Name of *Campbell*, by whom he left Se- " ven Children.

" This Dr. *Cameron* might have made a conſiderable Figure in his Pro- " feſſion, had he ſettled at *London* or *Edinburgh*; but choſe his Reſidence " near his Brother's, among the Highlands, where he took great Pains to " cultivate the Minds and Manners of the Highlanders, who by his Means " were greatly improved. He was a Man of no Ambition, but of an ea- " ſy, quiet Temper. His chief Buſineſs in the Rebel Army was to attend " his Brother, and to aſſiſt him with his Skill, if any Accident ſhould be- " fal him in Battle; and he did attend not only ſeveral of the wounded " Rebels, but likewiſe ſeveral of the King's Troops that fell wounded in- " to the Hands of the Rebels. But the Battle of *Culloden* put a final End " to the Rebellion, and all the Pretender's Hopes, and ruined vaſt Num- " bers of Families, that put their Truſt in *French* Faith: *Lochiel* was " wounded in the Ancle in the Battle, and carried off by his Clan, and at- " tended daily by the Doctor his Brother, wandering about for ſome Time " after the Battle; 'till at laſt the Young Pretender, *Lochiel*, his Brother " the Doctor, and ſome other of his Followers, embarked on board a " Veſſel in the Harbour of *Flota* in the Iſle of *South-Uiſt*, and landed at " *Boulogne* in *France* about the Middle of *September* 1746, to their great " Joy, having ſuffered innumerable Hardſhips.

" *Lochiel* had immediately a Regiment given him by the King in the " *French* Army, and the Doctor was made Phyſician to it; but on the " Death of his Brother, in *September* 1748, he was appointed Phyſician " to Lord *Ogilvie*'s Regiment, then quartered at *Liſle* in *Flanders*.

" About the Year 1749, a Collection was made among the Jacobites " for their Friends abroad; and, it was ſaid, Dr. *Cameron* came over, " and received a Part of it: After this, another Collection was made for " theſe unhappy People; and the Doctor repreſented, that his Pay would " not keep him and his Family: But, after many Sollicitations, receiving " no ſatisfactory Anſwer, he came over himſelf to *Scotland*, and was there " diſcovered, and was ſeized by a Party of Lord *George Beauclerk*'s Regi- " ment, who were ſent from the Fort of *Inverſnaid* in ſearch of him, and " brought Priſoner to *Edinburgh*, *March* the 26th, 1753; and being " brought before the Lord Juſtice Clerk, he told him, *You are the only* " *Man in your Circumſtances, that ever I had Occaſion to ſpeak to ſince I have* " *been engaged in Buſineſs, whoſe Anſwers to me could be of no Prejudice to him*; " *becauſe you are to be carried to* London, *and there are Witneſſes ready to ap-* " *pear againſt you at the Court of King's Bench, to prove that you are the identi-* " *cal* Dr. Cameron, *mentioned in the Bill of Attainder: This will condemn* " *you, and you are to have no other Trial.*——This ſtruck him; and, af- " ter ſome Pauſe, he replied, *That he did not come over with any political De-* " *ſign, but only to tranſact ſome Affairs relating to* Lochiel's *Eſtate.*

" Upon his Arrival at *London*, he was examined by the Council at the " Cockpit, and committed Priſoner to the Tower."

* From the Hiſtorical Account of his Life, publiſhed at the Time of his Death.

Doctor CAMERON's *Caſe* *.

PLEAS before our Lord the King at *Weſtminſter* of *Eaſter* Term, in the 26th Year of the Reign, &c.

Amongſt the Pleas of the King Roll.

ENGLAND. *Our preſent Sovereign Lord the King hath tranſmitted to his beloved and faithful Sir* William Lee, *and others his Fellows Juſtices, &c.* [as in the Caſe of Mr. *Murray*, of *Broughton*, *mutatis mutandis*, Vol. IX.]

Dr. *Archibald Cameron*, who was one of the Perſons attainted by the Act of the 19th of the King, was, on the 17th of *May* 1753, brought to the Bar by *Habeas Corpus* directed to the Lieutenant of the Tower; and being arraigned by the Secondary on the Crown Side, the Writ of *Mittimus*, with the *Certiorari*, and Return, were read to him by the Secondary. The Attorney-General then prayed that Execution might be awarded; and the Secondary demanded of the Priſoner, what he had to ſay why Execution ſhould not be done upon him?

The Priſoner, who, during the whole Time he ſtood at the Bar, behaved with great Propriety, not inſenſible of his Condition, nor greatly diſconcerted, ſaid, That he was led to take a Part in the Rebellion againſt his own Judgment and Inclination, by ſome upon whom his All depended: That he ſtill flattered himſelf he ſhould appear not unworthy of his Majeſty's Mercy; and mentioned ſome Facts which he hoped might intitle him to it. He ſaid, he did not offer theſe Things as a Defence he relied on in point of Law, but as Facts which he hoped might have ſome Weight in another Place, for he was determined to throw himſelf entirely on his Majeſty's Mercy.

Whereupon Proclamation being made for Silence, the Chief Juſtice, after a ſhort Exhortation to the Priſoner, pronounced the uſual Judgment in Caſe of High Treaſon, *as an Award of Execution grounded on the Act of Attainder*. And a Rule was made for his Execution on the 7th of *June*, and Writs for that Purpoſe to the Lieutenant of the Tower and the Sheriff of *Middleſex* were ordered, as in the Caſe of Mr. *Ratcliffe*, Vol. IX.

The Court, in pronouncing Judgment in this Caſe, followed the Precedents in the Caſes of *Humphrey Stafford*, (1 *H.* VII. 23, 25.) and of *Barkſtead*, *Okey*, and *Corbet*, (1 *Sid.* 72. 1 *Lev.* 61. *State Trials*, Vol. VIII. p. 363.) The Caſes of *Holloway* and Sir *Thomas Armſtrong*, in *Charles* the Second's Time, (*State Trials*, Vol. III. Edit. 1741. p. 944, 984.) and of Lord *Griffin* †, in the late Queen's Time, were mentioned at a Conference among the Judges of the King's Bench on this Occaſion; but little Regard was paid to them.

For in *Holloway*'s, which was the leading Caſe, the Opinion of the Court ſeemeth to have been given haſtily, and againſt the Senſe of the Bar. And in Lord *Griffin*'s Caſe, Chief Juſtice *Holt*, who was at that Time abſent, was of a contrary Opinion, and, as I have heard, conſtantly perſiſted in it; and I do not ſee how an Attainder by Outlawry at Common Law, is, in this reſpect, diſtinguiſhable from the Caſe of an Attainder by Act of Parliament, which, in the preſent Caſe, is but in Nature of a Parliamentary Outlawry.

Indeed, in Caſes within the Act of the 19th of the King, *c.* 34. where the Proceeding is upon a Suggeſtion on the Roll, that the Priſoner did not ſurrender to Juſtice purſuant to that Act, the conſtant Courſe hath been to award Execution, without pronouncing Sentence of Death, as in Caſes of Felony: But that Practice is grounded on the Words of the Act; "And it ſhall be lawful for the Court to award Execution againſt ſuch "Offender, in ſuch Manner as if he had been convicted and ATTAINTED "in the ſaid Court."

The Record in the Caſe of *Barkſtead*, &c. was ſearched, and the Judges had Copies of it. It is of *Eaſter* Term, in the Fourteenth of King *Charles* the Second; it agreeth, *mutatis mutandis*, with the Record in Mr. *Murray*'s Caſe, Vol. IX. and after ſetting forth the Act of Parliament by which the Priſoners ſtood attainted, it proceedeth, "Et modo ſcilicet "die Mercurii prox' poſt Quinden' Paſch' iſto eodem Termino coram "Domino Rege apud Weſt' veniunt prædict' Johannes Barkſtead, Jo"hannes Okey, & Milo Corbet, per Johannem Robinſon Mil. & Bar. "Locum tenent' Turris London', virtute Brevis Domini Regis de Ha"beas Corpus ei inde direct' ad Barram hic duct' in propriis Perſonis "ſuis (in cujus Cuſtod' præantea ex Cauſis prædict' commiſſi fuerunt) "qui committuntur eidem Locum tenent' ſuper quo quæſit' eſt per Cur' "de eiſdem Johanne Barkſtead, Johanne Okey, & Milone Corbet, ſi "quid pro ſe habeant, vel dicere ſciant, quare Cur' hic ad Executionem "de eis & eorum quolibet procedi non debeat, Separatim dicunt quod "ipſi non ſunt eædem Perſonæ, nec eorum aliquis eſt eadem Perſona, "quæ de altâ Proditione prædict' in Actu Parliamenti prædict' ſpecificat' "Convict' & Attinct' exiſtunt; & hoc parat' ſunt verificare prout Cur' "&c. unde petunt judicium &c. & Galfridus Palmer Mil. & Bar. At"tornat' Domini Regis Generalis qui pro eodem Domino Rege in hac "Parte ſequitur præſens hic in Cur' pro eodem Domino Rege dicit, quod "prædict' Johannes Barkſtead, Johannes Okey, & Milo Corbet, modo "comparent' ſunt eædem Perſonæ, & quilibet eorum eſt eadem Perſona "in prædict' Actu Parliamenti nominat' qui de altâ Proditione prædict' "Convict' & Attinct' exiſtunt, & hoc pro Domino Rege petit quod in"quiratur per Patriam, & prædict' Johannes Barkſtead, Johannes Okey, "& Milo Corbet, ſimiliter, &c. Ideo immediate veniat inde Jurata "coram Domino Rege ibidem, &c. Et Juratores Juratæ prædict' per "Vicecomit' Middleſex prædict' ad hoc impannellat' exact' veniunt, qui "ad Veritatem de præmiſſis dicend' elect' triat' & jurat' dicunt ſuper ſa"cramentum ſuum, quod prædict' Johannes Barkſtead, Johannes Okey, "& Milo Corbet, ſunt eædem Perſonæ, & quilibet eorum eſt eadem "Perſona in prædict' Actu Parliamenti nominat' qui de altâ Proditione "prædict' in Actu Parliamenti prædict' Convict' & Attinct' exiſtunt, prout "prædict' Galfridus Palmer Mil. & Bar. Attornat' Domini Regis nunc "General' pro dict' Domino Rege ſuperius allegavit, &c. & ulterius "quæſit' eſt de præfat' Johanne Barkſtead, Johanne Okey, & Milone "Corbet, ſeparatim, ſi quid ulterius pro ſe habeant vel dicere velint "necne, qui Nihil dicunt &c. Ideo conſiderat' eſt quod prædict' Jo"hannes Barkſtead, Johannes Okey, & Milo Corbet, ducantur, & quili"bet eorum ducatur uſque Turrim London, & deinde per medium Civi"tat' London directe uſque ad Furcas de Tyburn trahantur, & quilibet "eorum trahatur, & ſuper Furcas illas ibidem ſuſpendantur & quilibet "eorum ſuſpendatur, & Viventes ad Terram proſternantur, & quilibet "eorum proſternatur, & Interiora ſua extra Ventres ſuos & eorum cuju"ſlibet capiantur, ipſiſque Viventibus comburantur, & Capita eorum "& eorum cujuſlibet amputenter, & Corpora eorum & eorum cujuſlibet "in quatuor Partes dividantur, & quod Capita & Quarteria illa ponan"tur ubi Dominus Rex ea aſſignare voluerit, &c."

"On Dr. *Cameron*'s receiving Sentence, he made a genteel Bow, and "only deſired he might have Leave to ſend for his Wife, who, with "ſeven Children, entirely dependent on him for Support, were at *Liſle* "in *Flanders*; which was granted. He ſaid, that in 1746 he came from "*France* to ſurrender himſelf, agreeable to the Proclamation, but was "prevented by an Accident happening in his Family: He behaved with "great Reſolution and Decency before the Court ‡.

"During the Interval between the Sentence and his Execution, his "Wife uſed all poſſible Means to obtain a Pardon, by delivering a Pe"tition to his Majeſty, another to her Royal Highneſs the Princeſs of "*Wales*, and to ſeveral of the Nobility, but without Effect: For, on "*Thurſday*, *June* 7th, about Ten o'Clock in the Forenoon, he was "brought out of the Tower, guarded by a Party of the Horſe-Guards, "and delivered to the Sheriffs of *London* and *Middleſex*: As ſoon as he "was out at the Tower-Gate, he was put into the Hurdle, to which he "was faſtened by the Executioner. In this Manner he was drawn thro' "the City, attended by Sir *Richard Glynn*, one of the Sheriffs, and under "the Care of the Sheriff's Officers and Conſtables, to the Place of Exe"cution. Sir *Charles Aſgill*, the other Sheriff, left the Priſoner at the "Tower.

"The Doctor being arrived at the Place of Execution, and helped into "the Cart, deſired to ſpeak to the Sheriff, who came to him: The "Doctor intreated the Favour of him, that he would give Orders to let "his Body hang 'till he was quite dead, before the Executioner began "his further Operation, and the Sheriff promiſed to oblige him in his "Requeſt; and accordingly the Body hung three Quarters of an Hour "before cut down, when no Remains of Life was in him.

"While in the Cart, a Gentleman in a Lay Habit came and prayed "with him, and then left him to his own private Devotions; by which "it was imagined the Doctor was a Roman Catholic, and the Gentleman "who prayed with him a Prieſt. He died with great Decency and Re"ſolution, without any viſible Alteration in his Countenance or Beha"viour, but perfectly reſigned to the Will of Heaven. He left no Paper "behind him. After his Body was taken from the Gallows, the Exe"cutioner cut off his Head, and took out his Bowels, but did not "quarter the Body. His Body and Head were put into a Coffin, with "this Inſcription on the Lid of it, *Dr.* Archibald Cameron *ſuffered the* "*7th of* June, 1753, *aged* 46."

* *Foſter*'s Reports, p. 109—112.

† *The Caſe of Lord* GRIFFIN, *from a MS. Report of the late Lord Chief Baron* Dod. *Paſch.* 7 Annæ 1708.

Lord *Griffin*, who had been outlawed for High-Treaſon, was this Term brought to the King's Bench; and the whole Record of the Indictment and Outlawry was read to him, and he was demanded, if he had aught to ſay why Execution ſhould not be done; and he not making any material Objection, the Court ordered Execution to be done. But note, Sir *James Montagu*, Sollicitor-General, (there being then no Attorney-General) prayed that Judgment as in Caſe of High-Treaſon might be pronounced; or that at leaſt it might be entered on the Roll in the Award of Execution: And ſaid, this was the Opinion of *Holt*, Chief Juſtice, then at *Bath propter Ægritudinem*. But *Powell* and the Court held, that the Award of Execution ſhould be general; for the Judgment in the Outlawry implieth all the Particulars, and no ſecond Judgment ought to be given. And ſo they ſaid it was held in the Caſes of *Holloway* and Sir *Thomas Armſtrong*. *Mes per auters dubitatur, quia le Livre del* 1 H. 7. *fo.* 24. *eſt contra*; and it was ſaid that in the Caſe of *Barkſtead*, *Okey*, and *Corbet*, the Court followed the Precedent of that Book.

‡ From the Hiſtorical Account of his Life, p. 27.

LII. The TRIAL of ELIZABETH CANNING, Spinster, for Wilful and Corrupt Perjury, at *Justice-Hall* in the *Old-Bailey*, held by Adjournment on *Monday* the 29th of *April*, *Wednesday* the 1*st*, *Friday* the 3d, *Saturday* the 4th, *Monday* the 6th, *Tuesday* the 7th, and *Wednesday* the 8th of *May*, 1754, before the Right Hon. *Thomas Rawlinson*, Esq. Lord Mayor of the City of *London*, Sir *Edward Clive*, Knt. one of the Justices of his Majesty's Court of Common-Pleas, the Hon. *Heneage Legge*, Esq. one of the Barons of his Majesty's Court of Exchequer, *William Moreton*, Esq. Recorder, and others the Justices, *&c* *.

AT the General Session of Oyer and Terminer, holden for the City of London, *at* Justice-Hall, *in the* Old-Bailey, *within the Parish of* St. Sepulchre, *in the Ward of* Farringdon Without, *in* London *aforesaid*; *on* Wednesday *the 24th Day of* April, *in the twenty-seventh Year of the Reign of our Sovereign Lord* George *the Second*, *King of* Great-Britain, *&c. before* Thomas Rawlinson, *Esq. Mayor of the City of* London; *Sir* Edward Clive, *Knt. one of the Justices of our Lord the King, of the Court of Common-Pleas*; Heneage Legge, *Esq. one of the Barons of the Exchequer of our said Lord the King*; William Moreton, *Esq. Recorder of the City of* London; Robert Scott, *Esq.* Samuel Fludyer, *Esq. Aldermen of the said City, and others their Fellows Justices of our said Lord the King, assigned*, &c. *and continued by several mesne Adjournments to* Monday *the 13th of* May *following.*

On *Monday* the 29th of *April*, 1754, the Court being opened, the Prisoner *Elizabeth Canning* was set to the Bar, in order to take her Trial upon the following Indictment, which had been preferred against her in the *June* Session 1753, and to which she had appeared and pleaded Not Guilty, in the *February* Session following.

Gentlemen of the Jury.

William Manning,	——	sworn.
John Wilding,	——	sworn.
William Webster,	——	sworn.
John Langley,	——	sworn.
James Waugh,	—	challenged by Crown.
Charles Moore,	—	challenged by Crown.
Richard Frome,	——	sworn.
Robert Smith,	—	challenged by Defendant.
John Scott,	——	sworn.
William Evered,	——	sworn.
William Nash,	—	challenged by Crown.
John Carter,	——	sworn.
John Potter,	—	challenged by Crown.
John Kent,	—	challenged by Crown.
John Rogers,	—	challenged by Crown.
William Martin,	—	challenged by Crown.
Richard Linch,	—	challenged by Crown.
Robert Rampshire,	—	challenged by Crown.
Joseph Russell,	——	sworn.
Stephen Prew,	—	challenged by Crown.
John Nemes,	—	challenged by Defendant.
Wilkinson Brathwait,	—	challenged by Crown.
William Walker,	——	sworn.
John Mitchell,	—	challenged by Crown.
Martin Newth,	—	challenged by Crown.
Benj. Glanville,	—	challenged by Defendant.
Edward Baxter,	—	challenged by Crown.
John Whipham,	—	challenged by Crown.
William Parsons,	——	sworn.
Thomas Stracey,	—	challenged by Crown.
Daniel Destleu,	—	challenged by Crown.
Edward Dymoke	——	sworn.

Clerk of the Arraigns. Cryer, count these.

William Manning,	*John Wilding*,
William Webster,	*John Langley*,
Richard Frome,	*John Scott*,
William Evered,	*John Carter*,
Joseph Russell,	*William Walker*,
William Parsons,	*Edward Dymoke.*

Cl. of Arr. Cryer, Make Proclamation.

Cryer. Oyez, oyez, oyez! If any one can inform my Lords the King's Justices, the King's Serjeant, the King's Attorney, on this Inquest to be taken, of any Crimes or Misdemeanors done or committed by the Defendant at the Bar, let them come forth, and they shall be heard.

God save the King.

Cl. of Arr. Gentlemen of the Jury; The Defendant at the Bar stands indicted by the Name of *Elizabeth Canning*, late of *London*, Spinster; and the Indictment sets forth, that at the General Session of the Peace holden for the County of *Middlesex*, at *Hicks's-Hall*, in *St. John's-Street*, in the County aforesaid, on *Monday* the 19th Day of *February*, in the twenty-sixth Year of the Reign of our present Sovereign Lord *George* the Second, by the Grace of God, of *Great-Britain*, *France*, and *Ireland*, King, Defender of the Faith, and so forth; before *Luke Robinson*, Esquire, Sir *John Cross*, Baronet, *Thomas Lane* and *Pierce Galliard*, Esquires, and others their Fellows Justices of our said Lord the King, assigned to keep the Peace in the County aforesaid, and also to hear and determine divers Felonies, Trespasses, and other Misdeeds committed in the same County, by the Oath of *Edmund Kane*, Gent. *John Jennings*, *George Fry*, *David Reynolds*, *Thomas Foreman*, *Arthur Hancock*, *Isaac George*, *Lewis Powell*, *William Meads*, *Henry Haines*, *John Greenhill*, *Thomas Hibbins*, *John Brooke*, *Thomas Bowman*, *Richard Westmerland*, *Elias Lock*, *Henry Colman*, *John Knowles*, *Henry Carthrup*, *William Fort*, *Thomas Woorell*, *Job Blandford*, and *Robert Rewell*, good and lawful Men of the County aforesaid, then and there sworn and charged to enquire for our said Lord the King, for the Body of the said County; it was presented that *Mary Squires*, late of the Parish of *Enfield*, in the County of *Middlesex*, Widow, on the second Day of *January*, in the twenty-sixth Year of the Reign of our Sovereign Lord *George* the Second, King of *Great-Britain*, &c. with Force and Arms, at the Parish aforesaid, in the County aforesaid, in the Dwelling-House of one *Susannah Wells*, there situate, upon one *Elizabeth Canning*, Spinster, in the Peace of God and our said Lord the King then and there being, feloniously did make an Assault, and her the said *Elizabeth* in bodily Fear and Danger of her Life then and there feloniously did put; and one Pair of Stays of the Value of ten Shillings, of the Goods and Chattels of the said *Elizabeth*, from the Person and against the Will of the said *Elizabeth*, in the Dwelling-House aforesaid, then and there, violently and feloniously did steal, take, and carry away, against the Peace of our said Lord the King, his Crown and Dignity: And thereupon such Proceedings were had, that afterwards (to wit) at the Delivery of the Gaol of our said Lord the King of *Newgate*, holden for the County of *Middlesex*, at *Justice-Hall* in the *Old-Bailey*, in the Suburbs of the City of *London*, on *Wednesday* the 21st of *February*, in the twenty-sixth Year of the Reign of our said Lord the King, before Sir *Crisp Gascoyne*, Knight, Mayor of the City of *London*; Sir *Martin Wright*, Knight, one of the Justices of our said Lord the King, assigned to hold Pleas before the King himself; *Nathaniel Gundry*, Esquire, one of the Justices of our said Lord the King of the Court of Common Pleas; Sir *Richard Adams*, Knight, one of the Barons of the Court of Exchequer of our said Lord the King, and others their Fellows Justices of our said Lord the King, assigned to deliver his Gaol of *Newgate* of the Prisoners therein then being; and before whom the Indictment aforesaid, against the said *Mary Squires*, was then depending; came the said *Mary Squires* in the same Indictment named, under the Custody of Sir *Charles Asgill*, Knight, and Sir *Richard Glynn*, Knight, Sheriffs of the said County (into whose Custody in the Goal of *Newgate* aforesaid, she the said *Mary Squires*, for the Cause aforesaid, had been before committed): And the said *Mary Squires* being then brought to the Bar there in her proper Person, and being then and there asked how she would be acquitted of the Premisses specified in the said Indictment as aforesaid, she the said *Mary Squires* did then and there say, that she was not guilty thereof; and thereupon for Good and Ill she put herself upon the Country: Whereupon such Proceedings were had, that afterwards (to wit), at the same Session of the Delivery of the Goal aforesaid, holden for the County aforesaid, at *Justice-Hall* aforesaid, on the said *Wednesday* the 21st Day of *February*, in the twenty-sixth Year aforesaid, and before the same Justices of our said Lord the King, in that behalf above-named, and others their Fellows aforesaid, by a certain Jury of the County between our said Lord the King, and the said *Mary Squires* in that behalf in due Manner chosen, tried and sworn, the Issue aforesaid was tried. And the said present Jurors for our said Lord the King, now upon their Oath aforesaid, do further present, That upon the said Trial between our said Lord the King and the said *Mary Squires*, at *London* aforesaid, (that is to say) at the Parish of *St. Sepulchre*, in the Ward of *Farringdon Without*, in *London* aforesaid, (to wit) at *Justice-Hall* aforesaid, in open Court aforesaid, the said *Elizabeth Canning*, late of *London*, Spinster, did appear as a Witness for and on behalf of our said Lord the King, against the said *Mary Squires*; and the said *Elizabeth Canning* then and there did, before the said Justices last named, in open Court aforesaid, take her corporal Oath, and was duly sworn upon the Holy Gospel of God, to speak the Truth, the whole Truth, and nothing but the Truth, of and upon the Premisses so as aforesaid put in Issue between our said Lord the King and the said *Mary Squires* (the same Justices then and there having a competent Authority to administer an Oath to the said *Elizabeth Canning* in that behalf). And the said *Elizabeth Canning* being so sworn, and not having the Fear of God before her Eyes, but being moved and seduced by the Instigation of the Devil, and having no Regard for the Laws and Statutes of this Realm, nor fearing the Punishments therein contained, and unlawfully, wickedly, maliciously, and deliberately advising, contriving, and intending to pervert the due Course of Law and Justice, and to cause and procure the said *Mary Squires* untruly to be convicted of the Felony and Robbery charged upon her in and by the Indictment aforesaid, afterwards, (to wit) upon the 21st Day of *February*, in the twenty-sixth Year aforesaid, before the Justices of our said Lord the King last above-named, at the same Session of Delivery of the Goal aforesaid, at *London* aforesaid, (that is to say) at the Parish of *St. Sepulchre* aforesaid, in the Ward of *Farringdon Without* aforesaid, in *London* aforesaid, did falsely, wickedly, voluntarily, and corruptly, by her own proper Act and Consent, and of her own most wicked and corrupt Mind, upon her said Oath, so by her taken as aforesaid, say, depose, swear, and give in Evidence (among other Things) to the Jurors of the Jury, who were then and there in due Manner chosen, tried, and sworn to try the said Issue, That she the said *Elizabeth Canning* had been at *Salt-Peter*

* Taken in Short-hand by *Thomas Gurney*, *Samuel Rudd*, and *Isaac Harman*, all eminent Short-hand Writers, appointed by the Court for that Purpose; and after being carefully examined together, faithfully transcribed by the said *Thomas Gurney*, many Years Short-hand Writer at the said Court. Printed by the Authority and Appointment of the Right Hon. *Thomas Rawlinson*, Esq. Lord Mayor.

Bank to ſee an Uncle and Aunt, and ſtayed there till about nine at Night, on the 1ſt Day of *January* (meaning the Month of *January* in the ſaid Indictment mentioned): That then her Uncle and Aunt came with her as far as *Aldgate*, when they parted: That ſhe the ſaid *Elizabeth Canning* was then alone, ſo came down *Houndſditch* and over *Moorfields* by *Bedlam* Wall: That there two luſty Men, both in great Coats, laid hold of her: That they took her to the Priſoner *Wells*'s Houſe (meaning the Dwelling-Houſe of the ſaid *Suſannah Wells* in the ſaid Indictment mentioned, ſituate at *Enfield* aforeſaid, in the County aforeſaid). And the ſaid *Elizabeth Canning* being then and there, at and upon the ſaid Trial, aſked and examined upon her ſaid Oath, at what Time ſhe thought it might be that ſhe was taken to the ſaid *Suſannah Wells*'s Houſe; ſhe the ſaid *Elizabeth Canning* then and there, in the ſaid Court, at that Trial, falſly, wilfully, and corruptly, upon her ſaid Oath, ſaid, depoſed, anſwered, and gave Evidence to the Jurors of the ſaid Jury, ſo as aforeſaid choſen, tried and ſworn to try the ſaid Iſſue, That as near as ſhe could think, it was about Four o'Clock in the Morning (meaning the Morning of the ſaid 2d Day of *January*). The Indictment, Gentlemen, farther ſets forth, That the ſaid *Elizabeth Canning*, being ſo ſworn as aforeſaid, did then and there, upon the ſaid Trial, further falſly, voluntarily, and corruptly, by her own proper Act and Conſent, and of her own moſt wicked and corrupt Mind, upon her ſaid Oath ſo by her taken as aforeſaid, ſay, depoſe, ſwear, and give in Evidence (among other Things) to the Jurors of the ſaid Jury, ſo choſen, tried, and ſworn to try the ſaid Iſſue as aforeſaid, that ſhe the ſaid *Elizabeth Canning* ſaw the Gypſey Woman *Squires* (meaning the above-named *Mary Squires*) ſitting in a Chair (meaning ſitting in a Chair in the ſaid Dwelling-Houſe). That as ſoon as ſhe the ſaid *Elizabeth Canning* was brought in, (meaning into the ſaid Dwelling-Houſe) the ſaid *Mary Squires* took her by the Hand, and aſked her if ſhe choſe to go their Way, ſaying, that if ſhe did, ſhe ſhould have fine Cloaths. That ſhe the ſaid *Elizabeth Canning* ſaid, No. That then ſhe the ſaid *Mary Squires* went and took a Knife out of a Dreſſer-Drawer, and cut the Lace of her the ſaid *Elizabeth Canning*'s Stays, and took them (meaning the ſaid *Elizabeth Canning*'s Stays) from her. That ſhe the ſaid *Mary Squires* gave her the ſaid *Elizabeth Canning* a Slap on the Face: That ſhe the ſaid *Mary Squires* puſhed her up Stairs (meaning certain Stairs leading from the Kitchen of the ſaid Dwelling-Houſe) into a certain Room called the Workſhop, belonging to the ſaid Dwelling-Houſe from out of the Kitchen (meaning the Kitchen of the ſaid Dwelling-Houſe) where they were. And the ſaid *Elizabeth Canning* being then and there, upon the ſaid Trial, aſked and examined upon her ſaid Oath, concerning the Name of the Place ſhe was put into; ſhe the ſaid *Elizabeth Canning* then and there, at that Trial, falſly, wilfully, and corruptly, upon her ſaid Oath depoſed, anſwered, and gave in Evidence to the Jurors of the ſaid Jury, ſo as aforeſaid choſen, tried, and ſworn to try the ſaid Iſſue, That they call it (meaning the ſaid Room called the Workſhop) the Hay-loft (meaning by ſuch Anſwer ſo given to ſuch Queſtion, that ſhe the ſaid *Elizabeth Canning* had been puſhed up the ſaid Stairs by the ſaid *Mary Squires* into the ſaid Room called the Work-ſhop). The Indictment, Gentlemen, further ſets forth, that the ſaid *Elizabeth Canning* being ſo ſworn as aforeſaid, did then and there, upon the ſaid Trial, further falſly, voluntarily, and corruptly, by her own proper Act and Conſent, and of her own moſt wicked and corrupt Mind, upon her ſaid Oath, ſo by her taken as aforeſaid, ſay, depoſe, ſwear, and give in Evidence (among other Things) to the Jurors of the ſaid Jury ſo choſen, tried, and ſworn to try the ſaid Iſſue as aforeſaid, That the Room-Door was ſhut as ſoon as the ſaid *Elizabeth Canning* was put up: That after ſhe the ſaid *Mary Squires* ſhut the Door, ſhe ſaid, that if ever ſhe heard the ſaid *Elizabeth Canning* ſtir or move, ſhe would cut her the ſaid *Elizabeth Canning*'s Throat. That when the Day-light (meaning the Day-light of the 2d of *January*) appeared, ſhe could (meaning that ſhe did) ſee about the Room (again meaning the ſaid Room called the Work-ſhop): That there (again meaning the ſaid Room called the Workſhop) was a Fire-place and Grate in it: That there (again meaning the ſaid Room called the Work-ſhop) was a black Pitcher not quite full of Water and about twenty-four Pieces of Bread; and that a certain Pitcher then and there produced to the ſaid *Elizabeth Canning*, at the Time of her giving her Evidence as aforeſaid, was the Pitcher, and that it was full (meaning full of Water) to near the Neck. And the ſaid *Elizabeth Canning*, being then and there, at and upon the ſaid Trial, alſo aſked and examined upon her ſaid Oath, how long ſhe continued in the ſaid Room called the Workſhop; ſhe the ſaid *Elizabeth Canning* then and there, in the ſaid Court, at that Trial, falſly, wilfully, and corruptly, upon her ſaid Oath, ſaid, depoſed, anſwered, and gave in Evidence to the Jurors of the ſaid Jury, ſo as aforeſaid choſen, tried, and ſworn to try the ſaid Iſſue, a Month by the Weeks, all but a few Hours. The Indictment, Gentlemen, further ſets forth, that the ſaid *Elizabeth Canning* being ſo ſworn as aforeſaid, did then and there upon the ſaid Trial, further falſly, wickedly, voluntarily, and corruptly, by her own proper Act and Conſent, and of her own moſt wicked and corrupt Mind, upon her ſaid Oath, ſo taken as aforeſaid, ſay, depoſe, ſwear, and give in Evidence (amongſt other Things) to the Jurors of the ſaid Jury, ſo choſen, tried, and ſworn to try the ſaid Iſſue as aforeſaid, That on the *Wedneſday* (meaning *Wedneſday* the 24th Day of the ſaid Month of *January*) before the ſaid *Elizabeth Canning* came away, ſhe ſaw ſomebody look through the Crack of the Door (again meaning the Door of the ſaid Room called the Workſhop): That ſhe the ſaid *Elizabeth Canning* got out, (meaning out of the ſaid Room called the Workſhop) about Four o'Clock in the Afternoon, on a *Monday* (meaning *Monday* the 29th Day of the ſaid Month of *January*), after ſhe the ſaid *Elizabeth Canning* had been confined there four Weeks, all but a few Hours: That ſhe the ſaid *Elizabeth Canning* broke down a Board that was nailed up at the Inſide of a Window, (meaning a Window of and belonging to the ſaid Room called the Workſhop) and got out there (meaning out of the ſaid Window): That ſhe the ſaid *Elizabeth Canning* took an old ſort of a Bed-gown, and a Handkerchief, that were in the ſaid Hay-loft, (again meaning the ſaid Room called the Workſhop) and lay in a Grate of the Chimney (meaning the Chimney of the ſaid Room called the Workſhop). And the ſaid *Elizabeth Canning* being then and there, at and upon the Trial, aſked and examined upon her ſaid Oath, concerning the Time ſhe drank all her Water, (meaning the Water ſhe ſo as aforeſaid gave in Evidence to have been in the ſaid Pitcher) ſhe the ſaid *Elizabeth Canning* then and there, in the Court at that Trial, falſly and corruptly, upon her ſaid Oath, ſaid, depoſed, anſwered, and gave in Evidence to the Jurors of the ſaid Jury, ſo as aforeſaid choſen, tried, and ſworn to try the ſaid Iſſue, That ſhe drank all that (meaning all the Water ſhe ſo as aforeſaid gave in Evidence to have been in the ſaid Pitcher) about Half an Hour before ſhe got out of the Room (meaning the ſaid Room called the Workſhop): Whereas, in Truth and in Fact, ſhe the ſaid *Elizabeth Canning* was not, about Four of the Clock in the Morning of the ſaid 2d Day of *January*, taken by two Men to the ſaid Dwelling-Houſe of the ſaid *Suſannah Wells*; and whereas, in Truth and in Fact, ſhe the ſaid *Elizabeth Canning* was not taken or brought into the ſaid Houſe on the ſaid 2d of *January*; and whereas, in Truth and in Fact, ſhe the ſaid *Elizabeth Canning* was not on the ſaid 2d Day of *January*, or at any other Time in the ſaid Month of *January*, in the ſaid Houſe; and whereas, in Truth and in Fact, ſhe the ſaid *Elizabeth Canning* did not, on the ſaid 2d Day of *January*, ſee the ſaid *Mary Squires* in the ſaid Houſe; and whereas, in Truth and in Fact, ſhe the ſaid *Elizabeth Canning* did not, at any other Time in the ſaid Month of *January*, ſee the ſaid *Mary Squires* in the ſaid Houſe; and whereas, in Truth and in Fact, ſhe the ſaid *Mary Squires*, on the ſaid 2d Day of *January*, was at *Abbotſbury* in the County of *Dorſet*, and was not on that Day in the ſaid Houſe; and whereas, in Truth and in Fact, the ſaid *Mary Squires* did not take her the ſaid *Elizabeth Canning* by the Hand, and aſk her if ſhe choſe to go their Way, ſaying, that if ſhe did ſhe ſhould have fine Cloaths; and whereas, in Truth and in Fact, the ſaid *Mary Squires* did not take her the ſaid *Elizabeth Canning* by the Hand, and aſk her if ſhe choſe to go their Way; and whereas, in Truth and in Fact the ſaid *Mary Squires* did not go and take a Knife out of a Dreſſer-Drawer, and cut the Lace of her the ſaid *Elizabeth Canning*'s Stays, and take them from her; and whereas, in Truth and in Fact, the ſaid *Mary Squires* did not cut the Lace of her the ſaid *Elizabeth Canning*'s Stays; and whereas, in Truth and in Fact, the ſaid *Mary Squires* did not take the ſaid *Elizabeth Canning*'s Stays from her; and whereas, in Truth and in Fact, the ſaid *Mary Squires* did not give the ſaid *Elizabeth Canning* a Slap on the Face; and whereas, in Truth and in Fact, the ſaid *Mary Squires* did not puſh the ſaid *Elizabeth Canning* up the ſaid Stairs leading from the ſaid Kitchen into the ſaid Room called the Workſhop; and whereas, in Truth and in Fact, the ſaid *Mary Squires* did not puſh the ſaid *Elizabeth Canning* upon the ſaid Stairs into the ſaid Room called the Workſhop; and whereas, in Truth and in Fact, the ſaid *Mary Squires* did not puſh the ſaid *Elizabeth Canning* up any Stairs into the ſaid Room called the Workſhop, or Hay-loft, or into any other Room or Place whatſoever; and whereas, in Truth and in Fact, the ſaid *Mary Squires* did not ſay, that if ſhe ever heard the ſaid *Elizabeth Canning* ſtir or move, ſhe would cut her Throat; and whereas, in Truth and in Fact, when the Day-light of the ſaid 2d Day of *January* appeared, ſhe the ſaid *Elizabeth Canning* could not ſee about the ſaid Room called the Workſhop; and whereas, in Truth and in Fact, the ſaid *Elizabeth Canning* did not, on the ſaid 2d Day of *January*, ſee about the ſaid Room called the Workſhop; and whereas, in Truth and in Fact, the ſaid *Elizabeth Canning* was not, on the ſaid 2d Day of *January*, in the ſaid Room called the Workſhop, or in any Room or Place belonging to the ſaid Dwelling-Houſe; and whereas, in Truth and in Fact, the ſaid *Elizabeth Canning* was not, at any other Time between the ſaid 2d Day of *January*, and the ſaid 29th Day of *January*, in the ſaid Room called the Workſhop, or in any other Room or Place belonging to the ſaid Dwelling Houſe; and whereas, in Truth and in Fact, there was not, on the ſaid 2d Day of *January*, any black Pitcher, and about twenty-four Pieces of Bread, or any other Number of Pieces of Bread, in the ſaid Room called the Workſhop; and whereas, in Truth and in Fact, the Pitcher ſo produced to the ſaid *Elizabeth Canning*, at the Time of her giving Evidence as aforeſaid, was not, on the ſaid 2d Day of *January*, in the ſaid Room called the Workſhop; and whereas the ſaid Pitcher ſo produced to her the ſaid *Elizabeth Canning* as aforeſaid, was not, on the 2d Day of *January*, full of Water, to near the Neck; and whereas, in Truth and in Fact, the ſaid *Elizabeth Canning* did not drink all the Water, in and by her ſaid Evidence pretended to have been in ſuch Pitcher, about Half an Hour before the Time, ſhe ſo as aforeſaid gave in Evidence, that ſhe got out of the ſaid Room called the Workſhop; and whereas, in Truth and in Fact, ſhe the ſaid *Elizabeth Canning* did not, at any Time on the ſaid 29th Day of *January*, or at any other Time between the ſaid 2d Day of *January* and the ſaid 29th Day of *January*, drink any Water out of the ſaid Pitcher, in the ſaid Room called the Workſhop, or in any other Place or Room belonging to the ſaid Houſe; and whereas, in Truth and in Fact, the ſaid *Elizabeth Canning* did not continue in the ſaid Room called the Workſhop a Month by the Weeks, all but a few Hours; and whereas, in Truth and in Fact, the ſaid *Elizabeth Canning* was not, at any Time in the ſaid Month of *January*, confined in the ſaid Room called the Workſhop; and whereas, in Truth and in Fact, the ſaid *Elizabeth Canning* was not, in the ſaid Month of *January* confined in any other Room of or belonging to the ſaid Houſe of the ſaid *Suſannah Wells*, for one Month by the Weeks, all but a few Hours, or for any other Space of Time; and whereas, in Truth and in Fact, ſhe the ſaid *Elizabeth Canning* did not, on the ſaid *Wedneſday* the ſaid 24th of *January*, ſee any Perſon look through the Crack of the Door of the ſaid Room called the Workſhop; and whereas, in Truth and in Fact, the ſaid *Elizabeth Canning* did not, at any other Time in the ſaid Month of *January*, ſee any Perſon look through the Crack of the ſaid Door; and whereas, in Truth and in Fact, the ſaid *Elizabeth Canning* did not break down any Board that had been nailed up at the Inſide of any Window of or belonging to the ſaid Room called the Workſhop; and whereas, in Truth and in Fact, the the ſaid *Elizabeth Canning* did not get out of the ſaid Room called the Workſhop on *Monday* the ſaid 29th Day of *January*; and whereas, in Truth and in Fact, ſhe the ſaid *Elizabeth Canning* did not get out of the ſaid Window; and whereas, in Truth and in Fact, ſhe the ſaid *Elizabeth Canning* did not get out of any Window of or belonging to

the ſaid Room called the Workſhop; and whereas, in Truth and in Fact, the ſaid *Elizabeth Canning* did not take an old Sort of a Bed-gown and a Handkerchief, that were in the ſaid Room called the Workſhop, and lay in a Grate of the Chimney of the ſaid Room; and whereas, in Truth and in Fact, ſhe the ſaid *Elizabeth Canning* did not take any Bed-gown or Handkerchief out of a Grate in the Chimney in the ſaid Room; and whereas, in Truth and in Fact, there was not any Grate in the Chimney of the ſaid Room on the 2d Day of *January*; and whereas there was not any Grate in the Chimney of the ſaid Room, at any other Time, during the Time ſhe the ſaid *Elizabeth Canning* ſo as aforeſaid gave in Evidence that ſhe continued or had been confined in the ſaid Room called the Workſhop; and whereas, in Truth and in Fact, there was not, on the ſaid 2d Day of *January*, or at any other Time between that Day and the ſaid 29th Day of *January*, any Grate in the Fire-place of the ſaid Room called the Workſhop, as ſhe the ſaid *Elizabeth Canning*, by her falſe and corrupt Teſtimony aforeſaid, at and upon the ſaid Trial, did moſt falſely, voluntarily, and corruptly, by her own proper Act and Conſent, upon her ſaid Oath, ſo taken as aforeſaid, ſay, depoſe, ſwear, and give in Evidence to the Jurors of the ſaid Jury, in manner aforeſaid. And then, Gentlemen, the Indictment in this Place concludes, That ſhe the ſaid *Elizabeth Canning*, at and upon the ſaid Trial, upon the ſaid 21ſt Day of *February*, in the 26th Year aforeſaid, at *London* aforeſaid, (that is to ſay) at the ſaid Pariſh of *St. Sepulchre*, in the ſaid Ward of *Farringdon Without*, in *London* aforeſaid, before the ſaid Juſtices of our ſaid Lord the King laſt above-named, and others their Fellows aforeſaid, by her own proper Act and Conſent, and of her own moſt wicked and corrupt Mind, in Manner and Form aforeſaid, did falſely, voluntarily, and corruptly, upon her ſaid Oath, ſo taken as aforeſaid, commit wilful and corrupt Perjury, to the great Diſpleaſure of Almighty God, in Contempt of our ſaid Lord the King and his Laws, to the evil and pernicious Example of all others in the like Caſe offending, and againſt the Peace of our ſaid Lord the King, his Crown and Dignity. The Indictment, Gentlemen, further charges, That at the Seſſion of the Delivery of the Gaol of our ſaid Lord the King of *Newgate*, holden for the County of *Middleſex*, at *Juſtice-Hall* in the *Old-Bailey*, in the Suburbs of the City of *London*, on *Wedneſday* the 21ſt Day of *February*, in the 26th Year of the Reign of our ſaid Sovereign Lord *George* the Second, King of *Great Britain*, &c. before Sir *Criſp Gaſcoyne*, Mayor of the City of *London*; Sir *Martin Wright*, Knight, one of the Juſtices of our ſaid Lord the King, aſſigned to hold Pleas before the King himſelf; *Nathaniel Gundry*, Eſq. one of the Juſtices of our ſaid Lord the King of the Court of Common Pleas; Sir *Richard Adams*, Knight, one of the Barons of the Court of Exchequer of our ſaid Lord the King, and others their Fellows Juſtices of our ſaid Lord the King, aſſigned to deliver the ſaid Gaol of *Newgate* of the Priſoners therein being; one *Mary Squires* was in due Form of Law, tried by a Jury of the Country, duly taken between our ſaid Lord the King and the ſaid *Mary Squires* in that Behalf, upon another Indictment, for the Robbery of *Elizabeth Canning*, Spinſter, of a Pair of Stays of the Value of Ten Shillings, of the Goods and Chattels of her the ſaid *Elizabeth*, in the Dwelling-Houſe of one *Suſannah Wells*, Widow, ſituate in the Pariſh of *Enfield*, in the ſaid County of *Middleſex*, on the ſaid 2d Day of *January*, in the 26th Year aforeſaid; and that upon the ſaid laſt-mentioned Trial, *Elizabeth Canning*, late of *London*, Spinſter, did then and there appear as a Witneſs for and in behalf of our ſaid Lord the King, againſt the ſaid *Mary Squires*; and ſhe the ſaid *Elizabeth Canning* did then and there, before the ſaid Juſtices laſt-mentioned, in open Court aforeſaid, take her corporal Oath, and was duly ſworn upon the holy Goſpel of God, that the Evidence which ſhe ſhould give for our ſaid Lord the King, againſt the ſaid *Mary Squires*, ſhould be the Truth, the whole Truth, and nothing but the Truth (the ſame laſt-mentioned Juſtices then and there having a competent Authority to adminiſter the ſaid Oath to her the ſaid *Elizabeth Canning* in that Behalf); and ſhe the ſaid *Elizabeth Canning* being ſo ſworn, and not having the Fear of God before her Eyes, but being moved and ſeduced by the Inſtigation of the Devil, upon the ſaid 21ſt Day of *February*, in the 26th Year aforeſaid, at *London* aforeſaid, (to wit) at the Pariſh of *St. Sepulchre*, in the Ward of *Farringdon Without* aforeſaid, in *London* aforeſaid, before the ſaid Juſtices laſt-named, in the open Court aforeſaid, did falſely, willingly, and corruptly, by her own proper Act and Conſent, ſay, depoſe, ſwear, and give in Evidence to the Jurors of the ſaid Jury, according to the Purport and Effect following; I (meaning herſelf the ſaid *Elizabeth Canning*) had been to *Salt-Petre-Bank* to ſee an Uncle and Aunt, his Name is *Thomas Colley*: I (again meaning herſelf the ſaid *Elizabeth Canning*) ſet out from Home about Eleven in the Forenoon, and ſtayed there till about Nine at Night, on the 1ſt Day of *January* (meaning the 1ſt Day of *January* now laſt paſt): Then my Uncle and Aunt came with me (again meaning herſelf the ſaid *Elizabeth Canning*) as far as *Aldgate*, where we parted: I (again meaning herſelf the ſaid *Elizabeth Canning*) was then alone, ſo came down *Houndſditch*, and over *Moorfields* by *Bedlam* Wall; there two luſty Men, both in great Coats, laid hold of me. And that the ſaid *Elizabeth Canning*, being ſo ſworn, did then and there, upon the ſaid laſt-mentioned Trial, falſely, willingly, and corruptly, by her own proper Act and Conſent, ſay, depoſe, ſwear, and give in Evidence to the Jurors of the ſaid Jury, according to the Purport and Effect following, (that is to ſay) They (meaning the ſaid two Men) took me (again meaning herſelf the ſaid *Elizabeth Canning*) to the Priſoner *Wells*'s Houſe (meaning the Dwelling-houſe of the ſaid *Suſannah Wells*, ſituate at *Enfield* aforeſaid, in the County aforeſaid). And that ſhe the ſaid *Elizabeth Canning* being then and there, upon the ſaid Trial, aſked and examined upon her ſaid Oath, concerning the Time of her being ſo taken to the ſaid Houſe of the ſaid *Suſannah Wells*; ſhe the ſaid *Elizabeth Canning*, being ſo ſworn, did then and there further falſely, willingly, and corruptly, by her own proper Act and Conſent, ſay, depoſe, anſwer, and give in Evidence, according to the Purport and Effect following, (that is to ſay) as near as I (again meaning herſelf the ſaid *Elizabeth Canning*) can think, it was about Four o'Clock in the Morning (meaning the Morning of the 2d Day of the ſaid Month of *January*). And that ſhe the ſaid *Elizabeth Canning* being then and there, upon the ſaid Trial, aſked and examined upon her Oath, concerning what ſhe ſaw at the ſaid Houſe of the ſaid *Suſannah Wells*, at the Time that ſhe aforeſaid gave in Evidence that ſhe was taken there; ſhe the ſaid *Elizabeth Canning*, being ſo ſworn, did then and there further falſely, willingly, and corruptly, by her own proper Act and Conſent, ſay, depoſe, anſwer, and give in Evidence, according to the Purport and Effect following, (that is to ſay) I (again meaning herſelf the ſaid *Elizabeth Canning*) ſaw the Gypſey Woman *Squires* (meaning the ſaid *Mary Squires*), who was ſitting in a Chair (meaning ſitting in a Chair in the ſaid Houſe). And that ſhe the ſaid *Elizabeth Canning*, being ſo ſworn, did then and there, upon the ſaid laſt-mentioned Trial, falſely, willingly, and corruptly, by her own proper Act and Conſent, ſay, depoſe, ſwear, and give in Evidence to the Jurors of the ſaid Jury, according to the Purport and Effect following, (that is to ſay) As ſoon as I (again meaning herſelf the ſaid *Elizabeth Canning*) was brought in (meaning into the ſaid Houſe), *Mary Squires* (again meaning the ſaid *Mary Squires*) took me (again meaning herſelf the ſaid *Elizabeth Canning*) by the Hand, and aſked me (again meaning herſelf the ſaid *Elizabeth Canning*) if I (again meaning herſelf the ſaid *Elizabeth Canning*) choſe to go their Way, ſaying, if I (again meaning herſelf the ſaid *Elizabeth Canning*) did, I (again meaning herſelf the ſaid *Elizabeth Canning*) ſhould have fine Cloaths; I (again meaning herſelf the ſaid *Elizabeth Canning*) ſaid, No. And that ſhe the ſaid *Elizabeth Canning*, being ſo ſworn, did then and there, upon the ſaid laſt-mentioned Trial, falſely, willingly, and corruptly, by her own proper Act and Conſent, ſay, depoſe, ſwear, and give in Evidence to the Jurors of the ſaid Jury, according to the Purport and Effect following, (that is to ſay) Then ſhe (again meaning the ſaid *Mary Squires*) went and took a Knife out of a Dreſſer-Drawer, and cut the Lace of my (meaning her the ſaid *Elizabeth Canning*'s) Stays, and took them from me (meaning herſelf the ſaid *Elizabeth Canning*). And that ſhe the ſaid *Elizabeth Canning*, being ſo ſworn, did then and there, upon the ſaid laſt-mentioned Trial, falſely, willingly, and corruptly, by her own proper Act and Conſent, ſay, depoſe, ſwear, and give in Evidence to the Jurors of the ſaid Jury, according to the Purport and Effect following, (that is to ſay) She (meaning the ſaid *Mary Squires*) puſhed me (meaning herſelf the ſaid *Elizabeth Canning*) up Stairs, (meaning certain Stairs leading out of the Kitchen of the ſaid Houſe, up into a certain Room adjoining and belonging to the ſaid Houſe) from out of the Kitchen, (meaning the Kitchen of the ſaid Houſe) where we (meaning herſelf the ſaid *Elizabeth Canning*, and the ſaid *Mary Squires*) were. And that ſhe the ſaid *Elizabeth Canning*, being then and there, upon the ſaid Trial, aſked and examined upon her ſaid Oath, concerning the Name of the Place ſhe was put in; ſhe the ſaid *Elizabeth Canning*, being ſo ſworn, did then and there further falſely, willingly, and corruptly, by her own proper Act and Conſent, ſay, depoſe, anſwer, and give in Evidence to the Jurors of the ſaid Jury, according to the Purport and Effect following, (that is to ſay) They call it the Hay-loft, (meaning a certain Room belonging to the ſaid Houſe, into which the ſaid Stairs lead). And ſhe the ſaid *Elizabeth Canning* being then and there, upon the ſaid Trial, aſked and examined upon her Oath, how long ſhe continued in that Room; ſhe the ſaid *Elizabeth Canning*, being ſo ſworn, did then and there further falſely, willingly, and corruptly, by her own proper Act and Conſent, ſay, depoſe, anſwer, and give in Evidence to the Jurors of the ſaid Jury, according to the Purport and Effect following, (that is to ſay) A Month by the Weeks, all but a few Hours. And that ſhe the ſaid *Elizabeth Canning*, being ſo ſworn, did then and there, upon the ſaid laſt-mentioned Trial, falſely, willingly, and corruptly, by her own proper Act and Conſent, ſay, depoſe, ſwear, and give in Evidence to the Jurors of the ſaid Jury, according to the Purport and Effect following, (that is to ſay) I (again meaning herſelf the ſaid *Elizabeth Canning*) got out (meaning out of the ſaid Room) about Four o'Clock in the Afternoon, on a *Monday* (meaning *Monday* the 29th Day of the ſaid Month of *January*), after I (again meaning herſelf the ſaid *Elizabeth Canning*) had been confined there (meaning in the ſaid Room) four Weeks, all but a few Hours. And that ſhe the ſaid *Elizabeth Canning*, being ſo ſworn, did then and there, upon the ſaid laſt-mentioned Trial, falſely, willingly, and corruptly, by her own proper Act and Conſent, ſay, depoſe, ſwear, and give in Evidence to the Jurors of the ſaid Jury, according to the Purport and Effect following, (that is to ſay) I (again meaning herſelf the ſaid *Elizabeth Canning*) took an old Sort of a Bed-gown and a Handkerchief, that were in the Hay-loft (meaning the ſaid Room), and lay in a Grate in the Chimney (meaning the Chimney of the ſaid Room). Whereas, in Truth and in Fact, ſhe the ſaid *Elizabeth Canning* was not taken by two Men to the ſaid Houſe of the ſaid *Suſannah Wells*, about Four o'Clock in the Morning of the ſaid 2d Day of *January*, or at any other Time of that Day; and whereas, in Truth and in Fact, ſhe the ſaid *Elizabeth Canning* did not, at any Time on the ſaid 2d Day of *January*, ſee the ſaid *Mary Squires* in the ſaid Houſe; and whereas, in Truth and in Fact, the ſaid *Mary Squires*, on the ſaid 2d Day of *January*, was at *Abbetſbury* in the County of *Dorſet*, and was not at any Time on that Day in the ſaid Houſe; and whereas, in Truth and in Fact, the ſaid *Mary Squires* did not, on the ſaid 2d Day of *January*, take the ſaid *Elizabeth Canning* by the Hand in the ſaid Houſe, and aſk her if ſhe choſe to go their Way, ſaying, if ſhe did, ſhe ſhould have fine Cloaths; and whereas, in Truth and in Fact, ſhe the ſaid *Mary Squires* did not, on the ſaid 2d Day of *January*, take the ſaid *Elizabeth Canning* by the Hand; and whereas, in Truth and in Fact, ſhe the ſaid *Mary Squires* did not take a Knife out of any Dreſſer-Drawer, or any other Drawer, and cut the Lace of her the ſaid *Elizabeth Canning*'s Stays, and take them from her; and whereas, in Truth and in Fact, the ſaid *Mary Squires* did not cut the Lace of her the ſaid *Elizabeth Canning*'s Stays; and whereas, in Truth and in Fact, the ſaid *Mary Squires* did not puſh the ſaid *Elizabeth Canning* up any Stairs belonging to the ſaid Houſe; and whereas, in Truth and in Fact, ſhe the ſaid *Elizabeth Canning* did not continue, or was in anywiſe confined in the ſaid Room belonging to the ſaid Houſe, into which the ſaid Stairs lead, for a Month by the Weeks, all but a few Hours; and whereas the ſaid *Elizabeth Canning* did not continue, or was anyways confined in the ſaid Room, or in any other Room belonging to the ſaid Houſe, for a Month by the Weeks, all but a few Hours, or for any other Space of Time; and

whereas, in Truth and in Fact, ſhe the ſaid *Eliz. Canning* did not get out of the ſaid Room about 4 o'Clock in the Afternoon of the ſaid 29th Day of *Jan.* or at any other Time of that Day; and whereas, in Truth and in Fact, ſhe the ſaid *Elizabeth Canning* did not take any Bed-Gown or Handkerchief out of any Grate in the Chimney of the ſaid Room; and whereas, in Truth and in Fact, there was no Grate in the Chimney of the ſaid Room on the ſaid 2d Day of *January*, or on the 29th Day of *January*, or at any other Time between the 2d and 29th Days of *January*, as ſhe the ſaid *Elizabeth Canning* by her falſe and corrupt Teſtimony aforeſaid, at and upon the ſaid laſt-mentioned Trial, did moſt falſely, voluntarily, and corruptly, by her own proper Act and Conſent, upon her ſaid Oath, ſo taken as aforeſaid, ſay, depoſe, ſwear, and give in Evidence to the Jurors of the ſaid Jury, in Manner aforeſaid. And ſo the Jurors aforeſaid, now here ſworn, upon their Oath aforeſaid, do ſay, That ſhe the ſaid *Elizabeth Canning*, at and upon the ſaid Trial, upon the ſaid 21ſt Day of *February*, in the 26th Year aforeſaid, at *London* aforeſaid, (that is to ſay) at the Pariſh of *St. Sepulchre*, in the Ward of *Farringdon Without*, in *London* aforeſaid, before the ſaid Juſtices of our ſaid Lord the King laſt above-mentioned, and others their Fellows aforeſaid, by her own proper Act and Conſent, and of her own moſt wicked and corrupt Mind, in Manner and Form aforeſaid, did falſely, voluntarily, and corruptly, upon her ſaid Oath, ſo taken as aforeſaid, commit wilful and corrupt Perjury, to the great Diſpleaſure of Almighty God, in Contempt of our ſaid Lord the King and his Laws, to the evil and pernicious Example of all others in the like Caſe offending, and againſt the Peace of our ſaid Lord the King, his Crown and Dignity.

Mr. Gascoyne.

May it pleaſe your Lordſhip, and you Gentlemen of the Jury; I am Counſel in this Caſe for the King, againſt the Priſoner at the Bar, who ſtands before you indicted of wilful and corrupt Perjury: And the Indictment ſets forth, that, at the General-Seſſion of the Peace held for the County of *Middleſex*, on the 19th of *February*, in the 26th Year of his preſent Majeſty's Reign, an Indictment was found againſt one *Mary Squires*, for having, on the 2d Day of *January*, in the ſame Year, with Force and Arms, aſſaulted the Priſoner at the Bar, and having put her in Fear of her Life, feloniouſly and with Force took and ſtole from her Perſon, and againſt her Will, in the Dwelling-Houſe of one *Suſannah Wells*, in the Pariſh of *Enfield*, in the County of *Middleſex*, a Pair of Stays of the Value of Ten Shillings, the Property of the Priſoner at the Bar: And the Indictment charges, that at the Gaol-Delivery of *Newgate*, on the 21ſt Day of *February*, in the ſame Year, which was the Year 1753, *Mary Squires* was arraigned upon the Indictment ſo found againſt her, and having pleaded Not Guilty, the Priſoner at the Bar appeared at the Trial, and being duly ſworn as a Witneſs, did maliciouſly and deliberately, and in order to procure the ſaid *Mary Squires* to be convicted of the Felony and Robbery charged on her, falſely and corruptly depoſe and give in Evidence, that ſhe the Priſoner at the Bar, on the 1ſt Day of *January* 1753, had been at a Place called *Saltpetre-Bank*, to ſee an Uncle and Aunt; that ſhe ſtayed there till about Nine at Night; that her Uncle and Aunt came with her from thence as far as *Aldgate*, where they parted; that ſhe the Priſoner at the Bar being then alone, and coming over *Moorfields* by *Bedlam* Wall, two Men laid hold of her, and took her by Force from thence to the Houſe of *Suſannah Wells* at *Enfield*; and being there, that *Mary Squires* took her by the Hand, and aſked her if ſhe would go their Way, ſaying, that if ſhe did, ſhe ſhould have fine Cloaths; that ſhe refuſed; and that thereupon *Mary Squires*, with a Caſe-Knife, cut the Lace of her Stays, and took them from her, gave her a Slap on the Face, and puſhed her up Stairs into another Room, which they called the Hay-Loft; that as ſoon as ſhe was there, the Door of the Room was ſhut upon her; and that ſhe was threatened by *Mary Squires*, that if ſhe heard her ſtir or move, ſhe would cut her Throat: And the Indictment charges, that the Priſoner at the Bar being aſked on the Trial of *Mary Squires*, how long ſhe had continued in that Room, ſhe falſely and wilfully ſwore, that ſhe was kept there a Month, all but a few Hours; and that upon the 29th of *January* ſhe broke down a Board that was nailed up at the Inſide of the Window, and got out there: Whereas in Truth, as the Indictment charges, the Priſoner at the Bar was never taken or carried to the Houſe of *Suſannah Wells*; and that, in Truth and in Fact, *Mary Squires* was at that Time at *Abbotſbury*, in the County of *Dorſet*: And the Indictment charges, that in Truth and in Fact, *Mary Squires* did not cut the Lace of the Priſoner's Stays, and take them from her, or ſlap her on the Face, or puſh her up Stairs into another Room, or ſay, that if ſhe heard her ſtir or move, ſhe would cut her Throat; and that in Truth, the Priſoner at the Bar was not in any Room or Place belonging to the Houſe of *Suſannah Wells*; and therefore, that ſhe was on the Trial of the ſaid *Mary Squires* guilty of wilful and corrupt Perjury: All which is ſaid to be done, to the great Diſpleaſure of Almighty God, in Contempt of the Laws of this Land, and to the evil and pernicious Example of all others in the like Caſe offending, and againſt the Peace of our Lord the King, his Crown and Dignity. To this, Gentlemen, the Priſoner has pleaded Not Guilty: We ſhall call our Witneſſes, and if we prove her guilty, you will find her ſo.

Mr. (*now Serjeant*) Davy.

May it pleaſe your Lordſhip, and you Gentlemen of the Jury,

I am Counſel for the Proſecution againſt the Defendant at the Bar, who now comes before you to be tried for wilful and corrupt Perjury; attended with ſo many Circumſtances of Aggravation, and calculated to produce ſuch fatal Effects, that it is to be lamented the Law has not made it capital.

For it was committed to ſupport a groundleſs Proſecution for Felony, and, under Colour of Juſtice, to take away the Life of an innocent Perſon.

Than which it is hard to conceive an Offence more ſhocking to Humanity, or more dreadful.

Gentlemen, the Indictment ſets forth, that the Defendant maliciouſly and deliberately intending to pervert the due Courſe of Law and Juſtice, and to procure one *Mary Squires* untruly to be convicted of a Robbery, did, upon the 21ſt of *February* 1753, in this Court, give falſe Teſtimony againſt her. It contains ſeveral Particulars of the Defendant's Evidence upon that Occaſion, and avers, that in each Particular ſhe was guilty of Perjury.

What could tempt one ſo young to ſuch accumulated Wickedneſs, tho' the Proſecution is not concerned to account for it, may be eaſily conceived upon recollecting what had happened.

And, indeed, one would give Way to any charitable Suggeſtion, rather than ſuppoſe her Heart ſo thoroughly polluted, as at firſt to deſign a Sacrifice!

To preſerve her Character, it became neceſſary to frame an Excuſe for her Abſence from her Maſter's Service during the Space of a Month, from the 1ſt to the 29th of *January*. To what ſuch Abſence was really owing, I am not inclined to ſuggeſt, leſt I ſhould wrong her. But her Flight was ſudden, unexpected, and alarming.

An ill-concerted Story for this Purpoſe, or the forgetting ſome material Circumſtances in one invented with a greater Appearance of Truth, was, in all likelihood, her firſt Step to the Crime ſhe is now to anſwer for. And a too great Forwardneſs in ſatisfying unexpected Inquiries, the Effects of Diſtruſt and Curioſity, might lead her unwarily into a Deſcription of Places and Perſons, unthought of before, from which, once fixed, ſhe thought it dangerous to deviate.

But an additional Temptation fell in her Way, a Temptation too ſtrong to be reſiſted in the Situation to which ſhe was reduced; and this was a Scheme to raiſe Money.

For thoſe, who were weak enough to believe all the Abſurdities to which their own Credulity had given riſe, were ſo affected with her unprecedented Sufferings, that they propoſed a general Subſcription, as well to puniſh the infamous Wretches, who, it was ſaid, had endeavoured to ſtarve her out of her Chaſtity, as to reward her Purity.

Here then ſhe was under a Neceſſity, either to renounce thoſe golden Hopes, by retracting what ſhe had declared, and ſo to ruin her Character, or to perſiſt in it through Perjury. And having by this Time ſubdued all Remains of Virtue, ſhe preferred the Offer of Money, though ſhe muſt wade through innocent Blood to attain it.

The Project ſucceeded to the utmoſt of her Wiſhes. For, by the Help of Prejudices moſt artfully, induſtriouſly, and (I may add) infamouſly inculcated, ſhe made her Way to the Conviction of *Mary Squires*, and *Suſannah Wells*, (the former for robbing her of her Stays, and the other for being an Accomplice in that Robbery) and ſo ſhe became the Object of almoſt univerſal Compaſſion.

The unfair Means made uſe of upon that Occaſion, by Advertiſements in the Daily Papers, and in printed Bills, every where diſperſed, with the Names of ſix reputable Tradeſmen, atteſting the Truth of a Story, of which they were not able to prove a ſingle Syllable; and all this for the Sake of prejudging thoſe unhappy Women, who in Conſequence of it fell a Sacrifice; would paſs unnoticed in this Trial, had not the ſame unjuſtifiable Methods been continued to the preſent Hour.

An Appeal to the Public concerning Matters triable by Juries, has a direct Tendency to ſhut up the Avenues to Conviction, and to enervate the Arm of Juſtice.

But it is the Happineſs of this Proſecution to be brought before a Jury of Citizens, whoſe Characters give the greateſt Room to hope for an impartial Trial, notwithſtanding all the Arts which have been practiſed to inflame their Paſſions and corrupt their Judgment.

And if I am not greatly miſ-inſtructed, the Prejudices muſt be ſtrong *indeed*, that can reſiſt the Proofs of this Woman's Guilt.

Gentlemen, before I open the Evidence we have to offer, I muſt beg Leave to trouble you with repeating what the Defendant ſwore upon the Trial of *Mary Squires*, and with remarking ſome of the Objections to which it ſtands expoſed, without any other Proofs to contradict it.

She ſwore, "That on the 1ſt of *January* 1753, about Nine at Night, "two Men ſeized her in *Moorfields*; and without ſpeaking, robbed her "of Half a Guinea, and Three Shillings, and her Gown, Apron, and "Hat, which they folded up, and put into a Great-Coat Pocket.

"That ſhe ſcreamed out, and then one of the Men ſtopped her Mouth "with a Handkerchief.

"That they then tied her Hands behind her; after which one of them "gave her a Blow on the Temple, which ſtunned her, and threw her "directly into a Fit.

"That this Tranſaction in *Moorfields* laſted Half an Hour; but no-"body paſſed by in all that Time.

"That ſhe remained totally inſenſible for ſix Hours after; when ſhe "found herſelf by a large Road, with the two Men who had robbed her.

"That they dragged her to the Houſe of one *Suſannah Wells* (*who was "at the ſame Time tried as an Acceſſary to* Squires) at *Enfield-Waſh*, (*which "is between eleven and twelve Miles from* Moorfields) where ſhe arrived in "half an Hour after the Recovery of her Senſes. And it was then about "four o'Clock in the Morning.

"That ſhe there ſaw *Mary Squires*, and two young Women in the "Kitchen. And as ſoon as ſhe was brought in, *Squires* took her by the "Hand, and aſked her, *If ſhe choſe to go their Way*, ſaying, *if ſhe did, ſhe "ſhould have fine Cloaths*.

"That upon anſwering, No, *Squires* cut off her Stays, and took them "from her. And immediately the two Men went away.

"That *Squires* then called her Bitch, gave her a Slap in the Face, "puſhed her up Stairs into a Hay-loft, (a few Steps from the Kitchen) "and ſhutting the Door upon her, threatened to cut her Throat if ſhe "heard her ſtir or move.

"That when Day-light appeared, ſhe ſaw about the Room, in which "there was a Fire-place, and a *Grate* in it, *no Bed or Bedſtead*, nothing "but Hay to lie upon, a *Pitcher* almoſt full of *Water*, and about twenty-"four Pieces of Bread, to the Amount of a Quartern Loaf in the whole.

"That theſe Pieces of Bread, and this Water, between three and four "Quarts, was all ſhe had to ſubſiſt on, (except a Penny Mince-pye, "which ſhe had in her Pocket) for the whole Time ſhe remained in "that Room; which was from *Tueſday* the 2d of *January*, at four in the "Morning, till *Monday* the 29th at four in the Afternoon. And that "ſhe had no Stool in all that Time.

"That no one came to her, nor did ſhe ſee a human Creature, except "once ſhe ſaw ſomebody look through a Crack of the Door.

"That

" That she had eat up all her Bread on *Friday* the 26th, and had drank " up all her Water on *Monday* the 29th, at Half an Hour after Three " in the Afternoon; and at Four o'Clock she made her Escape, which " she had *never* attempted (nor did it ever once come into her head to " attempt) till that Day.

" That the Manner of her Escape, was by breaking down a Board " which was nailed up at the Inside of a Window, about eight or ten " Feet from the Ground; from which she jumped down, without the " least Hurt, it being soft clay Ground.

" But before she left the Room, she took a Bed-Gown and a Hand- " kerchief, which she *found* in the Chimney Grate.

" That having never been on that Road before, she inquired her Way " of People she met, and so walked on the great Road to her Mother's " House, (about twelve Miles) without seeking Refuge in any of the " Houses on the Road, for fear she should meet with somebody belong- " ing to the House she had escaped from.

" That she arrived at her Mother's in *Aldermanbury*, at a Quarter past " Ten at Night; and she told her Friends that her Confinement was " somewhere in the *Hertfordshire* Road, which she had discovered while " she was under Confinement; by seeing a Coach go by; which she knew " frequented that Road.

" And being called upon by the Court to particularize the *Furniture* " of the Room she was confined in, she mentioned *a Barrel, a Saddle, a* " *Basin, and a Tobacco-mould.*"

This, Gentlemen, was her Evidence.

Now I would ask any reasonable, unprejudiced Man in the World, whether he ever heard a Story so intirely destitute of all human Probability

Is it not a Heap of monstrous Absurdities, with Falshood glaring in every Circumstance?

What could induce the two Ruffians in *Moorfields* to behave in this extraordinary Manner?

Did they mean to rob, or kidnap her, or both?

If only to rob, why did they kidnap her? If only to kidnap, why rob her? If both, why lose Half an Hour in stripping her in so publick a Place, when Multitudes of People were continually passing by; since they might have done it securely at the End of their Journey?

Having robbed and stripped her, what Temptations had they to take the Pains and run the Hazard of carrying her twelve Miles, *in a Fit*, (supposing it possible) through several Turnpikes and Villages, where it was a thousand to one, that they would be discovered and apprehended?

The same Difficulties occur at *Enfield-Wash*. While she was in the House, was any Thing transacted, whereby one can trace the *Motive* of her being brought or confined there?

At first, indeed, she was asked, *whether she would go their Way; and if she would, she should have fine Cloaths.*

Their Meaning in this was left unexplained, and no further Persuasions were used to tempt her!

Advantage taken of a concise Refusal,—she was instantly locked up for a Month upon Bread and Water!

Not the least Inquiry in all that Time, what Effect this hard Usage had upon her; or what was become of her!

Whether she was *dead*, which might have been expected, if she remained in the Room; or had *escaped*, which it was more reasonable to suppose. For,

SEE HOW WONDERS MULTIPLY!

The Means of Escape were left open to her every Moment of the Time, at the Hazard of *their* Lives! Those Means unemployed, and unthought of, for the Preservation of *her own!*

Is it not amazing she should manage her Allowance of Bread and Water (scarce sufficient for a Week's Subsistence) with such Providence, that the former lasted till within three Days, and the latter, (which she could less endure the Want of) tho' less in Proportion, till within Half an Hour of her coming away!

And yet she had never received the least Intimation, how long she was to remain in Confinement, or whether she was to have any Supplies!

That she should survive all this Treatment, too hard for the best Constitution, and find Strength to walk twelve Miles immediately afterwards, without the least Refreshment or Rest!

These are not all, nor the fiftieth Part of the Objections, to which this unexampled Tale is liable. It would be mispending Time to enumerate them—they are obvious to every Understanding.

Does there need much Evidence to contradict this? Does not common Sense, and the Observation of all Mankind upon the Course of Nature, refute it in every Instance?

Yet such Arts have been practised to engage Men to believe it, that there are, at this Day, thousands who embrace it as zealously, as an Article of religious Faith.

Insisting upon the mere Possibility of this romantic Story, and having an implicit Faith in the Defendant's Sincerity, because her Character (they say) is clear of any other Imputation, they have been drawn in to conclude upon the Truth of all she has sworn.

Such are incapable of Conviction; upon whom neither Argument nor Evidence can have any Effect.

Let me imagine a Case, better authenticated than this before you, but in Favour of which Men have no Prejudices; and see what Reception it would meet with.

Suppose a Pretender to the Art of Flying (an Art which some soaring Geniuses of the last Age thought practicable) should swear to have taken a Month's Tour round the Extremity of the Atmosphere, without breathing in all that Time.

Were no Arts used to mislead Men's Understanding, were they left to judge for themselves, no one would believe this even upon the Faith of fifty Witnesses.

For, however unlikely it is, that fifty disinterested Men should concur in a Falshood, it would be still more unlikely, that a Man should be flying for a Month without drawing Breath.

But, Gentlemen, this Prosecution will not rest upon Improbabilities. It was commenced upon the clear Proof of Facts; sufficient to convince every Man, whose Judgment is not captivated by Prejudice.

The Evidence to be produced against the Defendant is of several Kinds.

First, To shew that *Mary Squires* was in another Place, above 130 Miles from *Enfield Wash*, at the Time of the supposed Robbery there.—But lest the Believers in Wonders should think this insufficient, and insist upon the Possibility of *Squires' being in two Places at once*; we shall,

In the next Place, under various Heads of Proof, attack the whole of the Defendant's Evidence, and shew that in every Part of it she is foresworn.

Gentlemen, because there may be no Uncertainty in that Part of the Case which relates to *Squires*, she will attend here in Person, to be referred to by the Witnesses. And you will observe, (to use her own Language to the Defendant, when she first charged her with the Robbery,) that the *Almighty has not created her Likeness.* So it is impossible, either for the Witnesses, or the Defendant, to mistake her for another.

She is one of that Tribe of People called *Gypsies*, and strolls about the Country as a Hawker and Pedlar. She is a Widow, and has a Son *George*, a young Man, and two Daughters, *Lucy* and *Mary*, both young Women.

It happened, that in the latter End of the Year 1752, this Gypsey, with her Son and her Daughter *Lucy*, travelled on Foot into the West of *England* with smuggled Goods, such as they meet with in Sea-port Towns, and sell again to People in the Country.

The material Questions with respect to these People will be, *Where were they upon the 1st and 2d of* January 1753? *And when did they arrive at* Enfield-Wash?

In order to give you the clearest Satisfaction in this Matter, it will be necessary to go a little farther back than the 1st of *January*, and trace them down to the Time of their being apprehended on the 1st of *February*.

Gentlemen, it will be worth your Observation, with what Degree of Certainty the Witnesses swear, not only with regard to the Identity of the three Persons, (who will be all in Court to be referred to) but also as to the precise Times of seeing them.

And, if it should appear to you, that they can be under no Mistake, either as to Persons or Times; it will only remain for your Consideration, what Credit should be given to their Oaths.

They are forty in Number; they are totally disinterested; and of unexceptionable Characters.

Upon *Friday* the 29th of *December* 1752, in the Evening, these three Foot-Travellers, *Mary Squires*, *George* and *Lucy Squires*, came to lodge in a little Inn at *South-Parrot*, in *Dorsetshire*; and went forward towards *Abbotsbury*, the next Morning. The Landlady of the Inn will tell you, she is certain as to the Time, from an Accident of some Guests leaving a Reckoning to pay, which she entered in her Book that Evening: A Book, wherein she had seldom occasion to make Entries; but whenever she did, it was her Custom to ascertain the Time by her Almanack: And she remembers to have referred to the Almanack; while they were in the House.

You will find them the next Morning, *Saturday* the 30th of *December*, between Eight and Nine o'Clock, taking Refreshment upon the Road, at a Place called *Winyard's Gap*, about a Mile from *South-Parrot*. The Person who proves this, saw them the Evening before as they were going to *South-Parrot*, and was so struck with the old Woman's hideous Face, that she compared her to a Picture then in her House of Mother *Shipton*.

The same Day, at Two in the Afternoon, they came to *Litton*, about nine Miles from *Winyard's Gap*, and three from *Abbotsbury*. There they lay at an Ale-house, and stayed till *Monday* Afternoon the 1st of *January*. This will be proved by five Witnesses, who will give you a particular Account of them during all that Time.

Monday the 1st of *January*, in the Evening, they came to *Abbotsbury*, a Sea-port Town in *Dorsetshire*; where they were very well known by a great many People, having been often there before. There they stayed till *Tuesday* the 9th. This will be proved by no less than eleven Witnesses: And as it is impossible these People should be under any Mistake as to their Persons, it will be material to observe, that it is equally impossible they should mistake as to the Time. It happened, that the Exciseman, stationed at *Abbotsbury*, was taken ill a few Days before the coming of these People there; and another Officer was placed in his stead, who lodged in the same House with them, at one *Gibbons*'s, and came there on the very same Day. You will find this, not only by the Exciseman himself, and several of the Witnesses who remember his and their coming; but we shall also produce the Books from the Excise-Office, by which the Time of this Man's coming to *Abbotsbury* will appear with absolute Certainty. There are, besides, several other Circumstances, which lead the Witnesses to Exactness of Time, as well here, as at the other Places beforementioned.

Before we leave *Abbotsbury*, it will be proper to let you know that *Lucy Squires*, though the Daughter of such a deformed Woman, is very far from disagreeable, and had an Acquaintance there, who was dear to her. This was one *William Clarke*, a Shoe-maker of that Place, who met them at *Litton*, and travelled on a Day and a half's Journey with them from *Abbotsbury*. The Reason of my taking Notice of this Circumstance will appear hereafter, when you find them at *Basingstoke*.

With this *Clarke* they left *Abbotsbury* on *Tuesday* the 9th of *January*, and went to *Porterham*, where they lay that Night.

Wednesday the 10th they went to *Ridgway*; where *Clarke* took an unwilling Leave of his *Lucy*, after obtaining her Promise to send him a Letter soon; they lay at *Ridgway* that Night; and,

The next Day, *Thursday* the 11th, you will find them crossing the Waters by *Dorchester*, which were very high after great Rains.

They had received an Account, that the other Daughter *Mary* was ill, and so travelled faster from this Time, to hasten Home.

Friday the 12th they lay at *Chettle*.

Saturday the 13th at *Martin*, in a Farmer's Barn.

Sunday the 14th at *Coombe*: From whence they proceeded the next Day in the Road to *London*.

The next Account you will receive of them will be *Thursday* the 18th at *Basingstoke*; which you will observe, according to their Rate of Travelling, to be four Days Journey from *Coombe*.

And here you will find a Piece of Evidence very material, and conclusive with regard both to Persons and Times, and which will confirm the rest of the Evidence before it to the utmost Degree of Certainty.

I mentioned before, that *Lucy Squires* had promised her Sweetheart, *William Clarke*, to send him a Letter on the Road. It was at this Place she performed her Promise.

But being an illiterate Girl, she was obliged to have Recourse to the Landlady of the Inn to write for her.

The Letter is dated from *Basingstoke*, the 18th of *January* 1753. The

Landlady, Mrs. *Morris*, will tell you it was wrote by her at the Time it bears Date. It will appear with the *Baſingſtoke* Poſt-Mark upon it.

There being no direct Poſt from *Baſingſtoke* to *Dorcheſter*, the Letter was put into the *London* Bag; and therefore the *London* Poſt-Mark is alſo upon it, by which it will appear, that it came into the General Poſt-Office on the 19th of *January*.

It happens that this Letter (which will be read to you in the Courſe of the Evidence) refers to the Circumſtance of *Clarke*'s travelling with them from *Abbotſbury*.

Friday the 19th they went to *Bagſhot*; and

Saturday the 20th to *Brentford*; where *George* left his Mother the *Sunday* Morning, to go to his Siſter *Mary*, whom he found well enough recovered to go with him to *Brentford* the *Monday* to her Mother.

Tueſday the 23d they lay at a Houſe called *The Seven Siſters* at *Page-green* by *Tottenham*. And the next Day,

Wedneſday the 24th of *January*, they went to *Enfield-Waſh*.

Here they were Strangers; and, inquiring for Lodging, had the ill Luck to be recommended to *Suſannah Wells*, whom they had never ſeen before.

Happy for *that* Woman, that theſe unfortunate Strangers came to her Houſe! In all likelihood ſhe owes her Life to that Accident. For,

Had there been no old Woman in her Houſe, beſides herſelf; nay, had ſhe not (another Accident for which ſhe is indebted to Providence!) changed Seats with the old Gypſey at the Fire-ſide, five Minutes before the Defendant's Arrival there on the 1ſt of *February*—there is too much Reaſon to believe, that *Wells* herſelf had been accuſed of this Felony.

Had it ſo happened, the ſame Evidence, which was applied to *Squires*, would have ſerved for *her* Conviction. And *ſhe* had no *alibi* to ſave her Life.

The Defendant had then been proſperous in Perjury; and the Means of detecting her had been borne down by popular Clamour.

Squires, her Son and Daughter, remained at *Wells*'s, from the 24th of *January* till the 1ſt of *February*; when they were apprehended.

What happened that Day, will fall under another Head of Evidence.

I have now done with that Part of the Proſecutor's Caſe, ſo far as it relates to the Innocence of *Mary Squires*.

Upon which I ſhall only obſerve, that, if the Evidence brought to ſupport it is clear and convincing, it will be too late for the Defendant to ſhelter herſelf under any Pretence of a Miſtake.

For whether ſhe was robbed by *Squires*, or not, was the moſt material Queſtion upon that Woman's Trial, and *her Fate* depended upon the Defendant's *poſitive* Teſtimony.

And it is worthy Obſervation, that there was not the leaſt Doubt ſuggeſted, when ſhe was giving Evidence againſt the moſt remarkable Perſon in the World.

Gentlemen, the next Head of Evidence will be to ſhew, (what would of itſelf be ſufficient to convince all Mankind) that the Defendant could give no Account of the Room ſhe pretended to have been confined in for a whole Month together; and that the Place ſhe afterwards fixed upon, and poſitively ſwore to, was not in any Reſpect anſwerable to her firſt Deſcription of it; and that her Deſcription of the Room upon the Trial of *Squires*, was in Conſequence of its being ſhewn to her ſome little Time before. You will alſo find her Evidence flatly contradicted, in a Variety of material Circumſtances, by her own Information upon Oath at another Time.

It has been urged in the Defendant's Behalf, with much Shew of Reaſon, that her giving an exact Deſcription of the Place of her Confinement is a ſtrong Proof of her having been there.

But on the other hand, if her Deſcription of the Place of her Confinement was as unapplicable to the Room ſhe ventured afterwards to ſwear to, as it was to St. *Paul*'s Cathedral, is it not an unanſwerable Proof, that ſhe was not there?

For can it be imagined, ſhe ſhould be alone in a Room for twenty-eight Days, without any Obſtruction of her Senſes, and at the End of that Time as ignorant of it, as if ſhe had never ſeen, or heard of ſuch a Place?

It was on *Monday* Night the 29th of *January*, according to her Account, that the Defendant returned to her Mother. On *Wedneſday* the 31ſt ſhe applied, with ſeveral of her Friends, to Mr. *Chitty*, the Sitting Alderman, for a Warrant againſt *Wells*, upon Suſpicion of having robbed her. For at that Time ſhe did not pretend to Certainty.

The Alderman having heard her Story, then declared his Doubts, and called upon her to authenticate it by a particular Deſcription of the Place ſhe had been in.

She ſwore it was a *little*, *ſquare*, *dark* Room, in which was *an old Stool or two*, an *old Table*, and an old *Picture over the Chimney*. And this was all the Deſcription ſhe gave. No Mention of any *Baſon*, *Saddle*, *Tobacco-mould*, or *Barrel*; and ſo far from any Pretence of *Hay*, that ſhe *complained of having been forced to lie every Night upon the bare Floor*.

She alſo ſwore, that her Modicum of Bread was in five or ſix Pieces, *(not four-and-twenty)* and that ſhe left ſome of the Water in the Pitcher, when ſhe came away: That ſhe eſcaped by the Help of a Pent-houſe under the Window, upon which ſhe ſlid down, and from thence jumped upon a Bank on the Back-ſide of the Houſe.

A Warrant being obtained from the Alderman, it was agreed upon by her Friends, who had heard this, to go down to *Wells*'s the next Morning; and after ſecuring all the People in the Houſe, to inquire whether any Room there was anſwerable to the Account ſhe gave; reſolving, if they found ſhe ſpoke Truth, to ſupport her to the utmoſt of their Power; if otherwiſe, to drop her.

The next Morning they all ſet out for *Enfield-Waſh*, and immediately ſecured all the People in *Wells*'s Houſe; there were Mrs. *Wells*, *Mary Squires*, her Son and two Daughters, *Virtue Hall*, and *Fortune Natus*, and his Wife *Judith Natus*.

It will be proper here to deſcribe this Houſe, and the ſeveral Rooms in it.

At the Entrance into the Houſe there is a Stair-caſe, the Bottom of which is within two or three Yards of the Street-door; this Stair-caſe leads to three Rooms on the firſt Floor, in one of which lay the old Gypſey and her two Daughters, in another *George Squires*, and in the third Mrs. *Wells* and her Daughter, and *Virtue Hall*.

Below Stairs, on the left Side of the little Paſſage from the Street-door, is a Parlour, in which all the Family were placed, as ſoon as they were ſeized.

On the right Hand of the Paſſage is the Kitchen, from which a Door opens to a little Flight of ſeven or eight Steps, leading into a Sort of Lumber-room or Workſhop, where *Natus* and his Wife lay upon a Bed of Hay. Theſe Steps or Stairs are incloſed in the Room, there being no Door but at the Foot of the Steps, which ſeparates it from the Kitchen. And this Place, which ſome call a Workſhop, and others a Hay-loft, (on Account of ſome Hay uſually kept there) the Defendant was pleaſed to fix upon as the Place of her Confinement.

The Arrival of the Defendant's Friends was above an Hour before her; but no Room could be found like what ſhe had repreſented.

There were two Perſons, one called *Adamſon*, the other *Scarrat*, who (for Reaſons beſt known to themſelves) were extremely deſirous of reconciling every Difficulty; and they would have it, that this Lumber-room muſt be the Place of Confinement.

But ſome Obſtacles were to be removed.

There was a Quantity of Hay, not leſs than Half a Load, in the Room; and not a Word of Hay had been mentioned. Theſe two Gentlemen imagined ſhe might have forgot it, and propoſed that one of them ſhould ride back to meet the Defendant upon the Road, in order to aſk her about it. They caſt Lots, who ſhould go upon this honeſt Errand, and it fell to Mr. *Adamſon*.

In a little Time *Adamſon* returned brandiſhing his Hat, and exulting, *We are all right*; *ſhe ſays, there is Hay in the Room!*

She had never ſaid ſo before; and, if ſhe forgot to mention it, ſhe alſo forgot the Uſe of it, for the whole Month while it was before her Eyes. For ſhe lay upon the bare Boards!

But this was not the only Difficulty which required the Skill of *Adamſon* and *Scarrat* to ſolve.

The Room is neither *ſquare*, nor *dark*, nor *little*. It is thirty-five Feet three Inches and a half long, by nine Feet eight Inches wide: it is extremely light, not only from the Windows, (but one of which ſhe pretended was boarded up) but alſo from the Roof itſelf, which is of Pantiles, raiſed above the Walls, ſo as to let in a great deal of Light from the Top.

There was no Grate in the Chimney, nor the leaſt Sign that a Grate had been there. For, in the firſt Place, there was no Hearth to it; and beſides, the whole Chimney, from the Bottom upwards to the Mantle-piece, was full of Cobwebs and Naſtineſs. It is impoſſible therefore that a Grate or any Thing elſe could have been there within three Days before, or indeed, as many Months.

There was a large Cheſt of Drawers by the Side of the Wall, which ſhe had ſaid nothing of. Did ſhe forget this too?

Perhaps it had been put there ſince her Eſcape the *Monday* before. Remove it, and ſee whether it has the Marks of long ſtanding. The Experiment was made, and immediately fifty *Spiders* ran out, to give Teſtimony of a long, undiſturbed Poſſeſſion.

Inſtead of any Pictures over the Chimney, there was an old broken Caſement, which filled the whole Place, and had the like Vouchers for its long ſtanding; the Cobwebs uniting it to the Wall.

Where was the Stool and Table ſhe ſpoke of? Nothing like either to be found.

Where was the Pent-houſe, or Shed of Boards under the Window, by which ſhe eſcaped? The Wall on both Sides perpendicular; the Windows but eight Feet from the Ground on the Outſide; and there never was either Pent-houſe, or Shed, or any Thing elſe by the Wall.

On the right-hand Side coming into this naſty Room, was ſome Hay made in the Form of a Bed, with a little Bag of Wool by way of Bolſter. And *Natus*'s Wife was ſeized juſt riſing from this Bed.

Near this Bed's-head was a Hole, through which a Jack-line had formerly run from the Kitchen. The Hole was almoſt large enough to thruſt her Head through, and looked quite over the Kitchen. This ſhe never obſerved; for ſhe ſaw Nobody, but once during the whole Month, and then it was through a Crack of the Door.

Over this Hole were the Pullies of the Jack-line, which ſhe alſo forgot to mention.

In ſhort, ſhe forgot almoſt all the Things that were there, and ſupplied her Defect of Memory, by naming ſeveral Things which had never been in the Room.

By this Time there was a great Company of People in the Houſe; ſome led by Curioſity, ſome by Juſtice, and ſome by Motives which muſt be left to themſelves to aſſign.

At laſt the Defendant arrived with her Mother in a Coach. She was immediately conducted to the Kitchen, and ſet on the Dreſſer.

The Door leading to the Lumber-room was then open, on her *left* Hand, and within three Yards of her, ſo that ſhe could then ſee all the Stairs, and a conſiderable Part of the Room; yet ſhe took no Notice of it. Nor did ſhe drop the leaſt Hint that the Kitchen ſhe was then in, was the Place where her Stays were cut off; though ſhe remained in the Kitchen five or ſix Minutes.

She was then placed on a Chair, with the Door of the Lumber-room open on her *right* Hand, where ſhe could ſee up into other Parts of the Room. Still, not the leaſt Notice taken of it.

It was then propoſed to carry her into the Parlour, where all the Family were Priſoners, in order for her to fix upon the Perſon who cut off her Stays.

In the mean while the Priſoners were diſpoſed in the Room ſo, as ſhe might have a diſtinct View of them all. Mother *Wells* was placed on the *right* Side of the Chimney, and the Gypſey on the *left*. But, a few Minutes before the Defendant's coming into the Parlour, the two old Women had changed Places, and the Gypſey then ſat on the right Side of the Chimney, leaning over the Fire, almoſt double, and ſmoaking her Pipe.

In this Situation were they, when the Defendant entered the Room; and in a Moment, without ſeeing her Face, pointing to the Gypſey, ſhe ſaid, *This is the Woman who robbed me of my Stays.*

The poor old Woman, ſmoaking her Pipe, was inattentive to what was ſaid. But one of her Daughters exclaimed, *Lord! Mother, the young Woman ſays you robbed her.*

Immediately the Gypſey ſtarting from her Chair, and looking in Aſtoniſhment full at her, expoſed her hideous Face, which till then was almoſt

almoſt covered with a Clout. *I rob you! Take care what you ſay; if you have once ſeen my Face, you cannot miſtake it, for God never made ſuch another!* And being told that this Fact was committed on the 1ſt of *January*, the old Woman immediately, without the leaſt Heſitation, declared ſhe was then above one hundred Miles off, in *Dorſetſhire*. And *George Squires* then ſaid, they were at *Abbotſbury* on the 1ſt of *January*, and for ſeveral Days after.

Proteſtations of Innocence were to no Purpoſe; the Defendant remained poſitive, and *Mary Squires* muſt ſuffer for it.

The next Thing to be done, was to fix upon the Room.

In the firſt Place, the Defendant ſuffered herſelf to be led up the great Stair-Caſe from the Street-Door, and ſo into all the Rooms forward. But neither of theſe was the Room.

Not the leaſt Notice taken that the Place ſhe was confined in was contiguous to the Kitchen, and but a few Steps from it; not at all like this Stair-Caſe.

At laſt ſhe was conducted to the Lumber-Room; and, after pauſing for ſome Time, ſhe declared this was the Place; but that there ſeemed to be more Hay than ſhe had obſerved during her Confinement there.

The Witneſſes, who had heard what ſhe ſwore before Mr. Alderman *Chitty*, and had made their Obſervations upon this Room juſt before her coming down to *Enfield-Waſh*, were aſtoniſhed.

She then recollected *one* of the three Saddles, and the Barrel, Baſon, and Tobacco-Mould; neither of which ſhe had mentioned before. But ſhe remembered nothing of the Cheſt of Drawers, the broken Caſement over the Chimney, the Hay-Bed, the Hole in the Wall, nor the Pulley.

One aſked her, Why ſhe had not opened the Window Caſement, and eſcaped *that* Way, ſeeing ſhe might have done it without the leaſt Difficulty? Her Anſwer was, ſhe took it for granted it was nailed, but had never tried it.

The Effect theſe Obſervations had upon ſuch of her Friends, as did not go there with a Reſolution to aſſiſt her in all Events, is eaſy to imagine. They were ſatisfied ſhe was an Impoſtreſs, and withdrew their Aſſiſtance.

Their Names are Mr. *Gawen Naſh*, Mr. ——— *Hague*, and Mr. —— *Aldridge*, Citizens of eſtabliſhed Reputation; who will give you a very faithful and circumſtantial Account of this whole Tranſaction.

Though what has been already opened would be abundantly ſufficient to maintain this Indictment, yet this is not all.

For, inſtead of relying upon Circumſtances, however ſatisfactory, we ſhall go further, and ſhew by *direct, poſitive Evidence*, that the Defendant was not in this Room in the Month of *January*.

Natus, a poor labouring Man, and his Wife, will tell you, that this Bed of Hay was their only Lodging during that whole Month, and for five or ſix Weeks before; and that they lay in this very Room every Night: And this will be confirmed by the Evidence of ſeveral other Witneſſes.

They will all tell you, that this Room, being the Repoſitory of Mrs. *Wells*'s Hay, with which her Horſe was fed, and of Pollard for the feeding her Pig, was viſited by ſome or other of them every Day.

That this black Pitcher, which the Defendant ſays was in the Room for all the time ſhe was there, was in conſtant Uſe in the Family, and filled with Water from a Neighbour's Pump almoſt every Day, during the Time the Defendant pretends to have been in the Houſe.

That none of them ever ſaw the Defendant, or heard of her, till ſhe came down on the 1ſt of *February* with Mr. Alderman *Chitty*'s Warrant.

Ezra Whiffin, who keeps an Inn in the Neighbourhood, will be produced a Witneſs to prove, that he bought of Mrs. *Wells* a Sign, which formerly hung at her Door, when ſhe kept a Public-Houſe; and on the 18th of *January* he took it out of this Workſhop, and *Natus*'s Wife was then lying there upon a Hay-Bed.

He will fix the preciſe Day by a very particular Circumſtance, in which he will be confirmed by another Witneſs.

John Whiffin, his Son, went with him to bring away the Sign; and ſtayed below in the Parlour, while his Father went up into the Room for it.

Three Witneſſes will be produced to prove their *lopping Trees* by the Side of Mrs. *Wells*'s Houſe on the 8th of *January*; and at that very Time they had ſome Converſation with two Women, *Virtue Hall*, and *Sarah Howit*, another Witneſs, then looking out at the Window of this very Room, where the Defendant is ſuppoſed to have been confined.

And the Time of their lopping theſe Trees will be fixed alſo by a fifth Witneſs to this Fact.

Such of theſe Witneſſes, as have been in the Workſhop, will give you the ſame Account of it, as you will find by the other Witneſſes to the former Head of Evidence.

After proving the Defendant perjured, not only with regard to the Perſon whom ſhe charged with having robbed her, but alſo as to the Place in which ſhe ſwore ſhe was confined; we ſhall need an Apology for proceeding further.

But to cut off all Pretence for Excuſe, we ſhall beg Leave in another Inſtance to ſhew the Defendant's Guilt, by her *own* Teſtimony.

In her Evidence at the *Old-Bailey*, ſet forth in this Indictment, ſhe ſwore that ſhe had drank up all the Water in the Pitcher, about Half an Hour before the Time of her Eſcape.

Before Mr. Alderman *Chitty* ſhe ſwore that ſhe did not drink it all, but ſome of it remained in the Pitcher when ſhe came away.

But in an Information ſhe made before Mr. *Fielding*, a Juſtice of Peace for *Middleſex*, (which we ſhall produce for this Purpoſe) ſhe ſwore that ſhe had drank up all the Water on the *Friday*, and ſo had not a Drop to drink from that Time till the *Monday*, on which Day ſhe eſcaped.

The Pain of Thirſt has been felt by almoſt every one, at ſome Time or other; and whoever has endured it for three Days and Nights, will be ſure to remember it as long as he lives.

Theſe Self-contradictions therefore could not ariſe from mere Miſtake; except only it was forgetting at one Time, what ſhe had ſworn at another.

A Lyar, ſays the Proverb, ſhould have a good Memory. But he who is reſolved to ſpeak Truth, needs take no Pains to recollect in what Manner he had told his Story before.

Gentlemen, to all this Evidence we ſhall add two Circumſtances, which you may poſſibly think worth your Attention.

Soon after the Defendant's ſuppoſed Return to her Mother, ſhe was viſited by a Midwife, who was an old Acquaintance; to whom the Mother, in the Daughter's Preſence, related the whole Story.

The Midwife's Curioſity took Place of her Pity, and ſhe deſired to ſee the Shift which the Defendant was ſuppoſed to have worn for a Month.

The Obſervations made upon it will beſt become the Witneſs herſelf to tell you. They lead to ſuſpect ſtrongly that it had not been worn ſo long as was pretended. On the contrary, it looked as clean, as if it had not been worn three Days.

The other Circumſtance is a *ſtriking* one. After the Conviction of *Squires*, there was a Re-examination of the Caſe before the late Lord-Mayor, in order to pave the Way to the Throne for Mercy, which proved effectual.

The Defendant was preſent at that Inquiry, and the Bed-Gown which ſhe pretended to have taken out of the Workſhop, as alſo the Pitcher, were both produced.

She was very deſirous of taking them with her, which my Lord-Mayor objected to, and propoſed that they ſhould be depoſited in ſome publick Place to be ſeen by any body, becauſe they might poſſibly lead to a Diſcovery.

What induced the Defendant to be ſo extremely anxious for the Poſſeſſion of this tattered Bed-Gown, and broken Pitcher, is hard to ſay; but ſhe was ſo much bent upon it, that ſhe unwarily claimed a Property in the *Bed-Gown*, and ſaid, *It was her Mother's.*

If it was her Mother's Bed-Gown, how did it get to Mrs. *Wells*'s?

This, Gentlemen, is the Nature of the Evidence we have to lay before you; upon the Weight of which there can be no Doubt but you will find the Defendant guilty.

Mr. WILLES.

I AM Counſel in this Caſe for the Crown; and though I cannot help feeling ſome Concern for the unhappy Situation of the Priſoner at the Bar, yet I own I rejoice, for the Sake of Truth, and for the Sake of the deluded Multitude, that this Matter is at length to receive the moſt ſolemn and impartial Examination.

For, in what Light ſoever we conſider the Priſoner's Hiſtory of herſelf, either as a groſs Impoſition on the World, or, as others would have it, a wonderful and miraculous Truth; moſt certainly 'tis a Fact about which Mankind have been much divided, which has been the Cauſe of great Uneaſineſs and Diſtraction in this Country, and concerning which the Minds of the People ought to be quieted.

Nor can we wonder at theſe Diſſentions among the Populace, when many able and great Magiſtrates have engaged in this Diſpute; ſome of whom have with great Warmth and Eagerneſs declared themſelves implicit Believers of this amazing Story, whilſt others have looked upon *Elizabeth Canning* as the moſt vile and abandoned Impoſtreſs.

I do not mention this with an Intent to throw Reflections on the Patrons of either Side of the Queſtion; the wiſeſt of Men have been deceived, nor will it be any Imputation on their Character, that they have been ſo; unleſs there is any Reaſon for conjecturing, that either through Partiality, Prejudice, or other ſtill worſe Motives, they have wilfully ſhut their Eyes to the Truth.

Far is it from me to inſinuate that any thing of this Sort has happened in the preſent Inſtance: I verily believe that the Fountain of Juſtice in this Kingdom has flowed, through all its Channels, unſtained, uncorrupted, and clear from all Manner of Pollution. I hope that thoſe who have ſat under his Majeſty's Commiſſion of the Peace, have acted *merely* and *ſingly* in that Capacity, and have not deſcended from the Dignity of Magiſtracy, to become Advocates for either Party.

But be that as it will, it is not our Duty, as Counſel for the Proſecution, to take Notice of collateral Circumſtances or *extrajudicial Behaviour* in any one; 'tis our Buſineſs only to lay the Particulars of the Charge againſt the Priſoner before you; and if the Weight of Evidence appears clearly to be on the Side of the Crown, I don't doubt but that the Truth will be irreſiſtible, and that we ſhall have your Verdict for the Conviction of the Priſoner.

And, Gentlemen, the Priſoner ſtands indicted of one of the moſt heinous of Crimes; an Endeavour, by wilful and corrupt Forſwearing herſelf, to take away the Life of a guiltleſs Perſon; and without Aggravation, in the black Catalogue of Offences, I know not one of a deeper Dye. 'Tis a Perverſion of the Laws of her Country to the worſt of Purpoſes; 'tis wreſting the Sword out of the Hands of Juſtice to ſhed innocent Blood.

Let us reflect a Moment on the ſad Cataſtrophe which might have enſued. On her Evidence *Mary Squires* was condemned to be executed, and had ſuffered the Judgment of the Law, but for the Wiſdom and Clemency of his Majeſty, ever careful, ever tender of the Lives even of the meaneſt of his Subjects. During the Application that was made to the Throne for Mercy, did the Priſoner abate aught of her Reſentment againſt the unhappy Convict? No; her cruel Heart never in the leaſt relented. God forbid, that the Meaſure ſhe has meted another, ſhould this Day be meaſured to her again!

When I think of the Age of the Priſoner at the Bar, ſcarcely yet above nineteen Years old, I can hardly perſuade myſelf that human Nature could ſo early attain to ſuch a Pitch of Wickedneſs: But when I attend to the very ſtrong and convincing Proofs we have to produce againſt her, I muſt give up my Reaſon to my Incredulity, if I any longer doubted, whether ſhe was guilty or not.

And, Gentlemen, the Whole we have to lay before you in Support of this heavy Charge, will naturally ariſe under one or other of theſe Conſiderations:

The numberleſs Inconſiſtencies, and even Contradictions of herſelf in her own Evidence, as taken at different Times before different Magiſtrates:

The Improbability of her Story:

The Teſtimony of a Multitude of Witneſſes of Credit and Character, who contradict her *materially* in almoſt every Circumſtance ſhe has related:

And, Gentlemen, in order to make you ſenſible how frequently *Canning* has varied in her *own* Account of theſe Facts, it will be neceſſary to inform you that ſhe has been examined on Oath four ſeveral Times. On the 31ſt of *January* before Alderman *Chitty*, when a Warrant was granted,

granted for the apprehending Mrs. *Wells*; on the 1ſt of *February* before Juſtice *Tuſomaker*, after ſhe had been down at *Enfield-Waſh*; on the 7th of *February* before Juſtice *Fielding*; and on the 21ſt of *February* at the Trial of *Squires*; on which laſt Examination we have aſſigned the Perjuries mentioned in the Indictment.

In tracing her through theſe ſeveral Examinations, we ſhall have an Opportunity of diſcovering what Variations from Time to Time there are in her Story, what new Circumſtances, Supplements, or Embelliſhments were added to her firſt Relation; and then we ſhall be able to judge impartially whether all theſe are reconcileable with Truth.

Before Alderman *Chitty* her Evidence was ſimply this; That ſhe was robbed by two Men in *Moorfields* of her Money, Hat, Gown, and *Cap:* That there ſhe received a Blow on her Head, which ſtunned her, but did not ſo far deprive her of her Senſes, but that ſhe remembers her being afterwards carried through *Biſhopſgate-Street:* That ſhe then was dragged to Mother *Wells*'s, and there ſtript of her Stays, and becauſe ſhe would *not go their Way*, (as it is termed) confined in a *little, ſquare, dark, or darkiſh Room*, which had nothing in it but an old Grate, an old Table, a Stool or two, and ſome Pictures over the Chimney: That there were *four or five Pieces of Bread and ſome Water, on which ſhe lived till ſhe made her Eſcape; and that ſhe lay all the Time on the bare Boards:* That ſhe got out of the Window on a ſmall *Shed of Boards or Pent-houſe, down which ſhe ſlid*, having cloathed herſelf with an old Bed-gown and Handkerchief, which ſhe took from the Grate.

This is the ſhort Account ſhe gave at firſt before the Alderman, for her Story had not then received Half its Decorations. The Circumſtance of her being ſubject to Fits was not then mentioned: No Hint of any Gypſey's being concerned, much leſs any Deſcription of *Mary Squires*, the moſt remarkable Woman in her Perſon that ever perhaps exiſted: Not a Word of any Hay being in the Room; though it appeared, on her coming down to *Enfield*, that there was above Half a Load, which had been laid in the Summer before. Let any one then believe, if they can, that, during her long Confinement, ſhe could overlook ſuch a Quantity of Hay, and continue Night after Night to take up her hard Lodging on the bare Boards!

In her Examination before Juſtice *Taſhmaker*, her Story receives ſeveral new Improvements. She had ſeen Mrs. *Wells*'s little Work-houſe, ſo now drops the unfortunate Circumſtance of its being a *little, ſquare Room:* Had ſhe ever ſeen it before, ſhe could not have ſo deſcribed it. She now recollects more Particulars of what the Gypſey ſaid to her: That ſhe promiſed her, *if ſhe would go their Way, ſhe ſhould have fine Cloaths enough.* This Attack (if it deſerves the Name of an Attack) on the poor innocent Girl's Virtue, was a proper Subject to excite the Compaſſion of the Public, and a pretty Uſe was made of it in the ſeveral Advertiſements, which were printed at that Time, to raiſe Subſcriptions for her.

She now ſwears, that after ſhe came to Mrs. *Wells*'s, a Man unknown to her took away her *Cap*. This expreſsly contradicts her former Evidence, in which ſhe ſays ſhe was robbed of her Cap in *Moorfields*.

She now introduced, for the firſt Time, the Circumſtance of the famous broken-mouth'd black Pitcher, on the Water in which, and ſome Pieces of Bread, ſhe lived *till the Wedneſday* before ſhe made her Eſcape, when the Whole was conſumed. No Wonder ſhe could now deſcribe the Pitcher, which was artfully conveyed into the Work-ſhop by her Friend *Adamſon* before her Arrival at *Enfield-Waſh*.

As to the Circumſtance of her Proviſion laſting her *only till Wedneſday*, it neither agrees with what ſhe afterwards ſwore before Juſtice *Fielding*, nor with her Evidence on the Trial of *Mary Squires*. Truth is always conſiſtent, but Falſhood and Fiction muſt be judged by another Criterion.

We are now come to her Examination before Juſtice *Fielding:* I know not through what Medium they were conveyed, but ſhe had certainly then received ſome new Lights, and is infinitely more learned and artful in the Manner of her telling her Story. The Men, ſhe ſwears, in *Moorfields feloniouſly and violently* took from her a Shaving Hat, *&c.* Theſe Words, *feloniouſly and violently*, are not the Expreſſions of a poor illiterate Girl, perhaps they are the Suggeſtion of her Solicitor.

She now ſwears, that the Blow in *Moorfields* threw her into a Fit, which deprived her of her Senſes; and that ſhe was uſed to have Fits, which laſted ſix or ſeven Hours. This was an uſeful and neceſſary Embelliſhment of her Story, as a Fit accounted much more naturally for a ſix Hours Inſenſibility, than a Blow which only ſtunned her could do.

That on her Recovery ſhe found herſelf in a high Road, but that ſhe was ſo intimidated, ſhe durſt not call out. 'Twas proper to give a Reaſon for not doing what any body in her Circumſtances naturally would have done. I own I always admire and ſuſpect an Affidavit, which aſſigns a Reaſon for every Thing which is ſworn in it.

She then ſwears ſhe was ſhoved into a back Room without any *Furniture* at all in it. I will not dwell on this trivial Miſtake in her Account; and yet ſurely, in the Imagination of a Girl who had had her Education at an Alehouſe, Stools, Tables, and Pictures, would be deemed *Furniture*.

But 'tis material to obſerve, ſhe now ſays, that *on Friday*, and *not Wedneſday*, ſhe had conſumed all her Bread and Water. This Alteration of her Evidence from *Wedneſday* to *Friday* muſt have its Deſign: Weak and ill as ſhe was, could ſhe have been able to walk from *Enfield* to *London* in leſs than ſix Hours, which is eleven Miles, if ſhe had received no Suſtenance for five Days before? Whereas ſhortening the Time of her being without any Refreſhment, took off a good deal from the Improbability of this Part of her Story.

In her Evidence on the Trial of *Mary Squires*, ſhe adds ſtill ſome new Circumſtances. She ſays, on her Recovery from her Fit, ſhe found herſelf in a great Road, where *there was Water*. This Addition was not without ſome View, and I think there is no Difficulty in finding out what it was. It ſupplied the World with a Reaſon, why ſhe and her Friends at firſt directed their Inquiries towards *Enfield-Waſh*.

A Barrel, Saddle, Baſon, and Tobacco-mould, are now recollected to have been in the Room: Strange, we ſhould never hear any Thing of them before!

She now ſwears, *ſhe had not drank all the Water till about a Quarter of an Hour before ſhe eſcaped.* This Amendment of her Evidence was with the ſame Intention as the former Alteration from *Wedneſday* to *Friday*; that is, to leſſen the Improbability of her being able to walk from *Enfield* to Town, without once ſtopping to take the leaſt Refreſhment.

Theſe are ſome of the moſt glaring Contradictions in her *own* Evidence, which muſt ſtrike every body, who reflects that theſe were Particulars in which ſhe could not err either through *Forgetfulneſs or Miſtake*; I will not ſay more.

But to this we may add the Improbability of her whole Story, which is as it were *felo de ſe*; at leaſt, 'tis ſuch a Tale as requires the ſtrongeſt Proof in the World to compel us to believe one Tittle of it.

The two Ruffians to continue with her Half an Hour in ſo public a Place as *Moorfields*, and tho' it was ſo early in the Evening, (an Holiday-Evening too) yet when ſhe ſcreamed out, for nobody to hear her! But why firſt rob her, and afterwards kidnap her? Was it their Deſign to rob her only? or, to rob her, and afterwards carry her where (in the Gypſey Language) they hoped they ſhould oblige her *to go their Way?*

If a Robbery only was deſigned, would they have carried with them the ſtrongeſt Evidence of their Guilt? If their Purpoſe was only to add this poor Girl to the Herd of wicked Wretches at Mother *Wells*'s, what Reaſon was there to begin their Seducement with a Robbery? At theſe Kind of Houſes a young Woman may be eaſily ſtripped of her Money, and yet no Robbery committed: Mother *Wells* might ſoon have made herſelf *Canning*'s Caſh-keeper, without the Aid of a Blow to ſtun her, or the Terrors of a Caſe-knife.

If her Murder was intended, why not have done it on the Road? Why not on her firſt Arrival at *Enfield-Waſh?* Why was ſhe ſupplied with any Bread and Water at all?

Her Fit likewiſe is of the marvellous Kind; it continued on her near ſix Hours; went away in an Inſtant; and though ſhe was uſed to have Fits on any Fright, yet ſhe never had another during her long and terrifying Confinement. How amazing this! What! a Girl uſed to Fits on Frights not have a Fit for a Month together, when ſhe might naturally expect, during all that Time, every next Minute would be her laſt!

But let us now follow this wonderful Girl to *Enfield*; not forgetting one very extraordinary Circumſtance in her Evidence before the Alderman, that though *ſhe was ſtunned in* Moorfields, *yet ſhe remembers afterwards her being carried through* Biſhopſgate-Street.

Is it credible, on her coming thither, that the Gypſey, an artful Procureſs, hackneyed in the Ways of Women, ſhould only ſlightly aſk her *to go their Way*, and, becauſe ſhe faintly ſaid *No*, ſhould give over all further Attempts? Was this acting like the Preſident or Lady Abbeſs of ſuch a Houſe as Mother *Wells*'s? Was this any proper Trial of the Priſoner's Virtue? I hope, for the Honour of the Female-Sex, that there hardly ever was a young Woman not above eighteen Years of Age, who did not ſay *No*, once at leaſt, eſpecially if ſolicited by an ugly, old, decrepid Hag. And yet this faint, this half-conſenting, no-Refuſal, is the only Reaſon given for her long and barbarous Confinement. Her Confinement! To what Purpoſe was it? What! ſtarve a young Woman out of her Virtue? Rich Food and ſtrong Liquors may do much; but Bread and Water, Cold and Hunger, are not apt to inflame the Paſſions.

This Bread and Water; a broken Pitcher of Water, and juſt *twenty-four Pieces of Bread, about equal to a Quartern Loaf*; before Alderman *Chitty* theſe *twenty-four Pieces were not above four or five.* But be they more or leſs, when was the Pitcher of Water and theſe conveyed into the Room? Was there any Expectation of ſuch a Gueſt? No. Were they carried in after *Canning* came thither, and before ſhe was ſhoved into the Work-ſhop? There was not Time enough to make ſuch a particular Proviſion. As to the Suppoſition that they might be conveyed into the Room after *Canning* was there, ſhe herſelf expreſly ſwears, that nobody came into the Room from the Time of her being ſhut up till ſhe made her Eſcape. *Virtue Hall* indeed in her Information ſays, that the Pitcher of Water was conveyed in there afterwards; but I ſhall lay her Evidence out of the Caſe, eſpecially as ſhe is in this Circumſtance abſolutely contradicted by the Priſoner.

But having mentioned *Virtue Hall*'s Name, I cannot help taking Notice of an Argument I have heard in Favour of the Priſoner's Innocence, which is this, *That* Canning *and* Virtue Hall *were never together before* Virtue Hall's *Examination, and yet they agree in almoſt every Circumſtance of the Story, and therefore* Canning's *Evidence muſt be true.* But the Anſwer to this is a very eaſy and obvious one. It does not at all appear, but that *Canning* and *Virtue Hall* were together before *Virtue Hall*'s Examination; at leaſt, 'tis certain they might have found out ſome Means of communicating their Sentiments to each other, which would anſwer the ſame End. 'Tis very remarkable, that *Virtue Hall*'s Confeſſion was not taken at firſt (for what Reaſon I know not) *vivâ voce* before Juſtice *Fielding*. She was ſent out of the Room to retire with her Solicitor, who was alſo *Canning*'s Solicitor: Her Information was reduced into Writing, and was two Hours in preparing. After this, what mighty Wonder is there, that when ſhe came into the Juſtice's Preſence again, ſhe ſhould repeat her Leſſon without the leaſt Heſitation?

But to purſue the Train of Improbabilities: Was it not ſtrange, that *Canning* ſhould ſubſiſt ſo long on ſo ſmall a Quantity of Bread and Water; four Weeks, wanting only a few Hours? Stranger, that ſhe ſhould huſband her Store ſo well as to have ſome of her Bread left, according to her firſt Account, till the *Wedneſday*; according to her laſt, till the *Friday* before ſhe made her Eſcape; and that ſhe ſhould ſave ſome of her miraculous Pitcher till the laſt Day? Was the twenty-fourth Part of a Six-penny Loaf a-Day ſufficient to ſatisfy her Hunger? If not, why ſhould ſhe defer the immediate Gratification of her Appetite, in order to make Proviſion for a precarious uncertain Futurity? Shall we ſuppoſe ſome Revelation from above in Favour of one of the *Faithful?* Perhaps an Angel from Heaven appeared to this *Mirror of modern Virtue*, and informed her, if ſhe eat above one Piece of Bread a Day, her ſmall Pittance would not laſt her till the Time ſhe was to make her Eſcape. Her Mother, we know, is a very enthuſiaſtical Woman; a Conſulter of Conjurors; a Dreamer of Dreams; perhaps the Daughter dreamed alſo what was to happen, and ſo, in Obedience to her Viſion, would not eat when ſhe was hungry,

hungry, nor drink when ſhe was thirſty. However that was, I would riſk the Event of the Proſecution on this ſingle Circumſtance, that, without the Interpoſition of ſome preternatural Cauſe, this Conduct of the Priſoner's muſt appear to exceed all Bounds of human Probability.

That ſhe ſhould have no Evacuations except by Urine, is another ſtrange Circumſtance, which decorates this romantic Girl's Story.

But another Thing: How came ſhe to make her Eſcape ſo eaſily at laſt, and yet never before once attempt it? Were theſe Dragons always on the Watch? Surely, if they ſat up all Night, they muſt ſleep in the Day-time, and the Priſoner tells you the Houſe was then very quiet. Even the Evening ſhe made her Eſcape, it muſt aſtoniſh us to find, that a Girl, who had been kept ſo long without her proper Nouriſhment, ſhould ſtop no where on the Road to take the leaſt Refreſhment, though ſhe paſſed by ſeveral Houſes, and met ſeveral Perſons.

But theſe Wonders, if poſſible, will grow more and more wonderful, when we come next to examine the Place of her ſuppoſed Impriſonment. This Room, what was it but a weak Erection of Lath and Plaiſter? Cracks and Crannies innumerable in the Sides of it, and the whole Building ſo ſlight, that a Boy of ten Years old might in an Hour's Time have demoliſhed any Part of it. The Window towards the Eaſt neither boarded nor faſtened; but three Feet from the Floor, and but nine from the Ground. The Caſement ſo large, that a very fat Man might have got out of it; ſo little a Way from the Ground, that a Child might have ſlipped down without hurting himſelf. And yet in this Cage, with the Door open, was this extraordinary Girl confined for a Month, without once trying to get out. The Story indeed is all of a Piece, 'tis all Witchcraft and Enchantment.

But, if ſhe was afraid of breaking out, why ſhould ſhe not call out of the Window for Aſſiſtance? It was near at Hand; the *Hertfordſhire* Road was not above ſixty Yards from the North Window, and ſhe frequently ſaw the Coachman paſs by, who uſed to drive her former Miſtreſs. Beſides this, there is a little Lane directly under that Window, which was uſed every Morning and Night by the Farmers and their Servants, who went that Way with their Cattle to the Marſhes. There is likewiſe a Pond not above ſeven or eight Yards from the Window, where the Townſmen watered their Horſes, and in froſty Weather it was a Sliding-place for all the Boys and Girls in the Village. Had ſhe made the leaſt Alarm, there were many ready to have come to her Aſſiſtance; but we hear of no Endeavours of this Kind; may be, the Gypſey had put a Spell upon her.

But perhaps I am talking of Impoſſibilities to Perſons, whoſe Credulity is great enough to believe whatever is artfully told them, how monſtrous and abſurd ſoever it may be in reality. I know the preſent Age to be, in ſome Reſpects, a very credulous one. Mr. *Davy*'s Story of a flying Man might now, for aught I know, be credited; 'tis not long ſince the Bottle Hero drew after him a numerous Attendance; this Heroine likewiſe has had her Admirers and Protectors; but, for my own Part, I would as ſoon believe either of thoſe Stories, as hers, which is equally incredible.

But ſhould theſe Improbabilities, I might almoſt ſay Impoſſibilities, find Credit with you; yet ſurely, Gentlemen, you cannot be totally inattentive to the Teſtimony of ſeveral Perſons of Credit and Character, who contradict the Priſoner in almoſt every Circumſtance of her Narrative.

As to her Deſcription of the Room, what ſay Mr. *Naſh*, *Hague*, *Aldridge*, and Mr. *White* the Sheriff's Officer? They will give you ſuch an Account of it, as muſt amaze you. The three firſt were her Friends, who went down to *Enfield-Waſh* on the 1ſt of *February*, with her Maſter Mr. *Lyon*, to aſſiſt in this notable Diſcovery; they will give you the Reaſons why they have not continued to be her Friends: That the Room *Canning* fixed upon as the Place of her Confinement, *was a long, light Room, not a little, dark, ſquare one:* That the Dimenſions of it were above thirty long, and only about nine Feet broad: That there was a large Quantity of Hay there, and an old ruſty Hay-bed: That there was no Grate in the Room, and the Chimney ſo overſpread with Cobwebs, that it was impoſſible there ſhould have been a Grate there for ſome Months before: No Pictures over the Chimney, nor any Marks that there ever had been any, but in their Place an old Caſement joined to the Wall by Cobwebs: That there were in different Parts of the Room three old Saddles, a Neſt of old-faſhioned Drawers, and a Tub of Pollard: That, on removing the Cheſt of Drawers from the Side of the Wall, they found it ſo affixed to it by Filth and Naſtineſs, that they are certain it could not be lately brought there: That they obſerved, under the Pulley of an old Jack-line, a large Hole in the Wall, which had Communication with the Kitchen, and commanded a View of every thing that was done there. This Hole likewiſe had eſcaped *Canning*'s Notice, though it will be proved to have been in the ſame Condition for many Years paſt. That, on the moſt careful Examination, they could not find that there either was, or ever had been, any Shed or Pent-houſe under the North Window, or any thing which could poſſibly be miſtaken for it: That the Room had a light Caſement in it, large enough for a Perſon to get out; and that *Canning* being aſked, why ſhe did not make her Eſcape this Way, ſaid, ſhe *believed it was faſtened, but that ſhe had never tried.*

Theſe were the Circumſtances that ſtaggered their Belief; nor could they account for the Priſoner's remembering none of theſe Things, tho', during her long Continuance there, ſhe had Leiſure enough to have marked every Cranny in the Room, and to have counted every Nail in the Floor.

Theſe Witneſſes and others will inform you, that on her coming down to *Enfield*, ſhe was firſt carried into the Kitchen, and ſet on the Dreſſer; and though the Door was open which led to the Hay-loft, yet ſhe never once intimated that this was the Place where her Stays were cut off, but ſuffered herſelf afterwards to be carried over the reſt of the Houſe in Search of the Place of her Impriſonment. Theſe Witneſſes, and particularly *White*, will ſpeak to the buſy Officiouſneſs of *Scarrat* and *Adamſon*, in pulling down the Boards of the North Window, and in conveying the Pitcher into this Room before *Canning* came there; and that one of them was then diſpatched to meet her on the Road,---with what View one may eaſily gueſs.

But in order to give you more convincing Proofs that *Canning* never was at Mother *Wells*'s in the Month of *January*, *Fortune Natus* and *Judith* his Wife will aſſure you, that they lay in this very Room at the Time the Priſoner pretends ſhe was there. This Fact they both aſſerted on the 1ſt of *February*, and this they would have given in Evidence on *Squires*'s Trial, if the furious Temper of the Times would have permitted them, without the Hazard of their Lives, to have come into Court and given their Teſtimony. I will not ſay what are the uſual Attendants of Fraud and Impoſture; but thus much is certain, Truth wants not a Party-Mob to ſupport it.

Another very remarkable Piece of Evidence to this Purpoſe, is the Atteſtation of three honeſt day-labouring Men, who on the 8th of *January* were lopping a Tree juſt over-againſt the Eaſt Window of this Room, and ſaw *Virtue Hall* and *Sarah Howit* looking out of the Caſement; they had a deal of Chat with theſe Girls, and in Sport threw Dirt at them: *Sarah Howit* will confirm this, who is one of Mother *Wells*'s Daughters. The Time will be fixed by *John Cantril*, a Publican, who uſed at that Seaſon of the Year to give his Neighbours and Cuſtomers a cold Entertainment.

One *Ezra Whiffin* will tell you, he went into this Workhop with Mother *Wells* herſelf on the 17th of *January*, to fetch out the Irons of a Sign-arm he had bought of her, and that he then obſerved *Fortune Natus*'s Hay-bed, at the Feet of which lay this Sign-arm. His Evidence will be ſupported likewiſe by his Son's; and the Time will be aſcertained by a Note of Hand, which was juſt then become payable, and for the Diſcharge of which he was going to *Wormleigh* to borrow ſome Money. *Ezra Whiffin* will acquaint you how he came not to be examined at *Mary Squires*'s Trial. I am ſorry he has ſo good a Reaſon for his Abſence. If the Avenues which lead to the Seat of Juſtice are to be ſurrounded and guarded by an inflamed Mob, what Security is there for our Lives and Properties; where is all our boaſted Liberty?

Robert White, a poor labouring Man, will prove, that in the Month of *January* he was at Mother *Wells*'s almoſt every Night in the Week, and that he frequently ſaw the People of the Family-go in and out of this Room; though 'tis true he was never in it himſelf.

John Howit, and indeed all the People who were at the Houſe, will affirm that Mother *Wells* kept Hay in this Room for her Horſe, and Pollard for her Poultry, and that ſome one or other of them went in there every Day. If all this laſt Sett of Witneſſes are not forſworn, if but one of them ſpeaks the Truth, what muſt we think of *Canning*'s Aſſertion, *That there was nobody in the Room during the whole Time ſhe was kept there?*

As to the taking of the Bed-gown out of the Grate, two Gentlemen of Figure and Reputation will acquaint you, that the Priſoner, on her Examination at the Manſion-Houſe, inſiſted upon taking away the Bed-gown with her, and ſaid, *It was her Mother's.* If her Mother's, how could it be found at Mrs. *Wells*'s, or taken out of the Grate, when there was no Grate in the Chimney?

Old Mrs. *Canning*'s Midwife will inform you, that the Daughter's Shift, which ſhe pretended ſhe had worn a Month in that naſty Place, was not dirty enough to have been worn by a cleanly Perſon a Week; that it was not draggled in the leaſt, nor had any Spots of Dirt on it. Some other Particulars you will hear from her own Mouth, which perhaps may lead you to gueſs what was the Priſoner's Employment during this long Receſs from the World and her Friends.

But if to all theſe Circumſtances we add the inconteſtable Proof we have to produce of *Mary Squires*, and her Son *George* and Daughter *Lucy*, being at *Abbotsbury* on the 1ſt of *January*, what Opinion ought we to have of the Priſoner's Veracity? Let it be remembered likewiſe, that this is no new-invented Story; for at *Enfield-Waſh*, as ſoon as the Gypſey was charged by *Canning* with having cut off her Stays on the 1ſt of *January*, ſhe immediately anſwered, *That can't be, for I was at that Time above a hundred Miles off, at* Abbotſbury. This Fact of the Gipſey's being then at *Abbotsbury* will be atteſted by above thirty Witneſſes. The Unexceptionableneſs of their Characters, the amazing Conſiſtency of their Evidence, their Remoteneſs of Habitation, and Ignorance of each other, as well as their having no Inducement to ſwear falſely, will, I am certain, not eſcape your particular Obſervation.

Theſe Witneſſes ſpeak not only as to the Perſon of *Mary Squires*, but alſo to the Perſons of the Son and Daughter, who travelled with her; they converſed with them; and ſeveral of them have known the old Woman for many Years laſt paſt, which removes all Poſſibility of imagining they are miſtaken.

Theſe Witneſſes take up the Gypſies at *South-Parrot*, on the 29th of *December*, about eight or ten Miles beyond *Abbotsbury*; and from thence from Place to Place, Step by Step, bring them to *Enfield-Waſh*, but not till the 24th of *January*.

At *Abbotsbury* they ſtayed from the 1ſt of *January* till the 9th, appeared publicly, and were preſent at ſeveral Dancing-Matches: *Lucy* had a Sweetheart there, who accompanied her Part of her Journey, and was an Evidence for the old Woman on her Trial. The Time will be fixed to a Degree of Demonſtration by the Exciſe-Books, to which *Gibbons*, who keeps the *Ship* Ale-houſe there, referred himſelf on his former Examination. The young Man who officiated for the Exciſeman lay in the ſame Room with *George Squires*, and is now attending to be examined. A Number of little Circumſtances will confirm their Teſtimony, and leave the Truth of it inconteſtable. A Piece of Nankeen left at one Place, a dead Horſe ſeen at another, a Letter wrote by *Lucy*'s Direction at *Baſingſtoke*, and which will be produced with the Poſt-mark on it, are ſome of thoſe unerrring Tokens, by which Truth is always to be diſtinguiſhed from Falſhood.

If the Gypſey was at *Abbotsbury* on the 1ſt of *January*, God (I hope) will forgive the Priſoner, for ſhe has ſworn that both the Mother and Daughter were then at *Enfield-Waſh*.

After all theſe Contradictions, Abſurdities, and glaring Falſhoods, need I remark that the Priſoner (conſcious of her Guilt) did not ſurrender herſelf till ſhe was in Danger of an Outlawry? The *fugam fecit* is by our Law conſidered always as a ſtrong Proof of Guilt, and is allowed as Evidence in all Criminal Proſecutions. And now a Queſtion may be aſked, What could be the Priſoner's Inducement to all this? Mr. *Davy* has ſuggeſted *Gain*; and doubtleſs ſhe and her Aſſociates have had a plentiful Harveſt. Perhaps this was only a ſecondary Motive; the primary one might be the Concealment of ſome Things from the World, which would have placed her Conduct in no very advantageous Light.

Light. But another Queſtion may be aſked, Where was ſhe all this Time? Certainly it will appear ſhe was not at Mother *Wells*'s, which is all that is neceſſary for us to ſhew in order for the Conviction of the Priſoner.

It was agreed upon by the Counſel on both Sides, that the Witneſſes ſhould be examined apart, and, when examined, not to return to the others. And they gave each other a Liſt of their Witneſſes Names.

William Chetham. (*He produced the Copy of the Record of the Conviction of* Mary Squires.) This I examined at the Office at *Hicks's-Hall*; it is a true Copy.

Croſs-examined.

Mr. *Williams.* How did you examine it?

Chetham. I examined it with the Clerk of the Peace. I read this, and the other was read to me.

Mr. *Williams.* Did you read the Record?

Chetham. I looked upon it when the Copy was read over, and ſaw that it was right.

The Copy read in Court. The Purport of which was, that Mary Squires *had a Bill of Indictment found againſt her at* Hicks's-Hall *before the Grand Jury for the County of* Middleſex, *for putting* Eliz. Canning, *Spinſter, in bodily Fear, in the Houſe of* Suſannah Wells, *Widow, at* Enfield-Waſh, *and ſtealing a Pair of Stays, Value ten Shillings, on the 2d of* January, 1752. *And that ſhe was tried for the ſame at the* Old-Bailey, *in the* February *Seſſions* 1753, *and found guilty of the Indictment* *.

When he was aſked, if he ſaw Elizabeth Canning *ſworn upon that Trial, Mr.* Davy *anſwered, That was admitted.*

Thomas Gurney *ſworn.*

Mr. *Davy.* You are the Short-hand Writer, I believe, that took the Evidence here at the *Old-Bailey*, upon the Trial of *Mary Squires* for the Robbery of *Elizabeth Canning?*

Gurney. Yes.

Mr. *Davy.* I ſuppoſe you have got the Minutes you took at that Time?

Gurney. I have.

Mr. *Davy.* Pleaſe to mention the Evidence ſhe gave.

Gurney. The Contents are in the Seſſions-Paper.

Mr. *Davy.* You are to give an Account of all the Evidence ſhe gave at that Time; you may refreſh your Memory by looking on your Minutes.

Gurney. She ſaid, ſhe had been at *Salt-Petre Bank* to ſee her Uncle and Aunt there; her Uncle's Name was *Thomas Colley.* She went from Home about eleven o'Clock, and ſtayed there till about Nine at Night, on the 1ſt of *January*; then came homewards; her Uncle and Aunt came with her as far as *Aldgate*, there they parted with her; and ſhe had Nobody in Company with her; ſhe came down *Houndſditch*, over *Moorfields* by *Bedlam* Wall; two Men came to her by *Bedlam* Gate, better than a Quarter after Nine o'Clock; they took hold on her, and ſaid nothing. Then ſhe was aſked, what Sort of Men they were? She ſaid, they were luſty Men. She was aſked, if ſhe loſt any Thing? She ſaid, Half a Guinea in a little Box, and three Shillings. She ſaid, the Man that ſtood on the right Hand took it, and took her Gown, Apron, and Hat, folded them up, and put them into a Great-coat Pocket; ſhe ſcreamed out; then one of them put a Handkerchief, or ſome ſuch Thing, in her Mouth; it was the Man who took her Gown that did that, and that ſhe ſaw no other Perſons by at that Time; they then tied her Hands behind her; after that one gave her a Blow on the Temple, and ſaid, D——n you, you B——h, we will do for you by and bye. Then ſhe was aſked about her having Fits; ſhe ſaid, ſhe had been troubled with Fits four Years, that they were convulſive Fits. She gave an Account, that the Blow ſtunned her, and flung her into a Fit. She was aſked, whether thoſe Fits were attended with Struggling? She ſaid, ſhe could not tell. The next Account ſhe gave was, ſhe found herſelf by a large Road where there was ſome Water, and the two Men that robbed her were with her: She ſaid, they lugged her along, and ſaid, You B——h, why don't you walk faſter? that one held her by one Arm, and the other by the other, while they pulled her along, and took her to the Houſe of *Suſannah Wells*, which was about Four o'Clock in the Morning. When ſhe was aſked, if ſhe could form any Judgment of the Manner in which ſhe was carried to the Place? ſhe ſaid they dragged her along by the Petticoats, ſhe thought, they being ſo dirty: That when ſhe came there, it was not Day-light; that it was Day-light about three Hours after; that ſhe believed it was then about Four o'Clock, and that ſhe then ſaw the Gypſey-Woman. She was then aſked the Woman's Name; and ſhe ſaid *Mary Squires.*

Mr. *Davy.* Was *Mary Squires* then at the Bar?

Gurney. She was. She then went on and ſaid, There were two young Women there, but ſhe did not ſee the Priſoner *Wells* then; that the young Women were ſtanding up, and the Gypſey-Woman was ſitting in a Chair: That when ſhe was brought in, ſhe took her by the Hand, and ſaid, if ſhe choſe to go their Way, ſhe ſhould have fine Cloaths; that ſhe ſaid, No. She was then aſked, if ſhe explained the Words, *go their Way?* She ſaid, ſhe did not: That then the Gypſey took a Knife out of the Dreſſer-Drawer, and cut the Lacing of her Stays, and took them from her. She was then aſked, if ſhe was under Apprehenſions of Danger at that Time? She ſaid, ſhe thought they were going to cut her Throat. She was aſked, if ſhe ſaw *Wells* there? She ſaid, No; and that *Mary Squires* looked at her Petticoat, and ſaid, Here, you B——h, take that, or I will give you that, and gave her a Slap on the Face. She was aſked, if ſhe had the Petticoat in her Hand? She ſaid, No, it was on me: Afterwards, ſhe ſaid, ſhe puſhed her up Stairs. She was aſked to deſcribe the Kitchen; ſhe ſaid, it was on the right Hand going in, and the Stairs by the Fire-ſide. She was aſked, what they called the Place where ſhe was? She ſaid, the Hay-loft, and that it was not then Day-light. She gave an Account that the Room-door was ſhut, but ſhe did not know whether it was faſt or no; that the Door was at the Bottom of the Steps in the Kitchen. She ſaid, that if

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* To make this Trial of *Canning*'s more complete, we ſhall here add the Trial of *Mary Squires* and *Suſannah Wells*, from the Seſſions-Paper; alſo the Lord-Mayor's Memorial, delivered to the King on *Squires*'s Behalf, *&c.*

The TRIAL *of* Mary Squires, *and* Suſannah Wells, *Widows, at the Seſſions-Houſe in the* Old-Bailey, *before the Right Hon. Sir* Criſp Gaſcoyne, *Knt. Lord-Mayor of the City of* London, *the Hon. Mr. Juſtice* Wright, *the Hon. Mr. Juſtice* Gundry, *the Hon. Mr. Baron* Adams, William Moreton, *Eſq. Recorder, and others his Majeſty's Juſtices of Oyer and Terminer of the City of* London, *and Juſtices of Gaol-Delivery of* Newgate, *holden for the ſaid City and County of* Middleſex, *on* Wedneſday *the 21ſt of* February, *and continued till* Monday *the 26th*, 1753.

MARY SQUIRES, Widow, and *Suſannah Wells*, were indicted; the firſt, for that ſhe, on the 2d of *January*, in the Dwelling-Houſe of *Suſannah Wells*, Widow, on *Elizabeth Canning*, Spinſter, did make an Aſſault, putting her the ſaid *Elizabeth Canning* in corporal Fear and Danger of her Life, and one Pair of Stays, value ten Shillings, the Property of the ſaid *Elizabeth*, from her Perſon, in the Dwelling Houſe, did ſteal, take, and carry away. And

The latter, for that ſhe, well knowing her the ſaid *Mary Squires* to have done and committed the Felony aforeſaid on the ſaid 2d of *January*, her the ſaid *Mary* did then and there feloniouſly receive, harbour, comfort, conceal, and maintain, againſt his Majeſty's Peace, and againſt the Form of the Statute.

Elizabeth Canning. I had been to *Salt-Petre Bank* to ſee an Uncle and Aunt; his Name is *Thomas Colley.* I ſet out from Home about Eleven in the Forenoon, and ſtayed there till about Nine at Night, on the 1ſt of *January*; then my Uncle and Aunt came with me as far as *Aldgate*, where we parted; I was then alone, ſo came down *Houndſditch*, and over *Moorfields* by *Bedlam* Wall; there two luſty Men, both in Great-coats, laid hold of me, one on each Side; they ſaid nothing to me at firſt, but took Half a Guinea in a little Box out of my Pocket, and three Shillings that were looſe.

Q. Which Man took that?

E. Can. The Man on my right Hand. They took my Gown, Apron, and Hat, and folded them up, and put them into a Great-coat Pocket. I ſcreamed out; then the Man that took my Gown put a Handkerchief, or ſome ſuch Thing, to my Mouth.

Q. Were there any Perſons walking near you at that Time?

E. Can. I ſaw nobody. They then tied my Hands behind me; after which one of them gave me a Blow on the Temple, and ſaid, D—n you, you B—h, we'll do for you by and bye. I having been ſubject to Convulſion-Fits theſe four Years, this Blow ſtunned me, and threw me directly into a Fit.

Q. Are theſe Fits attended with a Struggling?

E. Can. I don't know that.

Q. What happened afterwards?

E. Can The firſt Thing that I remember after this was, I found myſelf by a large Road, where was Water, with the two Men that robbed me.

Q. Had you any Diſcourſe with them?

E. Can. I had none; they took me to the Priſoner *Wells*'s Houſe.

Q. About what Time do you think it might be?

E. Can. As near as I can think, it was about Four o'Clock in the Morning. I had recovered from my Fit about Half an Hour before I came to the Houſe. They lugged me along, and ſaid, You B—h, why don't you walk faſter? One had hold on my right Arm, and the other on the left, and ſo pulled me along.

Q. Can you form any Judgment in what Manner you was conveyed to the Place before you recovered of your Fit?

E. Can. I think they dragged me along by my Petticoats, they being ſo dirty.

Q. When you came to *Wells*'s Houſe, was it Day-light?

E. Can. No, it was not; I think it was Day-light in about three Hours, or better, after I was there; which is the Reaſon I believe I was carried in about Four o'Clock.

Q. When you was carried in, what did you ſee there?

E. Can. I ſaw the Gypſey-Woman *Squires*, who was ſitting in a Chair, and two young Women in the ſame Room; *Virtue Hall* (the Evidence) was one; they were ſtanding againſt a Dreſſer.

Q. Did you ſee the Priſoner (*Wells*) there?

E. Can. No, I did not. As ſoon as I was brought in, *Mary Squires* took me by the Hand, and aſked me if I choſe to go their Way, ſaying, if I did, I ſhould have fine Cloaths. I ſaid, No.

Q. Did ſhe explain to you what ſhe meant by going their Way?

E. Can. No, Sir. Then ſhe went and took a Knife out of a Dreſſer-Drawer, and cut the Lace of my Stays, and took them from me.

Q. Had you, at that Time, any Apprehenſions of Danger?

E. Can. I thought ſhe was going to cut my Throat, when I ſaw her take the Knife.

Q. Did you ſee the Priſoner (*Wells*) at that Time?

E. Can. No, I did not.

Q. Was any thing elſe taken from you?

E. Can. There was not then; but *Squires* looked at my Petticoat, and ſaid, Here, you B—h, you may keep that, or I'll give you that, it is not worth much, and gave me a Slap on the Face.

Q. Had ſhe the Petticoat in her Hand?

E. Can. No, it was on me. After that, ſhe puſhed me up Stairs from out of the Kitchen, where we were.

Q. Deſcribe the Kitchen?

E. Can. The Kitchen was at the right Hand going in at the Door, and the Stairs are near the Fire.

Q. How many Steps to them?

E. Can. There are Four or Five of them.

Q. What did they call the Name of the Place where they put you in?

E. Can. They call it the Hay-loft. The Room-door was ſhut as ſoon as I was put up.

Q. Was it faſtened?

if ſhe (the Gypſey-Woman) heard her ſtir or move, or Words to that Purpoſe, ſhe ſaid ſhe would cut her Throat. She was aſked, if ſhe ſaw any Thing brought up to eat or drink? ſhe ſaid, No: That when Day-light appeared ſhe could ſee about the Room. She was aſked, what Sort of a Room it was? ſhe ſaid, a long Room, with a Fire-place and a Grate; that there was no Bed or Bedſtead, only Hay to lie upon; that ſhe ſaw a black Pitcher, which was produced in Court; then ſhe ſaid, This is the Pitcher, it was full up to near the Neck with Water, and about twenty-four Pieces of Bread. She was then aſked, how great a Quantity of Bread there was? ſhe ſaid, about a Quartern Loaf; and that ſhe had a Penny Mince-pye in her Pocket, that ſhe bought to carry Home to her Brother. Then ſhe gave an Account that ſhe was confined there a Month by the Weeks, all but a few Hours; and that ſhe ſaw Nobody in the Room all that Time, only ſhe once ſaw a Perſon look through the Crack of the Door, but did not know who it was. Then ſhe was aſked, if ſhe had made any Attempt to get out before? ſhe ſaid, No. Then ſhe was aſked, what Time ſhe got out? ſhe ſaid, about Four o'Clock in the Afternoon on a *Monday*. Then ſhe was aſked again, how long ſhe had been confined there? ſhe ſaid, four Weeks, all but a few Hours; ſhe ſaid, ſhe broke down a Board from the Window, and got out. She was then aſked, how high that Window was from the Ground? ſhe then pointed to a Place in the Court, which was about eight or ten Feet high: She gave an Account, that ſhe firſt put her Head out, and got faſt hold on the Wall, then got her Body out, and then jumped into a little narrow Place by a Lane. She was aſked, if ſhe did not hurt herſelf? ſhe ſaid, there was ſome ſoft Clay: Then ſhe gave an Account that it was Day-light. She was aſked, what ſhe had for Cloathing? ſhe ſaid, ſhe took a Bed-gown and Handkerchief, which lay in the Grate in the Chimney. Then ſhe was aſked, if ſhe ſaw any Body when ſhe got out? ſhe ſaid, ſhe did not. Then ſhe went up the Back of the Houſe, croſſed a little Brook over two Fields, as ſhe thought, and there got into the Road-way, then ſhe went ſtraight up the Road to *London*. She gives an Account, that ſhe did not know the Way, therefore aſked her Way to *London*. Then ſhe was aſked, if ſhe called by the Way? ſhe ſaid, ſhe did not call at any Houſe; but coming over *Moorfields*, the Clock ſtruck Ten. She was aſked, if ſhe acquainted any Body with it? ſhe ſaid, No, ſhe got to her Mother's in *Aldermanbury* a Quarter after Ten o'Clock; the firſt Perſon ſhe met with was the Apprentice, then ſhe ſaw her Mother and the Children; her Mother, ſhe ſays, went into Fits directly.

Mr. *Davy*. As far as you have mentioned, are you able to ſay, upon your Oath, that That was the Evidence that the Girl, upon her Oath, then gave in Court?

Gurney. The Subſtance of it is the Evidence ſhe gave in Court.

Croſs-examined.

Mr. *Mereton*. What Day did ſhe ſay ſhe was robbed?

Gurney. I have it in my Minutes that it was the 1ſt of *January*, which was the Day ſhe went to ſee her Uncle.

Mr. *Davy*. Now deſcribe what ſhe obſerved in the Hay-loft.

Gurney. There was a Barrel, a Saddle, a Baſon, and a Tobacco-mould, in the Room where ſhe was. She was aſked, what ſhe meant by a Tobacco-mould? ſhe ſaid, what People do up Papers of Tobacco in.

Mr. *Davy*. Now pleaſe to go on where you left off.

Gurney. She was then aſked, if ſhe had given the Account to any Body at that Time? ſhe ſaid, Yes, to Mrs. *Woodward*, who came to ſee her; ſhe told her ſhe had lived upon Bread and Water.

Mr. *Davy*. Did ſhe ſay Mrs. *Woodward* was ſo frightened ſhe could not aſk her any Queſtions?

Gurney. She ſaid, ſhe did not aſk her any more Queſtions then. Then ſhe ſays, Mr. *Wintlebury* came in, with whom ſhe had lived Servant: He took her by the Hand, and aſked, where ſhe had been? ſhe ſaid, on the *Hertfordſhire* Road: He ſaid, *Bet*, how do you know that? ſhe ſaid, Becauſe I have ſeen my Miſtreſs's Coachman go by, knowing them to go to *Hertfordſhire*; ſhe ſaid, ſhe knew it, for ſhe uſed to carry Things to the Coach, and fetch them back again. Then ſhe was asked, if ſhe was asked any Queſtions that Night about the Room or Jug? ſhe ſaid, ſhe had told them there was a Jug not quite full: That they asked her, how much? ſhe ſaid, better then a Gallon. She was asked, how ſhe got out of the Window? then gave an Account how ſhe tore her Ear in getting out.

Upon her Croſs-Examination, ſhe gave an Account, that the two Men were with her about Half an Hour in *Moorfields*, and that Nobody elſe was by, and there was a Box taken out of her Pocket: Then ſhe gave an Account, that ſhe had a Handkerchief which ſhe did not loſe. She was asked, if there was any Light near the Place where ſhe was firſt attacked? ſhe ſaid, there was a Lamp. She was asked, how long it was before ſhe came to herſelf? ſhe could not be ſure, but ſhe came to herſelf Half an Hour before ſhe came to the Houſe of *Wells*. She was then asked, if ſhe had any Degree of Senſe? ſhe ſaid as before, ſhe had none, only about Half an Hour before ſhe got to Mrs. *Wells*'s Houſe: Then ſhe was asked the Queſtion again, to which ſhe anſwered as before. Then ſhe was asked, if ſhe had Senſe enough of any Sort to know by what Means ſhe was conducted there? ſhe ſaid, ſhe thought they dragged her along by the Petticoats, for they were dirty. Then ſhe gave an Account, that ſhe was in a great Surprize and all of a Tremble, and the Terror made her ſenſible. Then ſhe gave an Account, that the two Men ſtayed there no longer than till they ſaw her Stays cut off; then they went away, before ſhe was put in the Hay-loft. She ſaid, ſhe did not attempt to get out of the Hay-loft, till *Monday*: She was asked, why ſhe did not? ſhe ſaid, ſhe thought they might let her out, and that it never came into her Head till that Morning. Then ſhe was asked, where ſhe was ſitting, when ſhe

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E. Canning. I don't know that; it was at the Bottom of the Stairs in the Kitchen. After ſhe ſhut the Door, ſhe ſaid, if ever ſhe heard me ſtir or move, or any ſuch Thing, ſhe'd cut my Throat.

Q. Did you ſee any Thing brought up to eat or drink?

E. Can. I ſaw nothing brought up. When Day-light appeared, I could ſee about the Room; there was a Fire-place and a Grate in it, no Bed nor Bedſtead, nothing but Hay to lie upon; there was a black Pitcher not quite full of Water, and about twenty-four Pieces of Bread (*a Pitcher produced in Court*). This is the Pitcher, which was full to near the Neck.

Q. How much in Quantity do you think theſe twenty-four Pieces of Bread might be?

E. Can. I believe about a Quartern Loaf.

Q. Had you nothing elſe to ſubſiſt on?

E. Can. I had in my Pocket a Penny Mince-pye, which I bought that Day to carry Home to my Brother.

Q. How long did you continue in that Room?

E. Can. A Month by the Weeks, all but a few Hours.

Q. What do you mean by a Month by the Weeks?

E. Can. I mean a four-weeks Month.

Q. Did any Body come to you in the Room during that Time?

E. Can. No, Sir, Nobody at all. On the *Wedneſday* before I came away, I ſaw Somebody look through the Crack of the Door, but don't know who it was.

Q. Did you, during the Time you was in this Confinement, make any Attempts to come down Stairs, or make your Eſcape?

E. Can. No, Sir, I did not till the Time I got out.

Q. Had you any Thing to ſubſiſt on during the Time, beſides the Pieces of Bread, Penny-Pye, and Pitcher of Water?

E. Can. No, I had not.

Q. At what Time did you get out?

E. Can. I got out about Four o'Clock in the Afternoon on a *Monday*, after I had been confined there four Weeks, all but a few Hours.

Q. How did you get out?

E. Can. I broke down a Board that was nailed up at the Inſide of a Window, and got out there.

Q. How high was the Window from the Ground?

E. Can. (*She deſcribed it by the Height of a Place in the Seſſions-Houſe, which was about eight or ten Feet high.*) Firſt I got my Head out, and kept faſt hold by the Wall, and got my Body out; after that I turned myſelf round, and jumped into a little narrow Place by a Lane, with a Field behind it.

Q. Did not the Jump hurt you?

E. Can. No, it was ſoft clay Ground.

Q. Was it light then?---*E. Can*. It was.

Q. What did you do for Cloathing?

E. Can. I took an old Sort of a Bed-gown and a Handkerchief, that were in this Hay-loft, and lay in a Grate in the Chimney. (*Produced in Court.*) I made my Ear bleed at getting out; the Handkerchief I tied over my Head inſtead of a Cap, it was very bloody.

Q. Did you ſee any Body when you jumped out at the Window?

E. Can. No, Nobody at all; then I went on the Backſide the Houſe up a Lane, and croſſed a little Brook, and over two Fields, as I think, but I did not take Notice how many Fields; the Path-way brought me by the Road-ſide. Then I went by the Road ſtraight to *London*.

Q. Did you know the Way?---*E. Can*. I did not.

Q. Did you call at any Houſe?

E. Can. No, I did not. It ſtruck Ten o'Clock juſt as I came over *Moorfields*. I got Home about a Quarter after to my Mother's Houſe in *Aldermanbury*.

Q. Did you acquaint any Body with your Misfortune coming along?

E. Can. No, I did not.

Q. Who did you meet with firſt?

E. Can. I met with the Apprentice firſt; then I ſaw my Mother and the Children. She went into a Fit directly.

Q. Did you give an Account to any Body how you had been treated?

E. Can. Yes, I did to Mrs. *Woodward*, who came to ſee me, that I had lived on Bread and Water. She was ſo affrighted, ſhe could not aſk me many Queſtions then: then Mr. *Wintlebury* came in, with whom I lived Servant before I went to live with Mr. *Lyon*; he took me by my Hand, and aſked me where I had been? I ſaid, Sir, in *Hertfordſhire* Road; he ſaid, *Bet*, how do you know that? I ſaid, Becauſe I ſaw my Miſtreſs's Coachman go by, which ſhe uſed to go into the Country into *Hertfordſhire*, that was Mrs. *Wintlebury*; I knew the Coach, becauſe I uſed to carry Things to it, and fetch them back again.

Q. Was you aſked any Queſtions about the Room or Jug that Night, and what you had to ſubſiſt on?

E. Can. Yes, there were many People came in, and I told them I had a Jug which was not quite full of Water; they aſked me how much? and I ſaid, I believed better than a Gallon of it: They aſked me alſo, how I got out? and I ſaid, I broke out of the Window, and had torn my Ear in getting out, which bled all the Way coming Home.

Q. What Things did you obſerve in this Hay-loft?

E. Can. There was a Barrel, a Saddle, a Baſon, and a Tobacco-mould.

Q. What do you mean by a Tobacco-mould?

E. Can. I mean ſuch a Thing that they do up Pennyworths of Tobacco with.

Croſs-Examination.

Q. How long might theſe two Men continue with you in *Moorfields*?

E. Can. About Half an Hour.

Q. Did any Body paſs by at the Time?---*E. Can*. Nobody at all.

Q. Was this Box, that contained your Half Guinea, taken out of your Pocket?---*E. Can*. Yes, Sir, it was.

Q. Had you any Thing elſe in your Pocket?

E. Can. I had a Pocket-handkerchief with a Pye in it, which I did not loſe.

Q. Was there any Light near this Place where you was firſt attacked?

E. Can. There was a Lamp.

Q. Have you recollected how long you lay in this Fit before you came to yourſelf?

ſhe ſaw ſomebody peeping through the Door? ſhe ſaid, ſhe was walking along the Room: She ſaid, there were four or five Steps up, and that ſhe did not in all the Time perceive where ſhe was, till about a Week after ſhe was there, and that was by looking out of the Window and ſeeing the Coach. She was aſked, if ſhe was not extremely weak? ſhe ſaid, ſhe was; her Words were, *I was pretty weak.* Then ſhe was aſked, whether ſhe was that Way before? ſhe ſaid, ſhe was not. She gives an Account of paſſing by many Houſes, and aſking the Way of the People on the Road. Then ſhe was aſked, why ſhe did not go into any Houſe? ſhe ſaid, ſhe thought ſhe might meet ſomebody belonging to that Houſe, that might know her, and take her back again. Then ſhe was aſked over again, the firſt Time of her making the Diſcovery: She ſaid, it was in her Mother's Houſe; and then ſhe gave an Account where her Mother's Houſe is, the Corner of *Aldermanbury*. Then ſhe gives an Account to Queſtions aſked before, whether ſhe ſaw Mrs. *Wells* at the Time ſhe was there? ſhe then ſaid, ſhe ſaw her afterwards when ſhe went down to the Houſe. She was aſked again about it, whether ſhe is certain to the Priſoner *Squires?* and ſhe ſays, ſhe is ſure ſhe is the Perſon who cut her Stays off, and ſhe was ſitting in a Gown and a white Handkerchief about her head. She was aſked, during her whole Confinement, whether ſhe tried to ſee if the Door was faſt? ſhe ſaid, ſhe had puſhed againſt it, and found it faſt. She was aſked, whether ſhe heard any Noiſe in the Kitchen? ſhe ſaid, ſhe heard People blowing the Fire, and paſſing in and out; and there was another Room ſhe heard a Noiſe in of Nights, but that it was very quiet of Days, being a Houſe of Entertainment in the Night. She ſaid, that ſhe eat all her Bread on the *Friday* before ſhe got out. Then ſhe was aſked, how ſhe eat it? ſhe ſaid, it was quite hard, that ſhe was forced to ſoak it in the Water, and that ſhe drank all her Water about Half an Hour before ſhe got out. Then ſhe was aſked, where ſhe did her Occaſions? ſhe ſaid, ſhe had never a Stool during the Time ſhe was there, only made Water.

Mr. *Davy.* Was the Apprentice ſhe ſays ſhe ſaw firſt, examined as a Witneſs on that Trial?—*Gurney.* No.

Croſs-examined.

Mr. *Moreton.* Were Mr. *Naſh*, Mr. *Hague*, and Mr. *Aldridge*, examined as Witneſſes?

Gurney. They were not.

Eſther Hopkins ſworn.

I live in *Dorſetſhire*, at *South-Parret.*

Mr. *Willes.* How far is that from *Abbotſbury?*

Eſther Hopkins. I don't know, it is the loweſt Part of *Dorſetſhire*; it is about a Mile from *Winyard's Gap.* I keep a Houſe of Entertainment for Travellers of all Sorts.

Mr. *Willes.* Look at that old Woman ſitting there; do you know her?

E. Hopkins. I really believe in my Conſcience, this is the old Woman that was at my Houſe on the 29th of *December* 1752, with her Son. I remember the Son particularly well: They lodged there one Night, and went away the next Morning.

Mr. *Willes.* Do you remember what Day of the Week it was?

E. Hopkins. I cannot ſay that I can.

Mr. *Willes.* How do you remember the Day of the Month?

E. Hopkins. Becauſe there were ſeveral Gentlemen there in Company at that Time, and two of them left the Reckoning to pay, and I put down the Day of the Month, and I keep my Book by the Almanack.

Mr. *Willes.* Do you remember any Thing of her Daughter being there?

E. Hopkins. I don't remember whether it was the Daughter or not; I remember the old Woman; I think I never ſaw a Woman more particular in my Life; ſhe told me the young Woman was her Daughter, and the other was her Son.

Mr. *Willes.* Did they tell you where they were going next Morning?

E. Hopkins. No, they did not.

Mr. *Willes.* Look at the young Man and young Woman behind her; do you know them, or either of them?

E. Hopkins. That is the Man (*pointing to* George Squires) to the beſt of my Knowledge.

Croſs-examined

Mr. *Moreton.* I think you did not ſeem to ſpeak poſitively to the old Woman.

E. Hopkins. I never ſaw a Woman more like her in all the Days of my Life, and I really believe ſhe is the Woman.

Mr. *Moreton.* Have you not many Paſſengers lie at your Houſe?

E. Hopkins. Some or other lie at my Houſe every Night.

Mr. *Moreton.* What was her Buſineſs? did ſhe ſell any Thing?

E. Hopkins. I aſked them what they ſold? they told me, Hard-ware.

Mr. *Moreton.* Did they ſell any Thing in your Houſe?

E. Hopkins. No.

Mr. *Moreton.* Did you ſee any Thing they had to ſell?

E. Hopkins. The Man carried a Bundle or Bag, not very large, under his Arm.

Mr. *Moreton.* Had they a Horſe?—*E. Hopkins.* I ſuppoſe they had not.

Mr. *Moreton.* Had you ever ſeen the old Woman before?

E. Hopkins. No, I had not.

Alice Farnham ſworn.

I live at *Winyard's Gap*; It is a Mile South from *South-Parret*, in the lower Part of *Dorſetſhire*, and about ten from *Abbotſbury*; it lies between them.

Mr. *Gaſcoyne.* How far is it from *Litton?*

A. Farnham. I don't juſtly know, I believe it is about ten or eleven Miles.

Mr. *Gaſcoyne.* Look at that old Woman; do you know her?

A. Farnham. I remember I ſaw her once on a *Saturday* Morning, between Eight and Nine o'Clock, a little after New *Chriſtmas* 1752: She came in at my Houſe for Refreſhment: I keep a Public Houſe: I took particular Notice of her, and compared her to a Picture that I had in the

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E. Canning. I cannot be ſure, but it was about Half an Hour before I arrived in *Wells*'s Houſe.

Q. During the Time of your firſt being attacked, whether you had any Degree of Senſe at all?

E. Can. Not till Half an Hour before I came to that Houſe.

Q. Had you Senſe enough of any Sort to know by what Means you was conducted?

E. Can. I think they dragged me along by my Petticoats, they were made ſo dirty; but I was not ſenſible.

Q. Was you in any Surprize when ſhe took your Stays?

E. Can. I was in a great Surprize, and all of a Tremble.

Q. Then how can you tell who was there at the Time?

E. Can. The Terror made me look about me to ſee what Company was there.

Q. How long did the two Men ſtay in the Room?

E. Can. They ſtayed no longer than till they ſaw my Stays cut off, then they went away, before I was put up in the Loft.

Q. Did not you make an Attempt to get out before that *Monday* you talk on?—*E. Can.* I did not.

Q. How came you not to make an Attempt before?

E. Can. Becauſe I thought they might let me out; it never came into my Head till that Morning.

Q. Where was you ſitting, when you ſaw ſomebody peep through the Crack of the Door?

E. Can. I was walking along the Room.

Q. How wide was this Crack?

E. Can. It was about a Quarter of an Inch wide.

Q. Did not you, in the whole twenty-ſeven Days, perceive where you was?

E. Can. I did in about a Week after, by ſeeing the Coach go by.

Q. Was not you extreme weak?—*E. Can.* I was pretty weak.

Q. Was you ever that Way before?—*E. Can.* No, I never was.

Q. Did not you paſs many Houſes in your Way Home?

E. Can. I did, and aſked my Way of People on the Road.

Q. How came you, being in that deplorable Condition, not to go into ſome Houſe, and relate the Hardſhips you had gone through?

E. Can. I thought, if I did, may be I might meet ſomebody belonging to that Houſe.

Q. Did you ſee the Priſoner (*Wells*) while you was in that Confinement?

E. Can. I never ſaw her in the Houſe at all till I went down afterwards.

Q. Had you any of your Fits while in that Room?

E. Can. I had not, but was fainting and ſick.

Squires. I never ſaw that Witneſs in my Lifetime till this Day three Weeks.

Q. How was the Priſoner (*Squires*) dreſſed, when you was carried in?

E. Can. She was ſitting in her Gown, with a Handkerchief about her Head.

Q. Did you never, during all the Time, try if the Door was faſtened or not?

E. Can. I did once puſh againſt it with my Hand, and found it faſt.

Q. Had you uſed to hear any body in the Kitchen?

E. Can. I heard People ſometimes blowing the Fire, and paſſing in and out. There was another Room in which I heard a Noiſe at Nights, but the Houſe was very quiet in the Day-time.

Q. Did you eat all your Bread?

E. Can. I eat it all on the *Friday* before I got out; it was quite hard, and I uſed to ſoak it in the Water.

Q. When did you drink all your Water?

E. Can. I drank all that about Half an Hour before I got out of the Room.

(*Upon being aſked where ſhe did her Occaſions while in the Room, ſhe anſwered, ſhe never had had any Stool while in Confinement, ſhe had only made Water.*)

Virtue Hall. I know the two Priſoners at the Bar; *Wells* lived at *Enfield-Waſh*; I went and lived there as a Lodger. *Mary Squires* lived in the Houſe, and had been there about ſeven or eight Weeks.

Q. How long before *E. Canning* was brought in?

V. Hall. About a Fortnight before, which was on the 2d of *January*, about four in the Morning; ſhe was brought in there by two Men; *John Squires* was one of them, he is Son to *Mary Squires*; the other Man I don't know any thing of; I never ſaw him before.

Q. How was ſhe dreſſed when brought in?

V. Hall. She had no Gown on, or Hat or Apron.

Q. Who was in the Houſe at the Time?

V. Hall. There was I and *Mary Squires*, the Priſoner, and her Daughter. The Gypſey-Man ſaid, Mother, I have brought you a Girl, do you take her: Then ſhe aſked *E. Canning*, whether ſhe would go her Way?

Q. What did ſhe mean by that?

V. Hall. She meant for her to turn Whore; but ſhe would not.

Q. Do you mention this by way of Explanation, or as Words that ſhe ſaid?

V. Hall. As Words that ſhe ſaid; then *Mary Squires* took a Knife out of a Dreſſer-drawer in the Kitchen, and ripped the Lace of her Stays, and pulled them off, and hung them on the Back of a Chair in the Kitchen, and puſhed her up into the Room, and ſaid, D---n you, go up there then, if you pleaſe; then the Man that came in with the Gypſey's Son, took the Cap off *E. Canning*'s Head, and went out a doors with it; the Gypſey-Man *John Squires* took the Stays off the Chair, and went out with them.

Q. Where was *E. Canning*, when the two Men took away the Things?

V. Hall. She was then up in the Room.

Q. Had you ever been in that Room?

V. Hall. I had, before ſhe was brought there, ſeveral Times.

Q. What was the Name they call it by?

V. Hall. They call it by the Name of the Workſhop; there was a great deal of Hay in it; they only put Lumber in it; there was a great many Pieces of Wood, a Tobacco-mould, and this black Jug; about three Hours after the young Woman was put up, *Mary Squires* filled the Jug with Water, and carried it up.

Q. How

the Room of old Mother *Shipton*; there was a young Man and Woman with her.

Mr. *Gaſcoyne*. Look at that Man.

A. Farnham. I ſee him; I know him perfectly well; it is her Son.

Mr. *Gaſ*. Look at the young Woman near him.

A. Farn. I think, to my Knowledge, ſhe is the ſame Perſon; they ſtayed with me almoſt an Hour that Morning; I never ſaw them before or ſince; they had one Quart of Beer and ſome Bread and Cheeſe, and told me they would come to ſee me again in Old *Chriſtmas* Holidays; they aſked me how far it was to *Litton*, and went up the Road all three of them together towards it; I am certain I know the old Woman and her Son.

Mr. *Gaſ*. How far is *Litton* from your Houſe?

A. Farn. It is ten or eleven Miles.

Mr. *Gaſ*. Had you ſeen them before they came to your Houſe?

A. Farn. I was coming out of *South-Parrot* on the *Friday* Night, and met them as they were going in, and the next Morning they came to my Houſe; I told my Mother, as we were laughing and talking, that I had met three Gypſies; and ſhe aſked me, if I was not affrighted.

Mr. *Gaſ*. How do you know that this was before Old *Chriſtmas*?

A. Farn. My Mother was a-brewing, and I went and aſked her, if ſhe would let me go to *Crookhorne* Market, which is on a *Saturday*: She told me, ſhe could not ſpare me, and ſaid it would be rare enough to go on *Monday* to buy ſome Things againſt Old *Chriſtmas*; and this was juſt as thoſe People went out at the Door.

Croſs-examined.

Mr. *Nares*. When was the firſt Time you ſaw them?

A. Farn. It was on the *Friday* Night.

Mr. *Nares*. Do you know where they lay that Night?

A. Farn. No, I cannot tell; when they came into my Houſe, they aſked me, how far it was from *South-Parrot*, and I ſaid, one Mile.

Mr. *Nares*. What Sign is yours, you keep?

A. Farn. I keep the Sign of the *Three Horſe-ſhoes*; it is a Public Houſe.

Mr. *Nares*. What made you think they were Gypſies?

A. Farn. Becauſe they were all three together; one had a little Bag in his Hand, not a large one nor a ſmall one; it was about as much as I could carry under my Arm; it was a little Fardle.

Mr. *Nares*. Which had that?

A. Farn. To the beſt of my Knowledge, the Man had the Bag.

Mr. *Nares*. How was this old Woman dreſſed?

A. Farn. She had a Sort of a drab-coloured Cloak on, and a ſort of a Serge Gown.

Mr. *Nares*. Was it whole or ragged?

A. Farn. It was not Rags.

Mr. *Nares*. How was the Daughter dreſſed?

A. Farn. She had a white Gown on and a red Cloak; it was a Sort of a Holland Gown, very clean and neat.

Mr. *Nares*. Then ſhe did not look like a Traveller or Gypſey by her Dreſs?---*A. Farn*. No, ſhe did not.

Mr. *Nares*. Did you inquire of them what Buſineſs they were of?

A. Farn. No, I did not inquire that; they aſked me for one Mug of Beer, and I drawed it them; they ſtayed almoſt an Hour.

Mr. *Nares*. Was you with them all the Time they ſtayed?

A. Farn. Yes, I was.

Mr. *Nares*. Look at them, and tell us from the Dreſs they are in now, and the Dreſs they were in then, whether you are certain they are the ſame Perſons?

A. Farn. To the beſt of my Knowledge, they are the ſame Perſons.

Mr. *Moreton*. I think it is opened that the young Man and young Woman (*meaning* George *and* Lucy Squires) are to be examined; if ſo, they ought not to be in Court to hear the other Witneſſes examined.

Mr. *Davy*. Then I'll either call them next, or not at all, which you chuſe.

Mr. *Moreton*. Then call them next.

Mr. *Nares*. Did they make the ſame Appearance they do now, or a different one?

A. Farn. They were very well dreſſed, as they are now; they were clean and fitty.

Mr. *Nares*. Did the old Woman appear to be as weak as ſhe is now?

A. Farn. She was very unhealthy ſeemingly, coming up againſt the Hill.

Mr. *Nares*. Could ſhe walk without Aſſiſtance?

A. Farn. She did not hold by them, they walked before her.

Mr. *Nares*. Can you take upon you to ſwear to the Identity of her Perſon?

A. Farn. I do think ſhe is; I took a true Obſervation of her; ſhe had a great Noſe and Lips.

Mr. *Nares*. Did you take Obſervation of her Daughter?

A. Farn. I did; ſhe ſeem'd to be a very clean Sort of a Body, and of a black Complexion.

Mr. *Nares*. What did you think them to be?

A. Farn. I took them to be Travellers; I did not know whether they ſold any Thing for a Livelihood; they offered me nothing, and I aſked them for nothing; they paid for what they had.

Mr. *Davy*. *Lucy* muſt go out while *George* is examined. *(She goes out of the Court.)*

George Squires ſworn.

Mr. *Davy*. What Relation is that old Woman to you?

G. Squires. My own Mother, and the young Woman that is turned out is my Siſter *Lucy*.

Mr. *Davy*. Where was you on the *Chriſtmas* before your Mother was taken up?

G. Squires. Really I cannot tell you.

Mr. *Davy*. Was you ever in *Devonſhire*?

G. Squires. I am not acquainted there; I was in *Somerſetſhire* in *Queen-Camneal*.

Mr. *Davy*. Was you ever in *South-Parrot*?---*G. Squires*. I was.

Mr. *Davy*. Can you remember the Time?

George Squires. I came there on a *Friday* Night.

Mr. *Davy*.

Q. How do you know it was three Hours after?

V. Hall. Then it began to be lightiſh.

Q. Did you hear any Talk between them after ſhe was in the Room?

V. Hall. They took care I ſhould know but little.

Q. Has *Suſannah Wells* a Huſband?

V. Hall. No, ſhe has not: When I went out of the Kitchen, I went into the Parlour; *Wells* ſaid, *Virtue Hall*, the Gypſey-Man came in and told me, that his Mother had cut the Stays off the young Woman's Back, and he had got them; and ſhe bid me not to ſay any thing to make a Clack of it, fearing it ſhould be known.

Q. How long was you in that Houſe?

V. Hall. I was there a Quarter of a Year in all, if not more; I was there the whole Time *E. Canning* was there; but I never ſaw her once after ſhe was put up into that Room. I was the firſt that miſſed her; I aſked the Gypſey-Woman once, whether that Girl was gone? She anſwered, What is that to you, you have no Buſineſs with it: But I durſt not go to ſee if ſhe was gone; if I had, very likely they would have ſerved me ſo.

Q. Did you ever ſee the other Man after that Night?

V. Hall. No, I never did.

Q. Who lodged in the Houſe at the Time beſides?

V. Hall. There was *Fortune Natus* did.

Q. Did *Mary Squires* continue in the Houſe long after this?

V. Hall. She did, till we were all taken up, which was, I think, on the *Thurſday* after the young Woman was gone.

Q. What was you in that Houſe?

V. Hall. I went there as a Lodger; but I was forced to do as they would have me.

Q. *from Mary Squires*. What Day was it that the young Woman was robbed?

Court. She ſays on the Morning of the 2d of *January*.

M. Squires. I return Thanks for telling me, for I am as innocent as the Child unborn.

Q. *from Wells*. How long were theſe People *(meaning the Gypſies)* at my Houſe in all, from firſt to laſt?

T. Hall. They were there ſix or ſeven Weeks in all; they had been there about a Fortnight before the young Woman was brought in.

Q. Did you ever ſee this Cap or Bed-gown before?

V. Hall. Not to my Knowledge.

Thomas Colley. I am *E. Canning*'s Uncle; I live at *Salt-Petre Bank*; on the New-year's Day ſhe dined and ſupped at my Houſe, and went away about Nine in the Evening, as near as I can gueſs; I and my Wife went along with her to *Houndſditch*, almoſt to the *Blue-Ball*; there we parted with her, about a Quarter or very near Half an Hour after Nine o'Clock.

Q. How was ſhe cloathed?

Colley. She had a Gown, Hat, and white Apron on.

Elizabeth Canning. *E. Canning* that has given her Evidence is my Daughter; after ſhe was miſſing from New-Year's Day, I advertiſed her three Times; ſhe came back on the Day before King *Charles*'s Martyrdom; about a Quarter after Ten o'Clock at Night; ſhe had nothing but this ragged Bed-gown and a Cap; I fell into a Fit directly; my Daughter is ſubject to Fits; there was a Garret-Ceiling fell in upon her Head, which firſt occaſioned them; and at Times, when any body ſpeaks haſtily to her, or at any Surprize, ſhe is very liable to fall in one; ſhe has ſometimes continued in one ſeven or eight Hours, ſometimes three or four; ſhe is not ſenſible during the Time ſhe is in one, no more than a new-born Babe; when I came to myſelf, my Daughter was talking to Mrs. *Woodward* and Mr. *Wintlebury*; they aſked her where ſhe had been? ſhe ſaid on the *Hertfordſhire* Road, which ſhe knew by ſeeing a Coach going by; ſhe gave the ſame Account ſhe has here. When ſhe came into her warm Bed, ſhe was very ſick, and had no free Paſſage through her for Stool or Urine, till ſhe was ſupply'd with Glyſters, for ſeven Days after ſhe came Home, but what was forced by half a Cup-full at a Time.

John Wintlebury. I ſaw *Elizabeth Canning* the Night ſhe came Home; ſhe appeared in a very bad Condition, and had this dirty Bed-gown and Cap on. Hearing ſhe was come Home, I went to her Mother's Houſe, and ſaid, *Bet*, How do you do? She ſaid, I am very bad. Said I, Where have you been? She ſaid, I have been ſomewhere on the *Hertfordſhire* Road, becauſe I have ſeen the *Hertfordſhire* Coach go backwards and forwards.

Q. Have you heard the Evidence ſhe has given here in Court?

Wintlebury. I have; ſhe gave the ſame Account that Night, but not quite ſo fully that Night, as ſhe did before the Sitting Alderman on the *Wedneſday* after; but all agrees with what ſhe has ſaid here. I found her in a great Flurry, ſo did not aſk her many Queſtions that Night.

Joſeph Adamſon. I have known *Elizabeth Canning* the younger ſome Years. I never ſaw her after ſhe came Home, till the Day we went down to take the People up. I, and ſeveral Neighbours of us, agreed to go to the Place, ſome on Horſeback, and ſome in the Coach with *E. Canning*. I was down about an Hour, or an Hour and half, before the Coach came, and had ſecured all the People we found there. I ſeeing the Room before ſhe was brought in, thought ſhe was capable of giving ſome Account of it: I returned to meet her and aſked her about it; ſhe deſcribed the Room with ſome Hay in it, a Chimney-place in the Corner of it, an odd Sort of an empty Room. I went with her to the Houſe, and carried her out of the Chaiſe into the Kitchen, and ſet her on the Dreſſer, and ordered all the People to be brought to her, to ſee if ſhe knew any of them; ſhe was then very weak. I took her in my Arms like a Child. Upon ſeeing *Mary Squires*, ſhe ſaid, That is the Woman that cut my Stays off; and threatened to cut my Throat if I made a Noiſe.

Q. Did any of the People ſeem unwilling to be inſpected?

Adamſon. Yes, they were very unwilling to be ſtopped, when we went down in the Morning, particularly *Mary Squires*; after the Girl had ſaid

Mr. *Davy.* What Day of the Month was it?

G. Squires. It was on the 29th of *December*; my Mother and Sister *Lucy* were there with me.

Mr. *Davy.* What makes you certain as to the Time?

G. Squires. It was after New *Christmas*, that made me take an Account of it.

Mr. *Davy.* At whose House was you?

G. Squires. I put up at the Sign of the *Red Lion*, to the best of my Knowledge; her Name is *Hopkins*; I have been there since, we stayed there but one Night.

Mr. *Davy.* From whence did you come to that Place?

G. Squires. We came from it by *Yeovil.*

Mr. *Davy.* What was the last Village you came from, when you came to *South-Parrot?*

G. Squires. I cannot recollect it.

Mr. *Davy.* Where did you lie the Night before you came to *South-Parrot?*

G. Squires. I cannot tell the Place's Name.

Mr. *Davy.* How long had your Mother, Sister, and you been travelling together?——*G. Squires.* I came from Home at *Newington-Butts* in *Southwark*, and I went from thence, as near as I can guess, about seven or eight Weeks before *Michaelmas.*

Mr. *Davy.* Can't you recollect the Place you lay at before you came to *South-Parrot?*——*G. Squires.* It was a pretty large Village.

Mr. *Davy.* How many Miles had you travelled that Day?

G. Squires. We had travelled about seven or eight Miles.

Mr. *Davy.* Where did you go the next Day, that is the *Saturday?*

G. Squires. I went to *Litton.*

Mr. *Davy.* Is not there a Town between *South-Parrot* and *Litton?*

G. Squires. There is *Winyard's Gap.*

Mr. *Davy.* How far is *South-Parrot* from *Litton?*

G. Squires. It is ten or twelve Miles, to the best of my Knowledge; I lay at *Litton* on the *Saturday*, and left my Sister and Mother there on the *Sunday* Morning, and went to *Abbotsbury.*

Mr. *Davy.* What Day of the Month was the *Sunday?*

G. Squires. It was the 31st Day of the Month; my Mother stayed there one Night after me; Mr. *Clarke* had then a good Regard for my Sister *Lucy*; he was a Sweetheart of her's, and she of his; I went to him at *Abbotsbury*, and lay at *Gibbons*'s House one Night; then in the Morning, which was on a *Monday* the 1st of *January*, *Clarke* and I went to *Litton*; there we dined upon two Fowls, which I bought: My Mother was surprised at my staying all Night at *Abbotsbury*, and she went in Pretence to see what was the Matter with me, thinking I was sick; there she heard I was gone with *Clarke* to *Litton*, and she came back again to *Litton* before we had dined.

Mr. *Davy.* How far is *Litton* from *Abbotsbury?*

G. Squires. It is three or four Miles.

Mr. *Davy.* Who walked with your Mother to *Abbotsbury?*

G. Squires Nobody, that I know of; after Dinner, my Mother, Sister, *Clarke*, and I walked to *Abbotsbury*, and we danced there that Night in Mr. *Gibbons*'s Parlour; he keeps the Sign of *The Ship.*

Mr. *Davy.* What Company had you there?

G. Squires. There were a great many of my Acquaintance; I can't call them all to Mind; there was Mr. *Wallace* a Shop-keeper, and Mr. *Bond* a School-master, he got fuddled that Night; Mr. *Wallace* generally drinks Cyder, he came in for a Penny Pot of Cyder.

Mr. *Davy.* Who was your Partner?

G. Squires. I danced with *Gibbons*'s Sister, and Mr. *Clarke* with my Sister *Lucy*; I can't mention all the Company, it is impossible; we danced Country Dances till about Eleven or Twelve at Night; we danced several Nights there after the first Night.

Mr. *Davy.* Had you ever been at *Abbotsbury* before?

G. Squires. Yes, I had several Times; and know several People in the Town.

Mr. *Davy.* How long did you continue at *Abbotsbury?*

G. Squires. We came there on the 1st of *January*, and went away on the 9th.

Mr. *Davy.* Did your Mother stay with you there all the Time?

G. Squires. She did; and when we went away, Mr. *Clarke* went with us to a little Village they called *Portersham*, about a Mile or a Mile and Half from thence; this was on a *Tuesday.*

Mr. *Davy.* Do you remember one *Andrew Wake*, an Excisеman, at *Abbotsbury?*

G. Squires. I do; he borrowed a Great Coat of me one Day, in order to survey in it, being a very wet Day.

Mr. *Davy.* What Day was that.

G. Squires. I cannot take upon me to say that; it was one Day while we were there.

Mr. *Davy.* What House did you go to at *Portersham?*

G. Squires. To the best of my Knowledge, it was *The Chequer*, an Alehouse; it is on the left Hand going down the Village; we lay there, Mr. *Clarke* lay with me, and we all went the next Day to *Ridgway*, which was *Wednesday* the 10th, which is about five or six Miles from *Abbotsbury*; we breakfasted there the next Morning, and, to the best of my Knowledge, went from thence about Eight or Nine o'Clock.

Mr. *Davy.* At what House did you lie at *Ridgway?*

G. Squires. At the House of Mr. *Bewley*, the Sign of *The Ship*; his Son, and he, and a Maid-servant, keep the House.

Mr. *Davy.* Did any Thing happen remarkable at *Ridgway* while you was there?

G. Squires. There was a dead Horse, and a Man skinning him as we came by; and I left a Piece of Nankeen, about three Yards and a Quarter, for my Reckoning with my Landlord. I was afraid that Silver would fall short; so I went to his Bedside, and told him I was afraid Money would fall short before I came Home, and desired he would take that till I fetched it. My Mother, Sister, and I went from *Ridgway* to *Dorchester* on *Thursday* the eleventh, which is about three Miles Distance; we did not lie there, but went forward almost all Night; for

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this of *Squires*, *Squires* said to her, she hoped she would not swear her Life away, for she never saw her before: *E. Canning* pointed to *Virtue Hall*, and said, That young Woman was in the Kitchen when I was brought in: She pointed also to another young Woman, and said, she was there at the Time. Then we carried her up to examine the House; she said, none of the Rooms she had seen, was the Room in which she was confined: Then I asked if there were any other Rooms; they said, Yes, out of the Kitchen (I had before been in it, but did not say so then, because I had a mind to see if she knew it). We had her up into it: She said, This is the same Room in which I was, but here is more Hay in it than there was then: I laid my Hand upon it, and said, It has lately been shook up, it lay hollow. She was then pretty near a Casement; said I, If you have been so long in this Room, doubtless you are able to say what is to be seen out here. She described a Hill at a Distance, which is *Chinkford* Hill: I believe she could not see it at the Time she spoke about it, for I was between her and the Casement, with my Back towards the Casement. She also said, there were some Houses on the other Side the Lane; then I opened the Casement, we looked, and it was as she had described. I asked where was the Window she broke out of? she shewed it us (there were some Boards nailed up against it), and said, That is the Window I used to see the Coach go by at: Then we pulled down the Board; it was big enough for me to have got out of it; it appeared to me to be the same Window, before she came to the House, for I saw some of the Plaister broke off on the Outside; that Window was one Story high.

Edward Lyon. The young Woman lived Servant with me till she was missing. I live in *Aldermanbury.* I was one of the Persons that went down to *Wells*'s House. I went after the rest of the Gentlemen on the 1st of *February*; we were there some time before she came, and had taken the People up; when she came, she was carried into the Kitchen, and set on a Dresser, and the People set all round her: I said to her, *Bet*, don't be frightened or uneasy, you see your Friends about you, and on the other Hand don't be too sure, without you really can swear to what you say, therefore be very careful: She pitched upon *Mary Squires* to be the Person that cut her Stays off; she pitched upon a young Woman that was said to be Daughter to *Mary Squires*, and said, she was in the Kitchen at the Time, and likewise *Virtue Hall*, but said they did nothing to her. This black Jug was brought down, a Bason, and the Tobacco-mould: She said, they were both in the Room where she was confined; she had described this Jug before, and said it was broken at the Mouth, as it now appears to be.

Robert Scarrat. I went down to *Enfield-Wash*; there were six of us in all: Her Mother and two Women were with her in the Chaise; she described the Fields, and likewise a Bridge, that Night she came Home, near the House; I asked her, if she perceived a Tanner's House near? she said, she believed there was.

Q. Have you heard the other Evidences that went down give their Evidence?

Scarrat. I have, and what they have said is the Truth, which I heard also; I also heard *E. Canning* examined before the sitting Alderman, she gave the same Account she has done here.

Q. Was *John Squires* in the Room at the Time she pitched upon his Mother and the rest?

Scarrat. He was; she said she could not swear to him; he had his great Coat on at our first going there, but he had pulled it off; she said, he looked like the Person, but she could not swear to him; they made him put his great Coat on before the Justice; then she said, he looked more like one of the two Men that brought her there.

Edward Rossiter. I went down with the rest on the *Thursday.* I heard *E. Canning* examined before Mr. *Tashmaker* the Justice; she gave the same Account then as now; she said, *John Squires* was much like one of the Men, when he had got his great Coat on; she said, she did not see *Wells* in the House, but she once saw her out at a Window, but did not know she was the Woman that belonged to the House.

Sutherton Backler. I am an Apothecary; I saw *E. Canning* the Day after she came Home, on the 30th of *January* about Noon; she was extremely low and weak; I could scarcely hear her speak, her Voice was so low, and her Pulse scarcely to be felt, with cold Sweats; she told me she had no Passage during the whole Time of her Confinement; she was then in such a Condition, she had a Glyster administered the same Day; she had many Glysters given her, which after some Time relieved her.

Q. Whether a Person that is extremely costive cannot subsist longer without Food, or with less Food, than a Person that is not so?

Backler. I cannot answer to that. (*Each of the Persons that said they went down to take the Prisoners, were asked where they went to? and answered, to* Enfield-Wash, *the House of the Prisoner* Wells.)

Mary Squires *said nothing in her Defence, but called the following Witnesses.*

John Gibbons. I live at *Abbotsbury*, six Miles from *Dorchester*; I am Master of the House called *The Old Ship*; on the 1st of *January*, 1753, the Prisoner *Squires* came into the House; there was *George* her Son, and *Lucy* her Daughter with her, as she called them; she came with Handkerchiefs, Lawns, Muslins, and Checks, to sell about Town; she stayed there from the 1st to the 9th Day of the Month, and lay at my House.

Q. How long have you kept that House?

Gibbons. I have kept it two Years, come *Lady-Day.*

Q. Look at the Woman, are you sure that is her?

Gibbons. He looks at Squires, *and says*, I am sure it is.

Cross-Examination.

Q. How long have you known her?

Gibbons. I have known her three Years, and have seen her there three Years ago.

for we had received a Letter from my Sister *Mary*, who was at *London*, that she was extremely ill, and desired us to come Home as soon as possible; there was a very great Water out at *Dorchester*, and the Miller's Man carried my Sister *Lucy* over it on Horseback, behind him; for which I told him I'd give him a Pint of Beer; and I took my Mother, and carried her on my Back through the Water; there is a Mill just by the Place; my Sister stayed till we came to her, then we all three walked on together.

Mr. *Davy*. Where did you stop?

G. Squires. The next Day we got to a Place called *Tawney-Down*, and we went into a little Ale-house on the Road, and had some Bread and Cheese, and a Pint of Beer: We lay at a Place called *Chettle* that Night, which was the *Friday*.

Mr. *Davy*. How many Miles is *Chettle* from *Dorchester?*

G. Squires. I cannot tell, because we went through *Blandford*.

Mr. *Davy*. What Time did you get to *Chettle* on the *Friday?*

G. Squires. We got there in the Evening; my Mother was very weary, and I asked a Shepherd on the Downs for an Ale-house, and he said there was never a one to *Chettle*: On the *Saturday* we went from thence to *Martin*; there I asked at an Ale-house for Lodging, and could get none; so a Gentleman let us lie in his Barn.

Mr. *Davy*. Do you know his Name?

G. Squires. I do not recollect it.

Mr. *Davy*. Was it Farmer *Thanes?*

G. Squires. It was; we lay there; my Mother and Sister were with me, we never were a Minute from each other all the Time to *London*.

Mr. *Davy*. Where did you go when you went from *Martin?*

G. Squires. We went from thence to *Coombe* on the *Sunday* Night, to the House of Widow *Greville*; her Son *Thomas Greville* is dead of the Small-pox.

Mr. *Davy*. When did you leave *Coombe?*

G. Squires. We left that on the *Monday*, but can't recollect where we lay.

Mr. *Davy*. Where did you lie on the 15th?

G. Squires. I cannot tell; I went to *Basingstoke* on the *Tuesday*, I think.

Mr. *Davy*. Recollect again.——*G. Squires*. I cannot recollect it.

Mr. *Davy*. How many Places did you lie at, or how many Days were you in going from *Coombe* to *Basingstoke?*—*G. Squires*. I cannot tell.

Mr. *Davy*. What Day of the Week did you get to *Basingstoke?*

G. Squires. I cannot tell: We travelled about ten Miles a-Day.

Mr. *Davy*. Where did you put up at *Basingstoke?*

G. Squires. At the *Spread-Eagle*; a Widow Woman keeps it; she wrote a Letter for my Sister *Lucy* to Mr. *Clarke*; Mr. *Clarke* and we had parted a long Time, and he desired *Lucy* to send a Letter to him.

Mr. *Davy*. Where did *Clarke* and you part?

G. Squires. We parted at *Ridgway*.

Mr. *Davy*. What is the Landlady's Name who wrote this Letter?

G. Squires. I don't know her Name; the Letter was sent to the Post-Office at *Dorchester*, directed to Mr. *William Clarke* at *Abbotsbury*; we did not lie at the *Spread-Eagle*, we could not have Lodging there; but she directed us about a Mile or Mile and Half farther on our Way to *London*.

Mr. *Davy*. What is the Name of the Place you lay at?

G. Squires. It is called *Old Basing*, it is a little out of the Way.

Mr. *Davy*. Were did you go the next Day?

G. Squires. We went, I believe, to *Bagshot*, and lay at the *Greyhound* there; and on the *Saturday* we went to *Brentford*, to the House of Mrs. *Edwards*; I lay there one Night, and on *Sunday* I went to *London* to look after Sister *Mary*; I stayed there one Night, and the next Day, which was on a *Monday*, I brought my Sister *Mary* to *Lucy* and my Mother at *Brentford*; we all stayed there till *Tuesday*.

Mr. *Davy*. What Sign does Mrs. *Edwards* keep?

G. Squires. She keeps no Sign, but there is the Sign of the *Drum* just by it; there we were all four together; and to the best of my Knowledge, we all left *Brentford* on the *Tuesday*, and went to the *Seven Sisters* by *Tottenham*, to the Sign of the *Two Brewers*.

Mr. *Davy*. Is not there another Name to that Place?

G. Squires. I don't know; there is a Green; they call it by some Name, but I don't know it.

Mr. *Davy*. What Day of the Week was this?

G. Squires. It was on a *Tuesday*.

Mr. *Davy*. Where did you go the next Day?

G. Squires. Then we went to Mrs. *Wells*'s House; this was on a *Wednesday*.

Mr. *Davy*. How came you to go there?

G. Squires. I was recommended to her House for Lodging; they said she was a very civil Woman: I never saw her in my Life before this Time, if I was to be racked to Death. There is an Acquaintance of mine that owed me seven Pounds fifteen Shillings in *London*, and I went there to stay till I could receive it, to Mrs. *Wells*'s House: We went to a Woman's House who sells Pease-soup at *Edmonton*; we would have lodged there; but my Mother wanted to wash, and the Woman said that was not customary, so she recommended us farther, to a Place called *Cheshunt*; upon that we went to Mrs. *Wells*'s House, being recommended there by Mrs. *Long*'s Daughter; I left my Mother and two Sisters at Mrs. *Wells*'s House, and went to *London* to receive my Money about two or three Days after we got there; I lay in *London* one Night, and came back the next Day, and we all remained there till we were taken up.

Mr. *Davy*. Describe particularly the Rooms you lay in at Mrs. *Wells*'s House.

G. Squires. The Room my Mother and two Sisters lay in, is as you go by the Kitchen Door up a Pair of Stairs, and turn short on the right Hand; it is a large Room, with one Bed in it, in which they all three lay; it is the handsomest Room they have in the House.

Mr. *Davy*. What Room was under that?

G. Squires. There is a Parlour under it; I lay in a little Room facing the Stair-head.

Mr. *Davy*. Where did Mother *Wells* lie?

G. Squires. She lay in a Room on the left Hand of mine, as you go up Stairs.

Mr. *Davy*. Who lay in that Room with her?

G. Squires. There was a Daughter of hers, and *Virtue Hall*.

Mr. *Davy*. Do you remember any body else that lay in the House?

G. Squires. There was *Fortune Natus* and his Wife lay in a Place where there is a vast deal of Hay.

Mr. *Davy*. What do you call that Room?

G. Squires. It was a Shuffle-board Room, as they say; you go up two or three Steps to it out of the Kitchen; they had a Bed made of Hay on the right Hand going up.

Mr.

Q. How long have you lived there?

Gibbons. I was born at that Town: I am a married Man, have a Wife and one Child; I was bred in the Farming Way at *Fisherton*.

Q. By what do you recollect the Day?

Gibbons. There came an Excisemen to officiate there for one *John Ward* that was sick, and I put the Day of the Month down when he came; the Excise-Office is kept at my House; the Man that came was *Andrew Wicks*, or *Wick*.

Q. Did you see the Prisoner sell any of these Goods you mentioned?

Gibbons. No, I did not; they offered them to sell to me, and others; my Wife bought two Check Aprons.

William Clarke. I live at *Abbotsbury*, and have for seven Years; I remember seeing the Gypsey there; the last Time I saw her was on the 10th of *January* last; I met with them on the Road; we went some Way together; we parted at *Crudeway-foot*, four Miles from *Abbotsbury*, and three from *Dorchester*.

Q. Where were they going?——*Clarke*. I cannot tell that.

Q. Had you ever seen her before?

Clarke. I saw her, and her Son and Daughter, three Years ago come *March*, at *Abbotsbury*; they came with Handkerchiefs, Lawns, and Muslins to sell: I saw the Landlord's Wife at the *Ship* buy some Aprons of them the last Time they were there.

Cross-Examination.

Q. How came you to take particular Notice of the Day?

Clarke. By keeping my other Accounts; I carried Goods out with me the same Day to *Portersham*.

Q. Have you your Book with you?——*Clarke*. No, I have not; but I can't forget the Day, because I don't go so often.

Q. Which Way were they going?

Clarke. They were making for *London*; they talked so.

Q. Did they give you any Account to what Place they were bound next?

Clarke. They did not; they lodged at this Man's House *(pointing to* Gibbons) at *Abbotsbury*.

Q. Did you see them there?

Clarke. I did, on the 1st of *January*: I commonly go there of an Evening, to have a Pot of Liquor.

Q. Do you remember when you kept *Christmas-Day?*—*Clarke*. I do not.

Q. Can you give any Account of New Stile or Old?

Clarke. No, I cannot; but if I was to die for the Woman, I'll speak the Truth.

Q. How was she cloathed there?

Clarke. The same as now, and the Son in a blue Coat and a red Waistcoat, and had a great Coat with him.

Q. What Size is he?——*Clarke*. He is about five Foot seven or eight Inches high; the Girl was in a Camblet Gown.

Q. You are sure you saw her the Time you mention?

Clarke. I undertake to swear positively to that, that I saw her there on the 1st of *January* last, and either on the 9th or 10th afterwards; and saw them going about the Town in the Time, to sell Things.

Q. What are you?

Clarke. I am a Housekeper, and have been in Business about six Years; I am a Cordwainer.

Thomas Greville. I live at *Coombe*, three Miles from *Salisbury*; I keep a Public House there, the Sign of the *Lamb*; I saw *Mary Squires* at my House on the 14th of *January*.

Q. How many Miles is *Coombe* from *Dorchester?*—*Greville*. I cannot tell.

Q. Who was with her there?

Greville. There was her Sister and her Brother, as she said; they sold Handkerchiefs, Lawns, and such Things.

Q. How long did she stay at *Coombe?*

Greville. They stopped there but one Night.

Cross-Examination.

Q. What *January* do you mean?

Greville. I mean last *January*, five Weeks ago last *Sunday*.

Q. How came you to take such particular Notice of it?

Greville. There was a Carpenter at my House; he had spent the biggest Part of his Money; it being *Sunday* Night, I would have him go about his Business, and put him out of the House two or three Times, and after that he went over the way to another House, and pawned his Ax. *(These three Witnesses shewed their Subpœna's, as the Cause of their coming to give their Evidence.)*

For the Crown.

John Inifer. I sell Fish and Oysters about *Waltham-Cross* and *Theobalds*. I know the Prisoner *Squires* very well by Sight; the last Time I saw her before now, was at the Time she was taken at *Susannah Wells*'s House; before that I had seen her several Times every Day up and down, before she was taken.

Q. Are you very certain of that?

Inifer. I am, that I saw her three Weeks before; that she walked into People's Houses, pretending to tell Fortunes. She told me mine once.

Q. Did you see any Goods she had to sell?

Inifer. No, I did not; I always saw her by herself. I saw a young Man in blue-grey when she was taken up, and two young Women, all taken in the House of *Wells*.

Wells *being called upon to make her Defence, said, As to her Character, it was but an indifferent one; that she had an unfortunate Husband, who was hanged; and added, she never saw the young Woman (meaning* E. Canning) *till they came to take us up; and as to* Squires, *she never saw her above a Week and a Day before they were taken up.*

Squires *Guilty*, Death. Wells *Guilty*.

Mr. *Davy*. At the Time you was at *Enfield-Waſh*, how did you ſupply yourſelves with Priviſion?

G. Squires. I bought my own Victuals myſelf; there is a little Chandler's Shop over the Way; the Man's Name is *Larney*; he is a Bricklayer; they ſell Butter, Tea and Coffee, Soap and Candles; I went there ſeveral Times for Tea.

Mr. *Davy*. Where did you buy your Butchers Meat?

G. Squires. It was in Herring Time; we lived on Fiſh, and did not buy Meat there; there was an old Man came to the Door, Mrs. *Wells* bought Fiſh of him, and ſo did I.

Mr. *Davy*. Did you ſee this young Woman at the Bar when you was there?

G. Squires. No, I did not; I never ſaw her before we were taken up in my Life, if I was to be racked to Death; I'll ſtand with a Sword put to my Heart, if ever I ſaw her till ſhe came in the Chaiſe; we came there on a *Wedneſday*, and at the End of a Week and a Day my Mother was taken up.

Croſs-examined.

Mr. *Moreton*. At ſetting out on your Examination, you ſaid you could not tell where you was at *Chriſtmas*.

G. Squires. Not the New *Chriſtmas*.

Mr. *Moreton*. You ſaid you was not at *London* before.

G. Squires. I mean, not before ſix or ſeven Weeks before *Michaelmas*.

Mr. *Moreton*. From what Place did you ſet out?

G. Squires. I went down into *Hampſhire*.

Mr. *Moreton*. When did you ſet out on your Journey, and where is your Home?

G. Squires. We ſet out from *Newington* to *Somerſetſhire* and *Dorſetſhire*.

Mr. *Moreton*. Where did you leave your Siſter *Mary*, when you ſet out?

G. Squires. She was with a particular Acquaintance, with Mrs. *Squires*'s Brother-in-law; I left her in *Kent*; Mrs. *Squires* in the Borough has a Brother, and his Wife was very ill, and I left my Siſter *Mary* with her, in order to do what was in her Power for her; they ſell Goods in the Country, and travel about as we do.

Mr. *Moreton*. At what Houſe, or in what Town did you leave her?

G. Squires. I had not a Thought of being called to ſuch Queſtions as theſe.

Mr. *Moreton*. I ſhall aſk you a great many Queſtions you have not heard yet: Can you give me any Anſwer, at what Houſe, or what Town you left your Siſter *Mary*? —— *G. Squires*. It was in *Kent*.

Mr. *Moreton*. Was your Mother and Siſter with you when you parted with her? —— *G. Squires*. We were all three together; I don't know at what Town, or whoſe Houſe; when I left my Lodgings, I went into *Kent*, and happened to meet with them. I went into the *Wild* of *Kent*.

Mr. *Moreton*. Did you come back again then to *Newington*?

G. Squires. I went from *Kent* into *Suſſex*.

Mr. *Moreton*. Name a Town there. —— *G. Squires*. *Lewes*, *Battel*.

Mr. *Moreton*. Did you go through either of them?

G. Squires. No, I did not.

Mr. *Moreton*. Name the firſt great Town that you went through in *Kent*.

G. Squires. I don't know which I went through firſt; I went through *Lewes*; I made the beſt of my Way into the Weſt.

Mr. *Moreton*. After you left *Lewes*, what is the firſt Town you came to that you did know?

G. Squires. Really I do not know; it is ſo long ago, I can't tell you.

Mr. *Moreton*. You, without an Almanack, have given a long and ſeeming fair Account of a long Journey, pray trace yourſelf down into *Dorſetſhire*; I don't aſk you the firſt Town from *Lewes*, but the firſt Town you do remember after you left *Lewes*. —— *No Anſwer*.

Mr. *Moreton*. It was not *South-Parrot*, was it?

G. Squires. No, it is not poſſible I can tell you; I went from thence into *Hampſhire* and *Wiltſhire*; I went through *Saliſbury*.

Mr. *Moreton*. Is that the firſt Town you can remember, after you left *Lewes*, you came at?

G. Squires. No, I went through ſeveral, but don't remember their Names; I muſt have went through ſome: I hope you will excuſe me, I hope you will not aſk me any more.

Mr. *Moreton*. Can you tell the Name of any Town you went through between *Lewes* and *Saliſbury*? —— *G. Squires*. No, I cannot.

Mr. *Moreton*. Where did you go when you went from *Saliſbury*?

G. Squires. I went to *Hindon*.

Mr. *Moreton*. What County is that in?

G. Squires. That is in *Wiltſhire*.

Mr. *Moreton*. Where did you go when you went from *Hindon*?

G. Squires. I went partly by *Mear*.

Mr. *Moreton*. What was the next Town when you left *Mear*?

G. Squires. Really, Sir, I hope you will excuſe me, be pleaſed to excuſe me; I cannot tell indeed; pleaſe to excuſe me.

Mr. *Moreton*. You gave ſo clear an Evidence on that Part of your Return, that if you do not go on, it muſt be left to my Lord who tries you: Tell me where you went when you left *Mear*?

G. Squires. From *Mear* we went towards *Shaftſbury*.

Mr. *Moreton*. Did you go to it? —— *G. Squires*. I went partly by it.

Mr. *Moreton*. Tell me ſome Town you lay at. —— *No Anſwer*.

Mr. *Moreton*. Did you lie at *Lewes*?

G. Squires. I did; I cannot tell the Houſe; it was an Ale-Houſe, but I don't know the Sign.

Mr. *Moreton*. Tell us another Town you lay at.

G. Squires. I know *Mear* very well; I lay there, but had never lain at that Houſe before.

Mr. *Moreton*. Where did you uſe to lie there? —— *No Anſwer*.

Mr. *Moreton*. Did you lie at *Shaftſbury*?

G. Squires. I cannot tell whether I did or not.

Mr. *Moreton*. Where was you going to in the Weſt?

G. Squires. I ſell Goods.

Mr. *Moreton*. What Goods?

G. Squires. I had white Waiſtcoats, and worked Gowns, and Hollands, and ſuch Things; and where my Buſineſs led me, there I went.

Mr. *Moreton*. What Quantity of Goods might you have when you went out of *Kent*? —— *G. Squires*. I had not dealt largely, I believe I had then about twenty Pounds Worth of Goods, conſiſting in Aprons, worked Gowns, Nankeens, and ſuch Things.

Mr. *Moreton*. How long was you before you came to *South-Parrot*?

G. Squires. I cannot tell; I never was at *South-Parrot* before the 29th of *December*; I went down with a Gentleman once ſince.

Mr. *Moreton*. Is *Yeovil* farther from *London* than *South-Parrot*?

G. Squires. No, Sir.

Mr. *Moreton*. Did you go through that?

G. Squires. No, I came partly by it; but they ſaid they had got the Small-Pox in the Town, and I had never had it, ſo I did not come through it.

Mr.

Squires, *the laſt Day of the Seſſions, being aſked what ſhe had to ſay before ſhe received Sentence, anſwered, That on New-Year's Day I lay at* Coombe *at the Widow* Greville's *Houſe; the next Day I was at* Stoptage; *there were ſome People who were caſt away, and they came along with me to a little Houſe on the Top of the Moor, and drank there; there were my Son and Daughter with me. Coming along* Popham *Lane, there were ſome People raking up Dung. I drank at the ſecond Alehouſe in* Baſingſtoke *on the* Thurſday *in the New-Year Week. On the* Friday *I lay at* Bagſhot-Heath, *at a little tiney Houſe on the Heath. On the* Saturday *I lay at* Old Brentford *at Mrs.* Edwards's, *who ſells Greens and Small Beer. I could have told this before, but one pulled me, and another pulled me, and would not let me ſpeak. I lay at Mrs.* Edwards's *on the* Sunday *and* Monday; *and on the* Tueſday *or* Wedneſday *after, I came from thence to Mrs.* Wells's *Houſe at* Enfield.

The Time drawing near for the Report of the Convicts, Sir *Criſp Gaſcoyne* laid before His Majeſty, not only the whole Evidence given at the Trial; but alſo the ſeveral Informations and Certificates he had received ſince her Conviction, accompanied by the following Memorial:

To the KING's *Moſt Excellence* MAJESTY.

" MAY it pleaſe your Majeſty to permit your dutiful Subject, the " Lord Mayor of your faithful City of *London*, with the moſt profound " Humility and Reſpect to repreſent to your Majeſty, that before the " Trial of *Mary Squires*, for the Robbery of *Elizabeth Canning*, and of " *Suſannah Wells*, as Acceſſary, many unfair Repreſentations were " printed and diſperſed, which could not fail to excite public Prejudice " againſt them.

" The fatal Conſequence whereof, in depriving thoſe unhappy Wretches " of a material Part of their Evidence, engaged me, from the high " Station I have the Honour to bear, to expreſs my Duty to your Ma- " jeſty, and the Public, by making this Inquiry.

" In which the utmoſt Caution has been obſerved.---All the Wit- " neſſes have been ſtrictly, ſeparately, and publicly examined, and their " Credit well certified.

" Many other Informations, to the ſame Effect, have been offered; " but I declined troubling your Majeſty with further Evidence, as " humbly apprehending it totally unneceſſary.

" In the Courſe of this Inquiry, *Virtue Hall*, a principal Witneſs, " voluntarily and publicly retracted the Whole of the Evidence ſhe gave " upon the Trial.

" To this I preſume, by your Majeſty's Leave, to add, that amidſt all " the Examinations I have taken, there has not appeared any Variation " or Inconſiſtency, or the leaſt Circumſtance or Suſpicion, that could " lead me to doubt the Innocence of thoſe unhappy Convicts.

" All which is humbly ſubmitted to your Majeſty's great Wiſdom and " Judgment, by

" *Your Majeſty's faithful Subject*,

" CRISP GASCOYNE, *Mayor*."

" On the 10th of *April* following, the Report was accordingly made " of the Convicts under Sentence of Death; when his Majeſty was " graciouſly pleaſed to reſpite the Execution of *Mary Squires* for ſix " Weeks; and to refer the Conſideration of the Evidence on both Sides " (for Evidence *againſt her* had been preſented) to his Attorney and Sol- " licitor-General.---Soon after the Attorney and Sollicitor-General made " their Report, with their Opinion, That the *Weight of Evidence* was in " the Convict's Favour: Whereupon his Majeſty was graciouſly pleaſed " to grant her a free Pardon." Thus far from Sir *Criſp Gaſcoyne*'s *Addreſs to the Livery*, p. 26, 27.

The Friends of *Canning*, in their *Refutation of Sir* Criſp Gaſcoyne's *Addreſs*, ſay, " But of the Purport of this Memorial, and what in parti- " cular was annexed to it, the Friends of *Canning* were totally ignorant " till the Publication of *The Addreſs*; and therefore could not examine " any Witneſſes with a particular View to contradict it. They had in- " deed, upon the Recantation of *Virtue Hall*, taken ſome Affidavits to " prove, that the Gypſey was at *Enfield* when the Robbery was commit- " ted; and the Duke of *Newcaſtle* (on whom they waited) having ac- " quainted them, that his Majeſty had referred the Conſideration of " the Evidence on both Sides to his Attorney and Sollicitor-General, " they took many other Affidavits to prove the ſame Facts; but when " theſe Affidavits were preſented to the Attorney and Sollicitor-General, " they rejected them, becauſe they were not at Liberty to examine any " Evidence that was taken after the Day of Reference: It neceſſarily " followed therefore, that the *Weight of Evidence* was in the Convict's " Favour; and ſo it was reported, and ſhe pardoned. Upon this View " of the Caſe, however, it does not become in any Degree more pro- " bable, that ſhe was innocent." See the *Refutation of Sir* Criſp Gaſcoyne's *Addreſs to the Livery*, in Folio, p. 18.

Theſe Friends of *Canning* likewiſe gave an Anſwer to Sir *Criſp*'s Memorial preſented to the King, *&c.* But Sir *Criſp*'s *Addreſs*, and *Canning*'s Friends *Refutation* of it, make two large Folio Pamphlets; and the many other Pamphlets publiſhed on both Sides at that Time, are too numerous to inſert here, or take any Notice of; and, as *Canning*'s Friends thought, did not clear up that *myſterious Affair*; probably this Trial of *Canning*, for Perjury, may be ſaid to have done it.

Mr. *Moreton.* Was you at *Crookhorne?*

G. Squires. No, I was not there at all.

Mr. *Moreton.* Tell me a great Town after you left *Shaftsbury?*

G. Squires. I went away from *Shaftsbury* to *Abbotsbury.*

Mr. *Moreton.* Tell me the Name of one Town you lay at in *Somersetshire?*

G. Squires. I did not go very far in *Somersetshire.*

Mr. *Moreton.* Name one Town betwixt *Yeovil* and *South-Parrot* that you lay at.

G. Squires. I don't know a Town betwixt them; there are several Villages, but I can't tell the Name of one.

Mr. *Moreton.* Tell me the Sign of an Inn where you lay at beyond *Shaftsbury*, whether it was a Fox, a Goose, a Dog, or a Pair of Compasses.

G. Squires. I don't know the Sign of any Place where I lay at, because it is so long ago.

Mr. *Moreton.* You remember the other Places very well.

G. Squires. That is because I have been there since.

Mr. *Moreton.* Then you remember it by the last Journey you took.

G. Squires. Yes, Sir, and by the other too.

Mr. *Moreton.* Then you can't remember either a Town, an Alehouse, or a Sign where you lay at, after you left *Shaftsbury?*

G. Squires. No, I cannot.

Mr. *Moreton.* Now we shall be a little better acquainted: We bring you now to *South-Parrot*; you say you had travelled seven or eight Weeks before *Michaelmas*, till the 29th of *December.*

G. Squires. But I did not travel all that Time, I came home to my House at *Newington* before that.

Mr. *Moreton.* Did you return Home after you set out for *Kent*, and so into the West, before you got to *South-Parrot?*

G. Squires. Before the Time of my coming Home, I could not.

Mr. *Moreton.* Let me understand you: Did you return back to *Newington* before *Christmas?*——*G. Squires.* No, Sir, not till after *Christmas.*

Mr. *Moreton.* Then from the Time you set out, seven or eight Weeks before *Michaelmas*, you was travelling about the Country with your Goods?

G. Squires. Yes, Sir.

Mr. *Moreton.* Can you tell the exact Time you set out from *Newington-Butts?*

G. Squires. It was Harvest-time, or near it; I can't tell whether it was in *July* or *August.*

Mr. *Moreton.* Well, we are come to *South-Parrot*; you say you came there the 29th of *December*; you say you met with Mr. *Clarke* on a *Sunday* at *Abbotsbury*, and lay there that Night, and set out with him on the *Monday*, and went to *Litton*, and your Mother went after you to *Abbotsbury*: Now I'll ask you this Question, When your Mother went after you there, did you meet her on the Road?

G. Squires. No, I did not.

Mr. *Moreton.* Then did your Sister come with your Mother there on the *Monday* Morning?

G. Squires. No, she stayed in the House at *Litton.*

Mr. *Moreton.* Then your Mother walked on the *Monday* Morning, *December* the 31st, from *Litton* to *Abbotsbury* by herself, and back again, and dined on two Fowls, then went with you to *Abbotsbury* again?

G. Squires. Yes, Sir.

Mr. *Moreton.* What Time did she come back to *Litton?*

G. Squires. Betwixt Two and Three o'Clock, and dined with us, and walked with us to *Abbotsbury* that Night.

Mr. *Moreton.* What Time did you all set out from *Litton* to go to *Abbotsbury?*——*G. Squires.* We set out between Three and Four o'Clock in the Afternoon.

Mr. *Moreton.* Was it dark?——*G. Squires.* It was quite dark.

Mr. *Moreton.* Where did you buy the two Fowls?

G. Squires. I bought them of one Mrs. *Turner*; I made *a Cludation* for the Feathers, she said she would have the Feathers.

Mr. *Moreton.* You lived well; I should think two Fowls a very remarkable Dinner for three Gypsies.

G. Squires. Fowls are bought there for Six-pence a-piece, it is cheaper than Beef or Mutton; that I have very often.

Mr. *Moreton.* I hope you always buy them.

G. Squires I do.

Mr. *Moreton.* Were they boiled or roasted?

G. Squires. They were both boiled; I was not at Home to see them boiled, but I eat Part of them.

Mr. *Moreton.* What Day was it you lent the Exciseman your Coat?

G. Squires. I don't know the Day.

Mr. *Moreton.* How many of your Goods might you have disposed of at that Time?——*G. Squires.* I had disposed of them all, except a Piece of Check and two Waistcoats.

Mr. *Moreton.* Then you had taken a little Money?

G. Squires. I had, and owed some, and returned it to *London.*

Mr. *Moreton.* To whom?—*G. Squires.* To an Acquaintance of mine, Mr. *Norman*; he is since dead; he was a Tide-waiter.

Mr. *Moreton*, From what Place did you return the Money?

G. Squires. I cannot name the Place.

Mr. *Davy.* I beg Leave to ask one Question I forgot; What happened at *Ridgway* when you were there?

G. Squires. A young Man that lives at *Abbotsbury*, who sells Turnips, had two Horses, and Mr. *Clarke*, after he had dined with us, designed to return Home; he knowing the Man, desired him to come in; we had got some Beef-steaks; this Man dined with us, and Mr. *Clarke* rode on one of his Horses Home; he is here.

Mr. *Moreton.* Tell me his Name.

G. Squires. I don't know his Name.

Mr. *Moreton.* Is that the House you left a Piece of Nankeen at?

G. Squires. Yes, Sir.

Mr. *Moreton.* Do you call Nankeen Check?——*G. Squires.* No, Sir.

Mr. *Moreton.* When you left this Piece of Nankeen in Pawn, because you was afraid you should want Money, pray how much Money had you then?——*G. Squires.* I had borrowed some of Mr *Clarke*, and had some of my own.

Mr. *Moreton.* Tell us this one Thing, that as Mr. *Clarke* was so much your Friend, and your Sister's Friend, why did he not pay your Reckoning, and save your Nankeen; that you might make your Money of it?

G. Squires. He offered it, but I was so kind I would not let him.

Mr. *Moreton.* What Money did you borrow of *Clarke?*

G. Squires. I borrowed six Shillings of him.

Mr. *Moreton.* Have you had your Nankeen since?

G. Squires. No, he has got it in Custody since.

Mr. *Moreton.* What was your Reckoning?

G. Squires It was about three Shillings and Sixpence.

Mr. *Moreton.* What is Nankeen worth a Yard?

G. Squires. It is worth, or I generally sell it for, two Shillings a Yard.

Mr. *Moreton.* Where did you receive the News of your Sister *Mary*'s Illness?

G. Squires. It was in the Country, I can't tell the Town where.

Mr. *Moreton.* How did you receive the Account of it?

G. Squires. It came by the Post; sure it must.

Mr. *Moreton.* Upon your Oath, did you leave any Directions with her to write to you in the Country?——*G. Squires.* Yes, and I had a Letter she was ill; I had it first by a Letter.

Mr. *Moreton.* Can your Sister *Mary* write?—*G. Squires.* No, she cannot.

Mr. *Moreton.* Was the Letter directed to you or your Mother? Was it after you left *Abbotsbury* you received the Letter?

G. Squires, I cannot say that.

Mr. *Moreton.* Then, if you received it before you came there, or at the Place, it is strange you should stay dancing there!

G. Squires. I will not swear I received it before we came there, or not.

Mr. *Moreton.* You say, at *Dorchester* the Miller carried your Sister over the Water on Horseback, how did you and your Mother get over?

G. Squires. I asked him to carry my Mother over; he said he could not stay.

Mr. *Moreton.* Did he come back again by you, or go on?

G. Squires. No, he went another Way.

Mr. *Moreton.* How far, after you set out from *Ridgway*, where the dead Horse was, might you walk with that old Woman, that Day and Night after you had received an Account of your Sister *Mary*'s Illness?

G. Squires. She got no farther then *Chettle.*

Mr. *Moreton.* How far is *Ridgway* from *Dorchester?*

G. Squires. It is about three or four Miles.

Mr. *Moreton.* How far is it from *Chettle* to *Blandford?*

G. Squires. I can't tell how many Miles.

Mr. *Moreton.* What did you lie upon in that Barn you mentioned?

G. Squires. We all three lay upon Straw; we don't carry Sheets or Blankets with us; we all sat up in our Cloaths.

Mr. *Moreton.* Whereabouts does *Chettle* lie?

G. Squires. It is on the left Hand, and *Martin* on the right.

Mr. *Moreton.* Which was you at first?

G. Squires. At *Chettle*, and then to *Martin*, and from thence to *Coombe.*

Mr. *Moreton.* Is not *Martin* in the direct Road from *Chettle* to *London?*

G. Squires. No, it is not; it is the Bottom Way; we came there because it was Night.

Mr. *Moreton.* How long did you stay at that House where the Letter was wrote?——*G. Squires.* About an Hour and Half; we came there about Three o'Clock, to the best of my Knowledge.

Mr. *Moreton.* Where did you go to find your Sister *Mary?*

G. Squires. To a Relation's of mine, who belongs to the Customs, named *Samuel Squires*; he lives down in *White-Hart-Yard.*

Mr. *Moreton.* Did she ask you whether you had received a Letter from her or not?——*G. Squires.* I told her I had.

Mr. *Moreton.* Did you tell her where you received it?—*G. Squires.* No.

Mr. *Moreton.* Which Way did you go from *Brentford* to *Tottenham-High-Cross?*

G. Squires. I went through the City, along by *Covent-Garden.*

Mr. *Moreton.* Did you go to your House at *Newington?*

G. Squires. No.

Mr. *Moreton.* Nor your Sister nor Mother?——*G. Squires.* No.

Mr. *Moreton.* On which Side the Park-Wall did you come from *Kensington?*

G. Squires. Through *Knightsbridge*, and all along the great Road.

Mr. *Moreton.* Do you know this Town of *London?*

G. Squires. I can find my Way in any Part of the City, but I am not acquainted with the Streets Names.

Mr. *Moreton.* Did you go through the City?

G. Squires. I went clear quite through the City.

Mr. *Moreton.* Which Way did you go out of Town to *Tottenham?*

G. Squires. By *Shoreditch.*

Mr. *Moreton.* Had you, or had you not, a Lodging at *Newington* at that Time?——*G. Squires.* Yes, I had; and my Houshold Goods were there at the Time.

Mr. *Moreton.* Then how came you to go through *London*, and not to your Lodgings?

G. Squires. Because I owed a Sum of Money, and was afraid of being arrested, and wanted to see Mr. *Squires*, who lived in the Neighbourhood, to make it up for me.

Mr. *Moreton.* What Day of the Week did you pass through *London?*

G. Squires. I left Mrs. *Edwards*'s House of a *Wednesday*, and the same Day I came through *London.*

Mr. *Moreton.* Where did you meet the Person that recommended you to this House of *Wells*'s?

G. Squires. Before I came to *Enfield*; the Woman's Name is *Long.*

Mr. *Moreton.* How many Beds are there in the Room at *Wells*'s where your Mother lay?

G. Squires. There is but one Bed.

Mr. *Moreton.* If you ever did go this Journey, be positive with yourself, whether it was in the Year 52?

G. Squires. Yes, Sir; I am sure it was then, and not at any other Time.

Mr. *Moreton.* Did your Mother and Sister help you in your trading?

G. Squires. My Mother buys old Clothes and silver Lace.

Mr.

Mr. *Moreton.* Who bought these Goods of yours?

G. Squires. I did myself.

Mr. *Moreton.* Did your Mother and Sister know of your trading?

G. Squires. They did.

Mr. *Moreton.* Did they know what Quantity of Goods you had?

G. Squires. I don't know whether they did or not.

Mr. *Davy.* We will not call *Lucy* the Sister; she is rather more stupid than her Brother, and has not been on that Road since their coming to *Enfield-Wash*; and so can give but a very imperfect Account either of Times or Places. But we will call Mr. *Willis*, who went with *George Squires* about the Country since the Commencement of this Prosecution, in order to ascertain the particular Places where *Mary Squires* and her Family have travelled through: And Mr. *Willis* will assign the Reason of this Man's remembering the Times and Places of their Return from the West with such Exactness, when he can recollect so little of the Journey of going down.

Robert Willis sworn.

I set out some Time in last *June* from *Dorchester*.

Mr. *Nares.* Whether this Gentleman is called to prove any Thing else than what *Squires* has related to him, and what he has heard from others since the Fact, I object to his Evidence.

Mr. *Gascoyne.* Mr. *Willis* went into the Country with *George Squires*, in order to ascertain the Places, he being a Person of Reputation, at Houses where these three People lodged, and has found them to be Facts.

Mr. *Moreton.* You have shewn there was a Person with them in Court, (that is *Lucy*) and you refuse calling her, and now call this Man to give an Evidence of Hearsay only, after a Person has been examined an Hour and Half, and told you of a Person within your Lordship's Power to call, who he says has been with him all the Journey: Will your Lordship suffer a third Person, that can only tell what this or that Man told him upon his making Enquiry? We are willing to risque the Issue of this Trial singly upon the Evidence of *George* and *Lucy*, examined separately.

Mr. Baron *Legge.* If they don't call the Sister, you'll make what Observations you please upon it. That Evidence has said upon his Oath, that his Sister went this whole Journey with him; and in order to confirm that what he said was Truth, they will not call her, but this Attorney.

Mr. Just. *Clive.* This is but Hearsay Evidence, and that is not Evidence; but if you go to discredit this Man, surely they may produce Evidence to shew the Conformity of his Evidence, that he was always in one Story.

Mr. *Nares.* This must be proved by a Person that was present at the Fact; if the Case was otherwise, I could call a hundred Witnesses in order to confirm my own Evidence.

Mr. Baron *Legge.* The several People that lived at the Houses where he says he called, are the Evidences to call to prove that.

Mr. *Moreton.* Here is a Man goes and tells his Case to his Attorney, and he comes here as a Witness. *(Refused.)*

George *and* Lucy Squires *were again placed by their Mother in the Court.*

John Fry *sworn.*

I live at a Place called *Litton*, in *Dorsetshire*; I am a Tiler and Plaisterer; I came to Town on *Wednesday* last.

Mr. *Willes.* Do you know that old Woman that sits there? *(meaning* Mary Squires.)

J. Fry. I have seen the old Gypsey several Times; I remember seeing her on the 30th of *December* 52, at *Litton*; it was on a *Saturday*, at the House of *James Hawkins*; I was at Work there at the same Time.

Mr. *Willes.* Pray, how can you remember the particular Time?

J. Fry. Because it was in the New *Christmas* Time, and the *Monday* following was the New-Year's Day; this is the very old Woman.

Mr. *Willes.* Look at the Man and Woman with her.

J. Fry. They are the Two Persons that were with her on that *Saturday* Evening.

Mr. *Willes.* Was you in Company with them?

J. Fry. I was not at all, but I saw them by the Kitchen Fire.

Mr. *Willes.* How can you be certain these are the People?

J. Fry. I have known the old Woman thirty Years; she has been in that Part many Times; I have seen her Face often before.

Cross-examined.

Mr. *Nares.* Is this Mr. *Hawkins* living?

J. Fry. He is, and is now here.

Francis Gladman sworn.

Mr. *Gascoyne.* Do you know *Mary Squires?*

Fr. Gladman. Yes, Sir; that is the Woman. *(Pointing to her.)*

Mr. *Gas.* Do you know these two People that stand by her?

Fr. Glad. I do, they are her Son and Daughter; I keep a House at *Litton*, and am a Gardener; I remember seeing these People there on *Monday* the 1st of *January* 53, in the House of *James Hawkins*; there is no Sign, it used to be *The Three Horse-shoes*; I shaved *George* the *Sunday*, being the Day before, at my House.

Mr. *Gascoyne.* Had you ever seen the old Woman before?

Fr. Glad. To the best of my Knowledge, I never did; but I am positive sure to them.

Mr. *Gas.* What is the Reason you know it to be the 1st of *January?*

Fr. Glad. The Reason is, we generally ring-in the New Year; I went to ring a Peal, and the People of the Parish gave us some Liquor, that is, some Ale and some Cyder, to drink; we concluded to go to the Alehouse with our Jug of Cyder, that was given us, to have something put into it; we went to *Hawkins*'s; the old Woman sat there; I sat down close by her, and asked her, if she could tell Fortunes? she said, No, she was no Fortune-teller: I asked her, if she could talk *Spanish?* and said, I thought I had seen her abroad somewhere or other; she said, she could not: I asked her, if she could talk *Portuguese?* she said, No: I said, Nor *French?* she said, No: Nor *Dutch?* No: She said she knew what I said, but could not answer me. Upon this an old Gentleman said, You must cant to her, talk Gypsey to her, and she'll answer you. Then I said, You are one of the Family of the Scamps; she said, No, I am no Scamp; and a young Man in the Room said her Name was *Squires.*

Cross-examined.

Mr. *Williams.* Did she sell any thing?

Fr. Gladman. She did not appear to me to sell any thing.

James Angel sworn.

Mr. *Davy.* Did you ever see that old Woman before?

J. Angel. I have seen her a great many Times.

Mr. *Davy.* Did you ever see her at *Litton?*

J. Angel. I saw her there on the last Day of the Year 52, at *James Hawkins*'s Apartment, a Public House; and I believe there was Miss *Lucy* with her.

Mr. *Davy.* Did you ever see the young Man?

J. Angel. No, I did not see him there.

Mr. *Davy.* By what Circumstance do you remember the particular Time?

J. Angel. Because it is a usual Thing for us to ring-in the New Year; we rang a Peal, and in the Morning concluded to go to a Public House to drink together; there we saw the old Woman sitting smoaking her Pipe; I was there two Hours, and then I was called away to go a Fox-hunting.

Mr. *Davy.* Did you ever see her before that Time?

J. Angel. No, but I have several Times since, and am well satisfied it is the same Woman.

Mr. *Davy.* What is your Business?

J. Angel. I am a Stay-maker.

Cross-examined.

Mr. *Moreton.* What Time of the last of *December* did you see her?

J. Angel. It was after the Evening Prayer on a *Sunday*; she was not in the Kitchen, but in a new Apartment, which was not made a Public House of then, but is now.

Mr. *Moreton.* What Time did you ring-in the Morning?

J. Angel. It was just about Day-break.

Mr. *Moreton.* How long might you stay at *Hawkins*'s?

J. Angel. I believe near two Hours; she was there all the Time, and I left her there when I went away.

Mr. *Moreton.* What Time was it you went to go a-hunting?

J. Angel. I believe betwixt Nine and Ten o'Clock, I am not certain to the very Time.

Mr. *Moreton.* How long did you stay a Fox-hunting?

A. Angel. Till almost Night; I believe it might be Three o'Clock.

Mr. *Moreton.* Did you go to *Hawkins*'s in the Evening?

J. Angel. I did, but then they were not there.

Mr. *Moreton.* Do you know *Clarke?* Did you see him there that Evening?

J. Angel. I know him, but I did not see him there.

Mr. *Moreton.* Do you imagine, that betwixt Ten and Two, or Half an Hour after, the old Woman could walk from *Litton* to *Abbotsbury* and back again, and after that walk again to *Abbotsbury?*

J. Angel. I think she might; she must make very good Speed.

Mr. *Moreton.* How many Miles are they from each other?

J. Angel. It is three little Miles we call it.

James Hawkins sworn.

I keep an Alehouse at *Litton.*

Mr. *Willes.* Do you know that old Woman there?

J. Hawkins. Yes, she passes by the Name of *Mary Squires*; I remember seeing her at our House on the 30th of *December* 52, being on a *Saturday.*

Mr. *Willes.* Do you know that young Man and Woman?

J. Hawk. Yes, they are *George* and *Lucy*, her Son and Daughter; they were all three of them at my House at that Time together; it was just at the turning of the Date; they lay there on the *Saturday* and *Sunday* Nights, and went away on the *Monday* about Two in the Afternoon.

Mr. *Willes.* What Time did they get to your House on the *Saturday?*

J. Hawk. About Two in the Afternoon; *George* went to *Abbotsbury* on the *Monday* the 1st of *January*, and one *Clarke* came with him.

Mr. *Willes.* Where was the old Woman that *Monday* Morning?

J. Hawk. She was at our House; she eat a Fowl in a little new Chamber.

Mr. *Willes.* Did she not leave your House before they all went away?

J. Hawk. I don't remember she did; they were by themselves; that Chamber is not in the House; they eat Fowls for their Dinner.

Mr. *Willes.* Who were the Fowls bought of?

J. Hawk. They were bought of one *Dance Turner*, in our Parish.

Mr. *Willes.* Were they boiled or roasted?

J. Hawkins. They were boiled, I believe; we don't eat roast Meat in the Country but very little.

Mr. *Willes.* What Time did they leave your House?

J. Hawk. They went away, I believe, about Two in the Afternoon.

Mr. *Willes.* Were *George Squires* and *Clarke* at Dinner with the others?

J. Hawk. I am certain they were; in my Opinion the old Woman went to look for *George* out into the Fields, somewhere or another; she did not tarry long.

Mr. *Willes.* How long?

J. Hawk. About an Hour; but I went but seldom into the Room where they were.

Mr. *Willes.* Do you remember *Angel*'s being at your House at the Time?

J. Hawkins. I do; they had been a-ringing; and the Minister's Kinsman went a Fox-hunting that Day, and gave the People some Money.

Mr. *Willes.* How do you know it was the 31st of *December?*

J. Hawk. By reason I made a Fire in that little Chamber on the *Monday* Morning, when the People were ringing, where no Fire had been made before.

Cross-examined.

Mr. *Nares.* Was *Angel* in the new Room or the common Kitchen?

J. Hawk. In both of them.

Mr. *Nares.* Did *Mary Squires* smoak in the Kitchen or the other Room?

J. Hawk. I believe she might smoak in both Rooms.

Mr. *Nares.* Where did ſhe ſmoak on *Monday* Morning?

J. Hawkins. I believe it was in the old Houſe.

Mr. *Davy.* If you deſign to impeach theſe People's Characters, here is the Miniſter we can call to confirm them.

Mr. *Moreton.* We have nothing to ſay againſt their Characters.

William Clarke ſworn.

I live at *Abbotſbury*, and know the old Woman, *Lucy* and *Polly*; I remember *George* coming to my Houſe at *Abbotſbury* the Day before New-Year's Day, in the Forenoon, laſt *December* was twelve Months; he and I went to *Litton* together on the *Monday* Morning; I was a Sweetheart of *Lucy*'s; we got there ſome time in the Afternoon, and met with *Lucy* about Three or Four o'Clock; I know it was ſome time before it was dark.

Mr. *Gaſcoyne.* Was the old Woman there?

W. Clarke. She was not when we came there, for ſhe had come to make Inquiry where *George* was, becauſe he did not return on the *Sunday* Night; the old Woman came there about half an Hour after us, and *George*, ſhe, *Lucy* and I went to *Abbotſbury* that Night, and we danced at *Gibbons*'s Houſe.

Mr. *Gaſcoyne.* Do you remember any thing of a Couple of Fowls?

W. Clarke. We eat ſomething there; I took Part of a Fowl.

Mr. *Gaſcoyne.* Was it roaſt or boiled?

W. Clarke. It was boiled Fowl, to the beſt of my Remembrance.

Mr. *Gaſcoyne.* Then if you ſtayed to dine, what Time did you ſet out for *Abbotſbury?*---*W. Clarke.* We ſet out late, after dark.

Mr. *Gaſcoyne.* Who was your Partner?

W. Clarke. Lucy was my Partner.

Mr. *Gaſcoyne.* Can you tell who was *George Squires*'s Partner?

W. Clarke. I cannot tell you indeed; *Melchiſedech Arnold* played on the Muſic, that I am ſure of.

Mr. *Gaſcoyne.* How many Days did they ſtay at *Abbotſbury?*

W. Clarke. They ſtopped there from the 1ſt to the 9th, all three of them.

Mr. *Gaſcoyne.* Did you ſee them often in that Time?

W. Clarke. I was in their Company every Day the Time they were there, and ſaw *Lucy* ſome Part of her Journey; I went as far as *Porterſham.*

Mr. *Gaſcoyne.* At whoſe Houſe did you lodge at *Porterſham?*

W. Clarke. We lodged at *Sias Frampton*'s Houſe, that is a Mile from *Abbotſbury*; I ſaw her three Miles farther, and parted with them at *Ridgway-Foot*; I ſupped with them there at *Francis Bewley*'s, and then returned to my own Houſe.

Mr. *Gaſcoyne.* Did any body borrow Money of you at *Ridgway?*

W. Clarke. Yes, *George* borrowed Six Shillings of me.

Mr. *Gaſcoyne.* What had you for Supper there?

W. Clarke. We had Beef-ſteaks.

Mr. *Gaſcoyne.* Upon what Terms did *Lucy* and you part, upon good Terms?

W. Clarke. We were upon civil Terms; I never ſaw any thing by her but civil Terms; ſhe is as honeſt a Girl as any in the World, for what I know.

Mr. *Gaſcoyne.* When ſhe and you parted, did you give her Directions to write to you?—*W. Clarke.* I did.

Mr. *Gaſcoyne.* Did ſhe give any Directions to you?---*W. Clarke.* She did.

Mr. *Gaſcoyne.* Did you give Directions only, or deſire her to write to you?

W. Clarke. I deſired her to write to me as ſoon as poſſible; after that I received a Letter from *Briſtol* at *Eſham in the Vale.*

Mr. *Gaſcoyne.* How long after your parting with them was it you received this Letter from *Briſtol?*

W. Clarke. It was not half a Year after; I had it brought to *Abbotſbury*; it was directed to me, but who wrote it I cannot tell.

Croſs-examined.

Mr. *Williams.* What Countryman are you?

W. Clarke. I was bred and born at *Abbotſbury.*

Mr. *Williams.* How long have you been acquainted with theſe People?

W. Clarke. Four Years laſt *March*; the firſt Time that ever I ſaw them was at the *Old Ship* at *Gibbons*'s; the ſecond Time I ſaw them was the laſt of *December* 52, when *George* came from *Litton* to me, and I went there back with him.

Mr. *Williams.* What Time of the Day was it when you came to *Litton?*

W. Clarke. Some Time in the Afternoon; I can't ſay to an Hour or two; it might be Three o'Clock.

Mr. *Williams.* How long were you walking from *Litton* to *Abbotſbury?*

W. Clarke. We were two Hours walking it; it is three Miles.

Mr. *Williams.* What Time did *Mary Squires* come in after you was at *Litton?*

W. Clarke. She might come in in half an Hour, and that might be between Three and Four o'Clock; we took Part of a Fowl there.

Mr. *Williams.* What, amongſt you all?

W. Clarke. Yes, amongſt us all.

Mr. *Williams.* Was it boiled or roaſted?

W. Clarke. To the beſt of my Remembrance, it was boiled.

Mr. *Williams.* Who paid the Reckoning?

W. Clarke. I don't know indeed, I did not pay a Farthing.

Mr. *Williams.* Is it but three Miles from *Litton* to *Abbotſbury?*

W. Clarke. It is three computed Miles, but it is four Poſt Miles.

Mr. *Williams.* Can you walk as faſt as *Mary Squires?*

W. Clarke. I can, and a great deal faſter.

Mr. *Williams.* Could ſhe do it in leſs than four Hours?

W. Clarke. No, I don't think ſhe could, becauſe ſhe is an elderly Woman; that is, walking thither and back again.

Mr. *Williams.* When you parted at *Ridgway-Foot*, did *George Squires* tell you whether he had Money, or no Money?

W. Clarke. He did not tell me whether he had or not.

Mr. *Williams.* Who paid all the Money from the 1ſt to the 9th, where you drank?

W. Clarke. George paid it, I believe; I don't know but he did; whether he paid it or not, he had Six Shillings of me.

Mr. *Williams.* Did he ſell any Goods, do you know, to any body?

W. Clarke. Yes, he ſold an Apron to the Landlady at the *Old Ship*, and another to the Servant.

Mr. *Williams.* Did he aſk you to lend him any thing?

W. Clarke. Yes, he did.

Mr. *Williams.* Did you know of his pledging that Piece of Goods at *Ridgway* for the Reckoning?—*W. Clarke.* I did not till afterwards.

Mr. *Williams.* Did you offer to pay half there?

W. Clarke. No, I did not; *George* would not let me.

Mr. *Williams.* Did you lend him this Money before or after he pawned the Nankeen?—*W. Clarke.* It was before.

Mr. *Williams.* How came he to pawn it?

W. Clarke. I cannot tell that.

Mr. *Williams.* How long was you at *Ridgway?*

W. Clarke. I might be there two Hours.

Mr. *Williams.* What Time did you ſet out for *Abbotſbury?*

W. Clarke. I ſet out about Four o'Clock in the Afternoon, and lodged at *Porterſham* going back.

Mr. *Davy.* When you came to *Litton*, had *Lucy* and *Mary Squires* ſat down to Dinner?—*W. Clarke.* No, Sir.

Mr. *Davy.* Did you ſee the Diſh when firſt ſerved up?

W. Clarke. I eat Part of what was meddled with.

Mr. *Davy.* Had they been eating before you came there?

W. Clarke. I don't know whether they had eat any thing or not.

Mr. *Davy.* Did you lie with *George Squires* at *Ridgway?*

W. Clarke. No.

Mr. *Davy.* Do you know any thing of the Circumſtance of the Piece of Nankeen?—*W. Clarke.* No, Sir.

Mr. *Davy.* Do you know any thing about a dead Horſe?

W. Clarke. There was a dead Horſe lay in the Highway at *Ridgway* as I went by.

John Gibbons ſworn *.

I keep the *Old Ship* at *Abbotſbury*; I know *Mary Squires*, and the young Man and Woman; they are Son and Daughter to the good Woman.

Mr. *Willes.* When did you ſee them at your Houſe?

J. Gibbons. They were at my Houſe on *Monday* the 1ſt of *January* 53; they came there in the darkiſh of the Evening.

Mr. *Willes.* Had you any Merriment at your Houſe that Night?

J. Gibbons. Yes, Sir, Dancing; *George* danced with a Siſter of mine named *Mary Gibbons*, and *Lucy* danced with *William Clarke*; the old Woman was in the Houſe at the Time.

Mr. *Willes.* How long did they ſtay at your Houſe?

J. Gibbons. They ſtay'd from the 1ſt to the 9th, then they went away.

Mr. *Willes.* Did they ſtay in your Houſe all that Time?

J. Gibbons. The old Woman did, I ſaw her every Day there, and ſo I did *George* and *Lucy*; I am ſure of this, upon my Oath; I knew *Mary Squires*

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* "Theſe *Abbotſbury* Witneſſes were indicted for Perjury, for the Evi- "dence they gave in the Trial of *Squires* and *Wells*. *Canning*'s Friends "had moved the Court of *King's Bench* for a *Certiorari* to remove the In- "dictment, which had been refuſed: But the Attorney for her inſiſted, "that according to antient Practice, a *Certiorari* might be obtained by "Application to a Judge during a Vacation, at the Inſtance of a Proſecu- "tor in a Criminal Cauſe, as a Matter of Right; becauſe it is the King's "Privilege, who in Criminal Cauſes is the Plaintiff, to ſue in what Court "he will. Therefore the Attorney for *Canning* was unwilling to try "them at the *Old-Bailey*, where Sir *Criſp Gaſcoyne* had a Seat; and went "down to *Totteridge*, to Lord Chief Juſtice *Lee*'s, and got his Hand to "the *Fiats*; upon which the *Certiorari's* were iſſued out to remove the In- "dictment into the Court of *King's Bench*; and next Term a Motion was "made to enforce a Return of them. Upon this Motion a Rule was "made, for the Court at the *Old-Bailey* to ſhew Cauſe, why a Return "ſhould not be enforced. The Attorney againſt her prayed a particular "Day, which was allowed; and he undertook to be ready on that Day. "He moved, that the *Certiorari's* might be ſuperſeded; alledging, that "the Lord Chief Juſtice had been impoſed upon in ſigning the *Fiats*: But "his Lordſhip not being preſent, a Rule was made for hearing the Me- "rits of that Suggeſtion at a future Day. On this future Day the Coun- "ſel for the Countrymen moved, that the Writs might be ſuperſeded, in "the Abſence of the Lord Chief Juſtice. But as the Motion to ſuper- "ſede theſe Writs was founded on a Suggeſtion, that the Lord Chief "Juſtice had been impoſed upon; and as none but his Lordſhip could "know, whether he was impoſed upon or no; both Motions were or- "dered to ſtand over, till his Lordſhip ſhould be preſent: But as he died "without ever coming into Court afterwards, the Writs are not ſuper- "ſeded to this Hour." *Refutation of Sir* Criſp Gaſcoyne's *Addreſs to the Livery*, p. 20, 21.

The TRIALS *of* John Gibbons, William Clarke, *and* Thomas Greville, *for Wilful and Corrupt Perjury, at the Seſſions-Houſe in the* Old-Bailey, *held on* Thurſday *the* 6th, Friday *the* 7th, Saturday *the* 8th, *and* Monday *the* 10th *Day of* September, 1753, *before the Right Hon. the Lord Chief Juſtice* Willes, William Moreton, *Eſq. Recorder, and other His Majeſty's Juſtices of Oyer and Terminer.*

[*Memorandum.* Sir *Criſp Gaſcoyne*, Knt. Lord-Mayor of *London*, withdrew when theſe Trials came on, as he always declared he would.]

JURY.

Robert Groom,	*John Allen,*	*Barnard Townſend,*
John Trimmer,	*Henry Bland,*	*Bartholomew Pain,*
Joſeph Tenniſwood,	*William Remnant,*	*John Merry,*
Richard Graham,	*William Champion,*	*Samuel Watlington.*

ACCORDING to the Courſe of the Court, the Trials of *Gibbons, Clarke*, and *Greville*, the three *Abbotſbury* Witneſſes upon the Trial of *Mary Squires*, for the Robbery of *Elizabeth Canning*, being called on,

Squires almoſt three Years before, and knew her when ſhe came into my Houſe.

Mr. *Willes.* When they went away, where did they tell you they were going?

J. Gibbons. They told me they were going to *Porterſham*; *Clarke* went with them.

Mr. *Willes.* Do you remember an Exciſeman coming to your Houſe to officiate for another that was ſick?

J. Gibbons. I do, his Name is *Andrew Wake*; he lay in the ſame Room with *George Squires*, and they were very familiar together.

Mr. *Willes.* Do you remember the Exciſeman borrowing *George*'s Great Coat?

J. Gibbons. I believe he did one Night, as he was walking his Rounds.

Mr. *Willes.* Was it as he was walking his Rounds, or to walk his Rounds?

J. Gibbons. It was to walk his Rounds.

Mr. *Willes.* How do you know that?

J. Gibbons. I heard him tell it.

Croſs-Examination.

Mr. *Moreton.* You was examined when *Mary Squires* was tried at this Bar?——*J. Gibbons.* I was.

Mr. *Moreton.* I will only aſk you, whether you gave an Account of ſeeing them dance, as you have now?

J. Gibbons. I don't know that it was aſked me.

Mr. *Moreton.* Was it not material to ſay, we had Muſic, and they danced at our Houſe at that Time? Did you ſwear that then?

J. Gibbons. I can't ſay whether I might or not.

Mr. *Moreton.* When did you firſt recollect it?

J. Gibbons. On the 1ſt of *February.*

Mr. *Moreton.* Then why did you not ſwear it then, and give my Lord and the Jury an Account of it?

J. Gibbons. I don't know, I was not aſked it then.

Mr. *Moreton.* Did you give an Account of the Exciſeman lying in the ſame Room with *George?*

J. Gibbons. No; but I then told the Court the Exciſeman was there at my Houſe.

Mr. *Moreton.* Was the Exciſeman here then?

John Gibbons. No.

Andrew Wake ſworn.

I was an Exciſeman about nine Months ago, and am now in the Foot-Guards; I was ordered to *Abbotsbury* to officiate for one Mr. *Ward*, who was ill, by Order of the Superviſor, from *Dorcheſter*; on the 31ſt of *December* 1752, I got there, I went to the *Ship* at *Gibbons*'s; (*he takes a Book in his Hand, and looks in it*) this is my Writing, theſe are our Entries, it is the Journal.

Mr. *Gaſcoyne.* Look at the old Woman ſitting there, do you know her?

A. Wake. I do, it is *Mary Squires*; I ſaw her at *Abbotsbury*, at *Gibbons*'s Houſe, at that Time, the 31ſt of *December* 52.

Mr. *Gaſcoyne.* Do you know that young Man?

A. Wake. I do; he paſſed for *George Squires*; he lay in the ſame Room with me.

Mr. *Gaſcoyne.* Do you know that young Woman by him?

A. Wake. I do, it is *Lucy*; they both went for Son and Daughter of *Mary Squires*; I ſaw *George* firſt there; he was ſitting by the Kitchen Fire, and one *Clarke*, a Shoemaker of that Place, with him; this was on *Sunday* Night: I am not poſitive to the firſt Day I ſaw *Mary Squires*, becauſe I was obliged to be out early in the Mornings; but I think I firſt ſaw her on the *Wedneſday*, and *Lucy* with her, by the Kitchen Fire.

Mr. *Gaſcoyne.* How long did you remain in that Town?

A. Wake. From the 31ſt of *December* to the 14th of *January*; *Gibbons*'s Houſe was my Houſe all that Time; I remember they went away two or three Days before I did.

Mr. *Gaſcoyne.* can you remember the Day they went away?

A. Wake. Upon my Word I do not.

Mr. *Gaſcoyne.* Do you know this by your Memory, or by your Books?

A. Wake. By my Memory.

Mr. *Gaſcoyne.* Did *George Squires* lie in the ſame Room you did every Night?

A. Wake. I don't remember but he did: the Mother and *Lucy* lay in a Room where there were two Beds, which we went through to go to Bed; it was up one Pair of Stairs; I ſaw them in Bed.

Mr. *Gaſcoyne.* Do you remember any Dancing there?

A. Wake. I do; I was in the Room with them one Evening; *George* danced with a young Woman of *Abbotsbury*, *Clarke* danced there, and *Lucy* danced there.

Mr. *Gaſcoyne.* What Sort of Weather was it while you was there?

A. Wake. There was a good deal of Snow: I remember I borrowed a Great Coat of *George Squires* to go my Rounds in, becauſe I had been out in my own, and it was wet.

Mr. *Gaſcoyne.* Who played the Muſic?

A. Wake. A Blackſmith, named *Melchiſedech Arnold*, played on a Fiddle; he ſold Cyder; I ſurveyed his Houſe; I remember I had been taken ill coming my Rounds, and was ſitting by the Fire-ſide, and the old Gentlewoman preſcribed ſomething to cure me, ſhe got me ſomething hot; the next Morning, or the Morning after, ſhe made me a buttered Toaſt before I went out.

Mr. *Gaſcoyne.* You had a Book in your Hand; is every Day's Gauge in that?

A. Wake. I believe they are; we return theſe Books to the Exciſe-Office; this Book was ſent for out of the Country on Purpoſe when I was examined; I had left them with *John Ward* at *Abbotsbury*, when I went from thence to *Dorcheſter* again.

Mr. *Gaſcoyne.* What Time was it you heard of this Affair about the Trial of the old Woman?

A. Wake. I ſaw it in a News-Paper, that one *Mary Squires*, a Gypſey-Woman, was taken up for a Robbery.

Mr. *Gaſcoyne.* Did it mention the Time?

A. Wake. I cannot remember whether it did or not; but I believe I told my Mother, that *that* could not be the Woman, becauſe I ſaw her at *Abbotsbury* when I was officiating for Mr. *Ward*; I was ſent to *Lewes* in *Suſſex*, and had an Order by my Superviſor, from the Commiſſioners, to come up and attend my Lord Mayor; but I did not know

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the Right Honourable the Lord Mayor quitted the Chair, and retired but of Court.——But in order to remove the Indictments into the Court of *King's-Bench*, and to ſuperſede the Juriſdiction of this Court, three Parchment Writings, ſaid to be Writs of *Certiorari*, were preſented to the Court; Whereupon Mr. *Davy*, of Counſel for the Defendants, informed the Court, that he was greatly ſurprized at this Attempt, not only as the Court of *King's-Bench* had, on the laſt Day of laſt Term, abſolutely refuſed to grant theſe Writs, although applied for by the Proſecutors; but as the Defendants had acted ſo very fairly, as to have given them (what they were not obliged to give) eight Days Notice of Trial, and had now near an hundred Witneſſes attending, many of them brought from great Diſtances, at a vaſt Expence, to manifeſt the Innocence of the Defendants to the World.——Upon which the Perſon who attended with theſe Writs, being aſked by the Court, Who he was? How he came by them? And how thoſe Writs had been obtained? He informed the Court, that he was Clerk to Mr. *Miles*, (an Attorney) who was out of Town; that he had the Writs delivered to him by Mr. *Miles*'s Brother, the Diſtiller; and that he himſelf knew nothing further of the Matter.——Which Anſwer not being ſatisfactory to the Court, the Court was pleaſed to order him to take the Writs back again, to recommend an Inquiry how theſe Writs had been obtained, and the Trials to be called on. Whereupon the Jury were charged with the following Indictment againſt *John Gibbons*:

Firſt Indictment.

LONDON. { THE Jurors for our Lord the King upon their Oath preſent, That at the Delivery of the King's Gaol of *Newgate*, holden for the County of *Middleſex*, at *Juſtice-Hall* in the *Old-Bailey*, in the Suburbs of the City of *London*, on *Wedneſday* the 21ſt Day of *February*, in the 26th Year of the Reign of our Sovereign Lord *George* the Second, King of *Great Britain*, &c. before Sir *Criſp Gaſcoyne*, Knt. Mayor of the City of *London*, Sir *Martin Wright*, Knt. one of the Juſtices of our ſaid Lord the King, aſſigned to hold Pleas before the King himſelf, *Nathaniel Gundry*, Eſq. one of the Juſtices of our ſaid Lord the King of the Court of Common Pleas, Sir *Richard Adams*, Knt. one of the Barons of the Court of Exchequer of our ſaid Lord the King, and others their Fellows Juſtices of our ſaid Lord the King, aſſigned to deliver the Gaol of our ſaid Lord the King of *Newgate*, of the Priſoners therein being, *Mary Squires*, late of the Pariſh of *Enfield*, in the County of *Middleſex*, Widow, was tried and convicted upon an Indictment againſt her, For that ſhe, on the 2d Day of *January*, in the 26th Year of the Reign of our Sovereign Lord *George* the Second, King of *Great Britain*, &c. with Force and Arms, at the Pariſh aforeſaid, in the County aforeſaid, in the Dwelling-houſe of one *Suſannah Wells*, Widow, there ſituate, upon one *Elizabeth Canning*, Spinſter, in the Peace of God, and our ſaid Lord the King then and there being, feloniouſly did make an Aſſault, and her the ſaid *Elizabeth* in bodily Fear and Danger of her Life then and there feloniouſly did put, and one Pair of Stays of the Value of Ten Shillings, of the Goods and Chattels of the ſaid *Elizabeth*, from the Perſon and againſt the Will of the ſaid *Elizabeth*, in the Dwelling-houſe aforeſaid, then and there violently and feloniouſly did ſteal, take, and carry away, againſt the Peace of our ſaid Lord the King, his Crown and Dignity. Upon which ſame Trial, one *John Gibbons*, late of *Abbotsbury*, in the County of *Dorſet*, Victualler, on the 21ſt Day of *February*, in the Year aforeſaid, to wit, at *Juſtice-Hall* aforeſaid, in the Pariſh of *St. Sepulchre*, in the Ward of *Farringdon Without*, in the City of *London*, came in his own proper Perſon as a Witneſs on the behalf of the ſaid *Mary Squires*, of and upon the Matters contained in the ſaid Indictment; and the ſaid *John Gibbons*, then and there in the Court aforeſaid, before the ſaid Juſtices laſt above-named, and others their Fellows aſſigned as aforeſaid, upon the Trial aforeſaid, was in due Manner and Form ſworn, and took his corporal Oath upon the Holy Goſpel of God, as ſuch Witneſs (the ſame Court then and there having a ſufficient Authority to adminiſter the ſame Oath to the ſaid *John Gibbons* in that behalf). And the ſaid *John Gibbons*, on the ſaid 21ſt Day of *February*, in the Year aforeſaid, not having God before his Eyes, but being moved and ſeduced by the Inſtigation of the Devil, and wickedly and unjuſtly deviſing and intending to pervert Juſtice, and to procure the ſaid *Mary Squires* unjuſtly to be acquitted of the ſaid Crime laid to her Charge in the ſaid Indictment, then and there upon the Trial aforeſaid, upon his Oath aforeſaid, falſly, maliciouſly, wilfully, wickedly, and corruptly, did ſay, depoſe, ſwear, and give in Evidence to the ſaid Court, and the Jurors of the ſaid Jury, upon the Trial aforeſaid, as follows, (that is to ſay) on the 1ſt Day of *January*, 1753, (meaning the Year of our Lord 1753) the Priſoner *Squires* (meaning the above-named *Mary Squires*) came into the Houſe (meaning the Houſe of the ſaid *John Gibbons*, at *Abbotsbury* aforeſaid, in the ſaid County of *Dorſet*). There was *George* her Son, (meaning *George* the Son of the ſaid *Mary Squires*) and *Lucy* her Daughter, (meaning *Lucy* the Daughter of the ſaid *Mary Squires*) with her (meaning the ſaid *Mary Squires*). And that the ſaid *John Gibbons*, upon the Trial aforeſaid, upon his Oath aforeſaid, on the ſaid 21ſt Day of *February*, in the Year aforeſaid, at *Juſtice-Hall* aforeſaid, in the Pariſh of *St. Sepulchre* aforeſaid, in the Ward of *Farringdon Without* aforeſaid, did falſly, maliciouſly, wilfully, and corruptly, ſay, depoſe, ſwear, and give in Evidence as follows: She (meaning the ſaid *Mary Squires*) came with Handkerchiefs, Lawns, Muſlins, and Checks, to ſell about Town (meaning *Abbotsbury*, in the County of *Dorſet*); ſhe (meaning the ſaid *Mary Squires*) ſtayed there (meaning at *Abbotsbury* in the ſaid County of *Dorſet*) from the firſt

know upon what Account; I came up, and gave the ſame Evidence before his Lordſhip, as I do now, after he had ſent me to *Newgate* to ſee *Mary Squires*, whom I knew very well by many Circumſtances, and ſhe knew me.

Mr. *Gaſcoyne*. How came you to be out of the Exciſe?

A. Wake. I was diſcharged, and ſo went into the Guards.

Mr. *Gaſcoyne*. For what was you diſcharged?

A. Wake. For Stamping.

Mr. *Gaſcoyne*. How could you ſee the People in Bed when you went through the Room?

A. Wake. Becauſe there were no Curtains to their Beds.

Croſs-examined.

Mr. *Williams*. Tell us what Year this was.

A. Wake. This is the Book we had from the Office at that Time; they are marked at the Exciſe-Office before they come.

Mr. *Williams*. Look in it, and ſhew me the firſt Entry you made there.

A. Wake. It was on the firſt of *January*; it is my Hand-writing from that to the 14th of *January*.

Mr. *Williams*. Was it in the Year 1752 or 1753?

A. Wake. There is no Year to it, only the Days of the Month.

Mr. *Williams*. What Year was this 1ſt of *January* in?

A. Wake. I believe it was the Year 53; the Mark 52 is done by the Superviſor on the 1ſt Page, before we have them.

Mr. *Williams*. Had you ever ſeen *Mary Squires* before that Time?

A. Wake. No, Sir, not ſince, till I ſaw her in *Newgate*.

Mr. *Williams*. Did you dance there?---*A. Wake*. No, I did not at all.

Mr. *Williams*. Can you tell who *Clarke* danced with?

A. Wake. *Clarke* danced with *Lucy*, to the beſt of my Knowledge.

Mr. *Williams*. Did *Mary Squires* recollect you, or you her firſt, before you told her upon what Account you came to ſee her?

A. Wake. I ſaid nothing at all to her, only aſked her if ſhe knew me; ſhe ſaid, Yes, that I was the young Man belonging to the Exciſe-Office; and ſaid ſhe remembered me very well, that I borrowed her Son's Great Coat.

Mr. *Williams*. Did ſhe ſeem to be under any Heſitation at that Time?

A. Wake. No, ſhe ſeemed rather over-joyed; ſhe knew me through the Grate as ſhe was in the Preſs-yard.

Mr. *Williams*. Had you the ſame Cloaths on then, as you wore in *Dorſetſhire*, when you ſaw her there?

A. Wake. Yes, I had the ſame Coat on, a ſort of a Pepper-and-Salt Coat; I went there before I went to my Lord-Mayor.

Mr. *Williams*. Had you ſent her any Notice you was coming there?

A. Wake. No, I had not.

Mr. *Williams*. Explain what you mean by Stamping.

A. Wake. That is Neglect of Duty, writing at home inſtead of going abroad.

Mr. *Williams*. Did not you ſay my Lord-Mayor ſent you to ſee her in *Newgate*?

A. Wake. My Lord aſked me, if I had ſeen her? I ſaid, I had: He aſked me, if I was poſitive to the Woman? I ſaid, I was: He ſaid, If you are not, go again; ſo I went and talked with her again.

Mr. *Davy*. Was you not poſitive, made you go again?

A. Wake. I was poſitive then.

Mr. *Williams*. Did my Lord-Mayor examine you before he had the Exciſe-Books?---*A. Wake*. I don't know that.

Francis Aldborough ſworn.

I am Aſſiſtant to the General Examiner at the Exciſe-Office; theſe Books are called the 5th and 6th Round for the Year 1752, ending at *Midſummer* 1753; they are ſent from the Office once in a Quarter of a Year, by Order of the Board; theſe are for *Abbotſbury* Diviſion: they are returned to the Office by the Superviſor; theſe contain an Account of what was done in *Abbotſbury* from the 21ſt of *December* 1752, to the 15th of *March* following, 1753; there is an Order of Board for every Officer that officiates in the Place of one that is ſick.

Mr. *Gaſcoyne*. Look in the Book: Do you know whoſe Hand-writing it is?

F. Aldborough. I don't know *Wake*'s Hand-writing; here is noted in this Book *January* 1 to 13; *Andrew Wake* officiated for the proper Officer, he being indiſpoſed; the Book ſays *John Ward* is the proper Officer.

Croſs-examined.

Mr. *Moreton*. At what Time are theſe Books returned to the Office?

F. Aldborough. There is no certain Time for that; there is an Order for them to be ſent in ſix Weeks after they are done with; ſome may be kept three Months, ſome more, ſome leſs; but we look upon him to be the more induſtrious Officer that ſends them up in proper Time: I was informed theſe came up according to Expreſs, and they were put in my Poſſeſſion.

George Clements ſworn.

I live at *Abbotſbury*.

Mr. *Davy*. Do you know that old Woman there? look at her Face.

G. Clements. I have looked at her Face many Years ago.

Mr. *Davy*. Do you remember her Daughter?

G. Clements. What, *Lucy*? Yes, Sir, and her Brother too; he is my Name-ſake.

Mr. *Davy*. When did you ſee them in your Country?

G. Clements. I ſaw them all three on the 1ſt of *January*; I went into the Public Houſe the *Old Ship*; there the old Woman's Son and Daughter danced with our *Abbotſbury* People; it was about Nine at Night.

Mr. *Davy*. Who was *Lucy*'s Partner?

G. Clements. *William Clarke*.

Mr. *Davy*. Did they ſtay at *Abbotsbury*?

G. Clements.

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firſt to the ninth Day of the Month (meaning from the firſt to the ninth Day of the Month of *January*, in the ſaid Year of our Lord 1753), and lay at my Houſe (meaning the Houſe of him the ſaid *John Gibbons*, at *Abbotsbury* aforeſaid, in the ſaid County of *Dorſet*). And the ſaid *John Gibbons*, then and there, upon the ſaid Trial being demanded to look at the ſaid *Mary Squires*, then a Priſoner at the Bar there, and being aſked whether or not he was ſure that ſhe was the ſame *Mary Squires*, whom he had ſo as aforeſaid depoſed and ſworn to have come to his ſaid Houſe at *Abbotsbury* aforeſaid, on the ſaid 1ſt Day of *January*, in the ſaid Year 1753, and to have ſtayed there from the ſaid 1ſt Day of *January* aforeſaid to the 9th Day of the ſaid Month; he the ſaid *John Gibbons*, upon the Trial aforeſaid, upon his Oath aforeſaid, in Anſwer to the ſaid Demand and Queſtion, did falſly, maliciouſly, wickedly, wilfully, and corruptly, further ſay, depoſe, ſwear, and give in Evidence as follows: I (meaning himſelf the ſaid *John Gibbons*) am ſure it is (meaning that he the ſaid *John Gibbons* was ſure that the ſaid *Mary Squires*, then a Priſoner at the Bar there upon the ſaid Trial, was the ſame *Mary Squires*, whom he the ſaid *John Gibbons* had as aforeſaid depoſed and ſworn to have come into his ſaid Houſe at *Abbotsbury* aforeſaid, on the ſaid 1ſt Day of *January*, in the Year of our Lord 1753, and to have ſtayed there from the ſaid 1ſt Day of *January* aforeſaid, to the 9th Day of the ſaid Month). Whereas, in Truth and in Fact, on the ſaid 1ſt Day of *January*, in the Year of our Lord 1753, the ſaid *Mary Squires* did not come into the Houſe of the ſaid *John Gibbons*, at *Abbotſbury*, in the ſaid County of *Dorſet*. And whereas, in Truth and in Fact, the ſaid *George*, the Son of the ſaid *Mary Squires*, and the ſaid *Lucy*, the Daughter of the ſaid *Mary Squires*, or either of them, were not in the Houſe of the ſaid *John Gibbons*, at *Abbotſbury* aforeſaid, in the ſaid County of *Dorſet*, on the ſaid 1ſt Day of *January*, in the Year of our Lord 1753, with the ſaid *Mary Squires*. And whereas, in Truth and in Fact, the ſaid *Mary Squires* did not ſtay at *Abbotſbury*, in the ſaid County of *Dorſet*, from the 1ſt to the 9th Day of the Month of *January*, in the ſaid Year of our Lord 1753. And whereas, in Truth and in Fact, the ſaid *Mary Squires* did not lie at the Houſe of the ſaid *John Gibbons*, at *Abbotſbury* aforeſaid, on the ſaid 1ſt Day of *January*, in the Year of our Lord 1753, until the 9th Day of the ſame Month. And whereas, in Truth and in Fact, the ſaid *Mary Squires* did not lie at the Houſe of the ſaid *John Gibbons*, at *Abbotsbury* aforeſaid, on the ſaid 1ſt Day of *January*, in the ſaid Year of our Lord 1753, nor on the ſaid 9th Day of the ſaid Month of *January*, in the Year laſt-mentioned, nor at any Time between the ſaid 1ſt Day of *January*, in the ſaid Year of our Lord 1753, and the ſaid 9th Day of the ſame Month of *January*. And whereas, in Truth and in Fact, the ſaid *Mary Squires*, on the ſaid 1ſt Day of *January*, in the Year laſt before-mentioned, was not at the Houſe of the ſaid *John Gibbons*, at *Abbotsbury* aforeſaid, nor at any other Houſe or Place at *Abbotsbury* aforeſaid. And ſo the Jurors aforeſaid, upon their Oath aforeſaid, do ſay, That the ſaid *John Gibbons*, on the ſaid 21ſt Day of *February*, in the 26th Year aforeſaid, at *Juſtice-Hall* aforeſaid, upon the Trial aforeſaid, in the Court aforeſaid, (the ſame Court then and there having a competent Authority to adminiſter the ſaid Oath to the ſaid *John Gibbons* in that Behalf) falſly, maliciouſly, wilfully, wickedly, and corruptly, in Manner and Form aforeſaid, did commit wilful and corrupt Perjury, to the great Diſpleaſure of Almighty God, to the evil Example of all others in the like Caſe offending, and againſt the Peace of our ſaid Lord the King, his Crown and Dignity.

All the Witneſſes, on the Back of the Bill, were called out to give Evidence; but no one appearing, except Mary Woodward, *and ſhe declaring ſhe knew nothing of the Matter, an Officer was ſent to the Proſecutors to attend the Court; but none of them appearing, the Jury acquitted the Defendant.*

A ſecond Indictment to the ſame Purpoſe was read againſt *William Clarke*; but he was acquitted for want of Evidence.

A third Indictment was preferred againſt *Thomas Greville*, for ſwearing he ſaw *Mary Squires* at *Coombe* on the 14th of *January*; and he was acquitted likewiſe for want of Evidence.

During the Time a Meſſenger was ſent to the Proſecutors to attend the Court, Mr. Davy, *Counſel for the Defendants, took that Opportunity of addreſſing himſelf to the Court as follows:*

My Lord,

I HAVE the Honour to appear before your Lordſhip in Behalf of the three Defendants; who ſtand indicted for Perjury, ſuppoſed to have been committed by them in this Place, upon the Trial of *Mary Squires*, for the Robbery of *Elizabeth Canning*, at *Enfield-Waſh*, in *January* laſt.

Gibbons and *Clarke* are charged with falſly ſwearing, that *Mary Squires* was at *Abbotſbury* from the 1ſt to the 9th of *January*; and *Greville*, that ſhe was at *Coombe* on the 14th.

If their Teſtimony was true, *Mary Squires* was unjuſtly accuſed; but it was hers, and their Misfortune, that it then obtained no Credit.

They were Strangers, unknown to every Body at the Trial.—*Canning* was poſitive, and being by unfair Means confirmed in her Evidence, *Squires* was convicted.

Upon this Charge of Perjury, great Care hath been taken, attended with great Expence, on either Side, to ſearch this Matter to the Bottom; every Circumſtance hath been ſcrutinized, and nothing omitted to inveſtigate the Queſtion thoroughly.

It hath a long while been the general Subject of Converſation, and hath engaged the Attention of the Public, more, perhaps, than any private Tranſaction ever did before.

Here are the Names of no leſs than fifty Witneſſes indorſed upon each of their Indictments; yet only one of them, a poor Woman, whoſe Evidence is immaterial, appears to proſecute!

This Deſertion may occaſion various Conjectures, and many falſe Reaſons will probably be ſuggeſted for not proſecuting theſe Indictments.

It may perhaps be attributed to a Compromiſe.—It may be ſaid, that theſe Defendants are to be acquitted by Conſent, and that the Indictment againſt

G. Clements. They did; they lodged at *Gibbons*'s; I drank with them the firſt and ſecond Mornings, and dined with them the *Sunday* following; I ſaw them on the *Monday*, and on the *Tueſday*, the Day they ſet out from thence.

Mr. *Davy.* Who ſet out with them?

G. Clements. *William Clarke*; he and *Lucy* went together.

Mr. *Davy.* I hope they are married by this Time.

G. Clements. The Lord knows, I don't know that.

Croſs-examined.

Mr. *Nares.* How often have you ſeen this old Acquaintance of yours, *Mary Squires?*

G. Clements. About fifteen or ſixteen Times in that Place, but juſtly I cannot tell.

Mr. *Nares.* How often have you ſeen *George?*

G. Clements. I cannot tell; I have ſeen him more than once.

Mr. *Nares.* Twice?---*G. Clements.* More.

Mr. *Nares.* Three Times?—*G. Clements.* Three Times.

Mr. *Nares.* Four Times?—*G. Clements.* I cannot tell.

Mr. *Nares.* Then you will not ſay you have ſeen him more than three Times?

G. Clements. It may be more, I will not ſay.

Mr. *Nares.* When *George* was not with the old Woman, who came with her?

G. Clements. Her Daughters, *Polly* and *Lucy*.

Mr. *Nares.* How often have you ſeen *Polly* and *Lucy?*

G. Clements. I cannot tell.

Mr. *Nares.* Have you ſeen them oftener than you have *George?*

G. Clements. I cannot tell.

Mr. *Nares.* How long is it ſince you ſaw the old Woman at *Abbotſbury*, before this Time you are ſpeaking of?

G. Clements. I believe it is four Years ſince.

Mr. *Nares.* Was *George* with her that Time?

G. Clements. Yes, Sir.

Melchiſedech Arnold ſworn.

I am a Blackſmith, and live at *Abbotſbury*; I know the old Woman perfectly well, and the Girl on the left Hand, and the Man behind her; they are her Son and Daughter; the laſt Time I ſaw them all three, was in *January* laſt was Twelve-month; I ſaw them on an Evening at the *Old Ship* at *Abbotſbury*.

Mr. *Willes.* Do you mean Old Stile or New?

M. Arnold. I mean this preſent calculated Time; I remember it was on the 1ſt of *January* at Night; the young Man and young Woman danced, and I played on the Violin.

Mr. *Willes.* Do you know who was *Lucy*'s Partner?

M. Arnold. Her Partner was *William Clarke*, and *George Squires*'s Partner was *Mary Gibbons*; they might give over Dancing at Eleven or Twelve at Night.

Mr. *Willes.* Did you ſee them afterwards?

M. Arnold. I be not poſitive I ſaw them the next Day, but I ſaw them ſeveral Times that Week there; I ſaw them on the *Saturday* Night in particular, that Week, they were dancing again, and the old Woman ſat in the Dancing-Room; ſhe was in the Kitchen on the *Monday* Night, ſitting by the Fire-ſide; I alſo ſaw them the next *Monday*, being the 8th; they were then in *Gibbons*'s Houſe; I heard they went away the *Tueſday*, being the next Day.

Croſs-examined.

Mr. *Williams.* Had you any Knowledge of them before this Time you talk of?

M. Arnold. I don't remember any perfect Knowledge I had of them; but I have heard ſay they were there three Years before, but I don't remember I ever ſaw them before.

Mr. *Williams.* What Buſineſs do they follow?

M. Arnold. I don't know that, for I never dealt with them.

Mr. *Williams.* Where did you ſee them theſe Times you mention?

M. Arnold. They were at the *Ship*, and I don't know that I ſaw them at any other Houſe.

John Ford ſworn.

I live at *Abbotſbury*, and am a Carpenter.

Mr. *Davy.* Did you ever ſee that old Woman before? (*Pointing to* Mary Squires.)

J. Ford. I have ſeen her many Times before at *Abbotſbury*; I ſaw her a matter of four Years ago, and I ſaw her on the 1ſt of *January*, a Twelve-month ago laſt *January*, being of a *Monday*; I ſhook Hands with her, drank with her Son, and kiſſed her Daughter; the Daughter, Son, and ſhe came all together to the Exciſe-Office in our Town (there they lodged); *John Gibbons* keeps the Houſe; he is a Nephew of mine; I drank with *George*, or elſe I am not here now.

Mr. *Davy.* Did you ſee them often?

J. Ford. I ſaw them at *Gibbons*'s Houſe from the 1ſt to the 9th every Day; they bought the Bread they eat of me; I am as ſure I ſaw them there, as I am that I am here this Minute.

Mr. *Davy.* Who bought the Bread?

J. Ford. *Mary Squires* did, or her Son, or Daughter.

Mr. *Davy.* How came you, that are a Carpenter, to ſell Bread?

J. Ford. I keep a Shop, and ſell Bread and ſeveral other Things.

Mr. *Davy.* Have you any particular Reaſon for remembering the Day?

J. Ford. I have, it being the 1ſt of *January*; and Mr. *Bond*, a School-maſter in our Town, gives his Scholars a Holiday at New-Year's Time; he was there on the *Sunday* Evening, and gave them Liberty; I was with him, and Mr *Wallace*, and *George Squires*.

Croſs-examination.

Mr. *Moreton.* Where did they come from then?

J. Ford. They came from a Place called *Litton*.

Mr. *Moreton.* How early on the *Monday* did you ſee them there?

J. Ford. It was ſome Time about One, Two, or Three o'Clock; I am ſure it was ſome Time in the Afternoon; I know it was not Night, becauſe I was looking over the Hatch, and ſaw *George* coming down the Street, and ſpoke to him.

Mr. *Moreton.* How far might you ſee *George*, before he came to ſpeak to you?

J. Ford. I ſaw him, perhaps, fifty Yards; I could ſee a hundred, and I believe I could ſee a thouſand Yards.

Mr. *Moreton.* What Hour do you take it to be?

J. Ford. I am ſure it was not come to three o'Clock; upon my Life I kiſſed *Lucy* before Three o'Clock.

Mr. *Moreton.* You have given a very particular Reaſon for knowing it to be the 1ſt of *January*, that is, that Mr. *Bond* had given his Scholars a Play-day; then does he only give them a Play-day on the 1ſt of *January?*

J. Ford. No, not in particular.

Mr. *Moreton.* Does not he let them break up at *Chriſtmas?*

J. Ford. No, he does not let them break up all the *Chriſtmas*; they had ſeveral Days at this Time, that is the Reaſon I know the Day.

Mr. *Davy.* You ſay the firſt Time you ſaw them was on *Monday* the 1ſt of *January*; pray what Time of the Day was it?

J. Ford. I went to the Ale-houſe between One and Two o'Clock for a Mug of Beer.

Mr. *Davy.* How many Pots of Beer have you drank To-day? Do you take upon you to ſay you ſaw them on the *Monday* about Two or Three in the Afternoon?

J. Ford.

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againſt *Canning* is to be dropped. One cannot eaſily imagine what Rumours Malice may raiſe.

For this Reaſon, and to prevent any Imputation upon thoſe who are concerned for the Defendants, I beg Leave to aſſure your Lordſhip, and all who hear me, that the Defendants now come prepared for Trial; that their Witneſſes attend your Lordſhip, ready to give their Teſtimony with ſuch clear, ample, convincing Circumſtances, as would demand univerſal Aſſent; and fully prove the Innocence of the three Defendants, and the Falſity of *Elizabeth Canning*'s Story in every Particular.

Here are Witneſſes, more in Number than perhaps ever appeared in any one Cauſe, collected together at a vaſt Expence, and from different remote Places.

Here is *other* Evidence alſo ready to be produced, ſuch as, *in its Nature, cannot deceive.*

The Proſecutors have been invited to meet them here before your Lordſhip and the Jury; and ſo deſirous were the Friends of the Defendants that this Matter ſhould be fairly tried, that they have offered to bear Part of the Charges of this Proſecution.

The Public hath been a long while amuſed with Promiſes, that, in the Trials of theſe Indictments, the Guilt of the preſent Defendants ſhould be clearly manifeſted, and the Whole of this myſterious Tranſaction unravelled.

The Time is come to perform theſe Promiſes, and Thouſands expect it.

Why do all theſe Boaſters now hide their Faces? becauſe they are covered with Confuſion.

They are aware how dangerous it is to purſue a Proſecution, founded in the foulеſt and moſt daring Perjury; and *wiſely* withdraw themſelves from a Trial which would involve them in Ruin.

Had I conſidered the Caſe of the Defendants alone, without regard to any other Perſon, I ſhould have thought it needleſs to give the Court any Trouble upon this Occaſion.

They are private Countrymen, without any Connections in this Part of the World, and totally unconcerned at any Reports which may prevail here:——Within the narrow Circle of their Acquaintance, their Characters will remain unblemiſhed, let Fame do its worſt; becauſe the Charge againſt them is the Atteſtation of a Fact, which all their Acquaintance, all their Pariſh, and their whole Country, know to be true.

But there is *One*, whoſe near Relation to this great City makes it neceſſary for me to ſay thus much.

It is impoſſible for *Him* to be unſollicitous for puplic Approbation, after having done ſo much to deſerve it.

Yet all the Reproaches which Malice could ſuggeſt to little, dark, deſigning Men, have been levelled at the Chief Magiſtrate of this City, only for doing what the Love of Juſtice and Humanity inſpired him to.

For *His* Sake, therefore, I have thus treſpaſſed upon your Lordſhip's Patience, and only beg Leave to add a few Words more, to ſhew how unmerited thoſe Reflections were.

As his Lordſhip was at the Head of the Commiſſion at the Trial of *Mary Squires*, and was totally uninfluenced by the infamous Endeavours which at that Time had been uſed to give Credit to a moſt improbable Narrative; he was directed, merely by a Regard for Truth, to make further Inquiry into a Story pregnant with Abſurdities, and unlike any Tranſaction that ever went before it.

And the Evidence of *Elizabeth Canning* depending entirely upon this Queſtion, Whether the Account which theſe three Men had given was true, where could his Lordſhip ſo properly direct his Inquiry, as to thoſe Places, where they ſwore they had ſeen her?

The Succeſs of that Inquiry anſwered the Wiſhes of his Humanity; and the moſt indubitable Proofs of the Convict's Innocence warmed the Royal Heart to Mercy.

One ſhould have thought, that this Conduct of a Magiſtrate, whoſe ſole Motive to it was a Deſire of reſcuing a wretched, friendleſs Convict, from the Miſeries into which Perjury and popular Prejudice had thrown her, ſhould at leaſt exempt him from Cenſure.

But his Enemies could never forgive him the Merit of this Action: As it raiſed him ſtill higher in the Eſteem of good Men, he became more the Object of Envy; and no Arts were uneſſayed to diminiſh the Reputation he had ſo juſtly acquired.

Had my Lord-Mayor been preſent, I ſhould not have ſaid ſo much; but I have been the more encouraged to it from obſerving, that *His Lordſhip withdrew himſelf* as ſoon as theſe Cauſes were called, becauſe he was pleaſed to think it improper for him to preſide, where any Thing that might be thought to concern Himſelf ſhould come before the Court.

I have an Apology to make for giving your Lordſhip any Trouble, where there is no Proſecution; but as the Court waits for the Return of a Meſſenger, and no Buſineſs is now proceeding upon, I hope I have given no Offence. *Vide Seſſions-Paper in* Gaſcoyne's *Mayoralty*, September 1753.

J. Ford. I did.

Mr. *Davy.* You are drunk now, and ought to be aſhamed of yourſelf.

Daniel Wallace ſworn.

I live at *Abbotſbury*, and am a Mercer: I have ſeen theſe three People before, and remember them all very well: I ſaw them there the 7th of *January*, which was on a *Sunday*.

Mr. *Willes.* Had you ſeen the Son and Daughter before?

D. Wallace. I had ſeveral Times before.

Mr. *Willes.* When did you ſee the Son and Daughter firſt?

D. Wal. It was three or four Years before; I ſaw them that Time almoſt every Day.

Mr. *Willes.* Had you ſeen either of them that Week, before *Sunday* the 7th, at *Abbotſbury*?

D. Wal. I ſaw *George* almoſt every Day; he bought Sugar of me; and I ſaw *Lucy* twice that Week, but did not ſee the Mother till the 7th, and did not ſee them after that Day.

Mr. *Willes.* Had you ever ſeen the Mother before, ſo as to be certain of knowing her?—*D. Wal.* I had, and that is the real Woman.

Croſs-Examined.

Mr. *Williams.* When did you firſt ſee them that Week?

D. Wal. I ſaw *George* the Day he came to Town; I believe he came into Town the *Sunday* before.

Mr. *Wil.* What Day of the Month was it when you firſt ſaw *George?*

D. Wal. I ſaw him on the firſt Day he came into Town, about Six in the Evening.

Mr. *Wil.* Did you ſee him on the *Monday* the 1ſt of *January?*

D. Wal. I ſaw none of them on the *Monday*; I believe I ſaw *George* on *Tueſday*, *Wedneſday*, *Thurſday*, and *Friday*; I have ſeen the old Woman ſeveral Years ago, and have converſed with her a great many Times.

Mr. *Wil.* What did they come there for?

D. Wal. That I don't know; they have at different Times ſold Things.

Mr. *Recorder.* What do you know the particular Day by, on which you ſaw the old Woman?

D. Wal. I had bought a new Jack, and had a Shoulder of Mutton roaſted for Dinner on the *Sunday*; and the old Woman was peeling Potatoes, and aſked me to dine with her; and I ſaid, I had ſomething particular to dine on.

Hugh Bond ſworn.

I am a School-Maſter at *Abbotsbury*; I ſaw this old Woman there on the 8th and 9th of *January* 1753, and *George* and *Lucy* along with her; this was on a *Monday* and *Tueſday*, at the Sign of the *Old Ship*: I had been down in *Devonſhire*, and came home about Six or Seven at Night: I lodged at the *Old Ship*, and had never ſeen the old Woman before; they went away on the Morning of the 9th about Nine o'Clock; this old Woman is the very ſame Perſon; whoever ſees her once, can never miſtake her again: I ſaw *George* again the ſame Night; then *Clarke* and he came back again from *Porterſham*.

Mr. *Gaſcoyne.* Had you any Converſation with her?

H. Bond. No; but I had with *George*, and one Mr. *Wake*, an Exciſeman, that officiated in the room of Mr. *Ward*, who was then ſick; for when I came Home, my Landlady begged I would not be offended at her putting Somebody in my Bed; that was this Exciſeman; there are two Beds in the Room, and in the other *George Squires* lay.

Mr. *Gaſ.* When did you go down into *Devonſhire?*

H. Bond. I went on the 31ſt of *December*, and came back on *Monday* the 8th of *January*.

Mr. *Gaſ.* As you are a School-Maſter, you muſt know the Time of your going out.

H. Bond. My Wife was in *Devonſhire*; I went to ſee her; ſhe was ſick, and is ſince dead.

Croſs-Examined.

Mr. *Moreton.* What Time did you ſee this old Woman on the 8th?

H. Bond. It was after Candles were lighted; after I had ſhifted myſelf, I came and ſat down by the Fire, with *George Squires* and Mr. *Wake*; I had never ſeen *George* before; I aſked my Landlady, who he was? She ſaid, his Name was *Squires*, and that his Mother and Siſter were in another Room; after which the old Woman came out to call her Son to go to Bed.

Mr. *Mor.* What Time did they go away the next Day?

H. Bond. I don't know what Time; but when the Girl came to call me from the School to Breakfaſt, they were then in the Kitchen.

Mr. *Mor.* How far is *Porterſham* from *Abbotsbury?*

H. Bond. It is about a Mile Diſtance.

Mr. *Mor.* Are you ſure you ſaw *George*, after he came back again from *Porterſham?*

H. Bond. I am; he came back again in the Evening, and drank a Mug of Beer at my Door, after School-time, with *William Clarke*, in the Street.

Mr. *Mor.* What might it be o'Clock?

H. Bond. It might be Five o'Clock; I ſaw no more of him; *George* ſaid he would not ſtay any longer, for he muſt go to *Porterſham*; I did not go out, but went to Bed afterwards.

John Bailey ſworn.

I live at *Abbotsbury*, and am a Carpenter.

Mr. *Davy.* Look at that old Woman; do you know her?

Bailey. I do; the Man and Woman behind her are *George* and *Lucy*: I ſaw them at *Abbotsbury* on the 1ſt of *January* 1753, at the *Old Ship*, the Exciſe-Office; and I ſaw them all three there the *Monday* and *Tueſday*, which was a Week after. My Yard joins to the *Old Ship*; I ſaw them moſt Days of that Time; I ſhaved *George* twice, the Time he was there, on the *Wedneſday* and *Monday* after; I practiſe the Trade of a Barber as well as a Carpenter.

Mr. *Davy.* How long have you known the old Woman?

Bailey. I have known her ten or fifteen Years, and am ſure I am not miſtaken.

Mr. *Davy.* How long have you known the Son and Daughter?

Bailey. Not ſo long; I have known them above three Years; that is, from the laſt Time they came there before this 1ſt of *January* I mentioned.

Mr. *Davy.* By what Circumſtance do you recollect it to be the 1ſt of *January?*

Bailey. I had a Brother that uſed the Sea, and he went away that very Day for *Briſtol*; I am certain that was the very Day: He left ſomething of a Will for me to enjoy, if he died; and he has ſince returned, and taken the Paper from me.

Croſs-Examined.

Mr. *Moreton.* What Time did you ſee them at *Abbotsbury* on the 1ſt of *January?*

Bailey. It was in the Evening, betwixt Eight and Nine o'Clock, by the Kitchen Fire.

Mr. *Davy.* Do you remember the Dancing there?

Bailey. I cannot ſay I do, for I went Home to Bed.

Thomas Anſon ſworn.

I live at *Abbotsbury*, and am a labouring Man; I know that old Woman very well, and her Son and Daughter, as ſhe calls them.

Mr. *Willes.* Did you ever ſee them at *Abbotsbury*, and when?

Anſon. I ſaw them on Old *Chriſtmas-Day* there, being on a *Friday*, the 5th, at *John Gibbons*'s Houſe; they were all three together; I had ſeen them a Day or two before that.

Mr. *Willes.* Had you ſeen them before this Time of coming there?

Anſon. I had ſeen her about four Years ago, and her Son and two Daughters with her.

Mr. *Willes.* Do you know one *William Clarke?*

Anſon. I do; he was with them at the ſame Time; they were intimate together; that is, *Lucy* and he, as Sweethearts; it was reported ſo then.

Croſs-Examined.

Mr. *Nares.* Do you know their Reaſons for coming there?

Anſon. No, I do not.

Mr. *Nares.* How long have you lived at *Abbotsbury?*

Anſon. About five Years.

Mr. *Nares.* How far is that from the Sea?

Anſon. It is about a Mile from it.

John Hawkins ſworn.

I live at *Abbotſbury*, and am a Weaver.

Mr. *Gaſ.* Look at that old Woman that ſits there, and her Son and Daughter.

Hawkins. I do; I know them: I ſaw them at *Gibbons*'s at *Abbotsbury*, on the 1ſt of *January*, about Eight at Night.

Mr. *Gaſ.* What *January?*

Hawk. I am no Scholar; it was not laſt *January*, but *January* was Twelve-month; the Son and Daughter were dancing then.

Mr. *Gaſ.* Who played on the Violin that Time?

Hawk. Melchiſedech Arnold.

Mr. *Gaſ.* Where was the old Woman?

Hawk. She was ſitting in the other Houſe by the Fire-ſide in the Kitchen.

Mr. *Gaſ.* Why do you call it the Kitchen belonging to the other Houſe?

Hawk. That is the lower Houſe, joining to the ſame Houſe.

Mr. *Gaſ.* Did you ſee the old Woman more than once?

Hawk. I ſaw her every Day till the Day ſhe went away, which was on a *Tueſday*, being the 9th Day of the Month.

Mr. *Gaſ.* Had you ever ſeen the old Woman before that *January?*

Hawk. Yes, Sir, I had, it may be a Year, two, or three before, at *George Clements*'s.

Mr. *Gaſ.* By what do you remember the particular Time of your ſeeing her?

Hawk. Becauſe it was on New-Year's Day, and being Holiday-Time we got to dancing.

Mr. *Gaſ.* Were you acquainted with them before this?

Hawk. No, I was not.

Mr. *Gaſ.* Did you dance with them?

Hawk. Yes, I did, on the *Monday* Night.

Mr. *Gaſ.* Can you tell how they were coupled?

Hawk. I cannot tell who my Neighbours danced with.

Mr. *Gaſ.* Who did *Clarke* dance with?—*Hawk.* I cannot tell.

Mr. *Gaſ.* Who did you dance with?—*Hawk.* I cannot tell now.

Croſs-Examined.

Mr. *Moreton.* This was a very merry Dance: What had you been at all Day? Had you kept Holiday the whole Day? Cannot you remember your Partner?

Hawk. I do not remember my Partner.

Mr. *Mor.* Nor who danced with *Lucy?*

Hawk. No, I cannot; there was a very great Company of us.

Mr. *Mor.* Who did *George* dance with?

Hawk. I do not know.

Mr. *Mor.* Do you remember the Place?

Hawk. Yes, I do; it was in *Gibbons*'s Parlour; it was a common Dance, any body might come as would.

Mr. *Mor.* What was *Clements*'s Houſe, where ſhe came before?

Hawk. A private Houſe; ſhe uſed to lie at that Houſe.

Mr. *Mor.* What is his Trade?

Hawk. He is no Trade, but a Fiſherman.

Mr. *Mor.* Does he never catch ſuch a Thing as a Handkerchief, ſuch as is round your Neck, at Sea?

Hawk. No, not as I know of.

Mr. *Mor.* What had the old Woman uſed to deal in?

Hawk. I never ſaw her deal in any Thing; I have heard People talk ſhe ſold Things.

Mr. *Mor.* Was it Hardware?

Hawk. I do not know what Ware it was.

Mr. *Mor.* Did you ever talk with her?

Hawk. Yes, once at *Clements*'s.

Mr. *Mor.* What was your Converſation then?

Hawk. It was about telling of Fortunes; we aſked her Queſtions, and ſhe told us ſhe was no Fortune-teller.

Mr. *Mor.* Did ſhe tell you what her Trade was?

Hawk. No; we went about our Buſineſs; there were two young Men with me.

Mr. *Davy.* Now we leave *Abbotsbury*, and come to *Porterſham.*

William Haines ſworn.

I live at *Porterſham.*

Mr. *Davy.* Look at that old Woman; do you know her?

W. Haines. I know her very well, her Name is *Mary Squires*; I have known her thirty Years and upwards.

Mr. *Davy.* Where did you ſee her laſt?

W. Haines. I remember ſeeing her at *Porterſham* on the 9th of *January* 753.

Mr. *Davy.* Do you know that young Man and Woman that are by her?

W. Haines. I do; they are *George* and *Lucy:* They were all three of them at my Door with *William Clarke* from *Abbotsbury*; they were going to their Quarters, the Sign of the *Chequer*, *Joſhua Frampton*'s Houſe; *Clarke* called at my Houſe, to know if I had done his Cloaths (I am a Taylor). I aſked the old Gentlewoman and the reſt to come into my Houſe, but they did not, and went on to the *Chequer*; after that I went down to the *Chequer*; there was one *Richard Chipman*; we drank a Pot of Beer: Mrs. *Squires* ſat in one Corner, and *George* in the other, and *Lucy* and *Clarke* before the Fire in the Kitchen.

Mr. *Davy.* What Sort of Weather was it that Night?

W. Haines. It was terrible bad Weather the next Day; I left them that Night there.

Mr. *Davy.* What makes you remember it to be the 9th of *January?*

W. Haines. I rent a Shop at *Abbotsbury*, and was going there on New-Year's Day; and becauſe of the Old *Chriſtmas*, I never went till *Monday* the 8th. Although I have known the old Woman ſo long, yet I never had any Knowledge of the young ones, till *William Clarke* courted *Lucy:* As for *George*, he might paſs by, but I never had any Knowledge of him till then. I lived two Years at *Abbotsbury:* I was once at Work at *George Clements*'s, and the old Woman happened to be there all the Time I was there, which was ſeven or eight Days.

Croſs-Examination.

Mr. *Nares.* What Time in the Afternoon did you ſee them at your Door on the 9th of *January?*

W. Haines. It was about Ten or Eleven o'Clock in the fore Part of the Day.

Mr. *Nares.* Did you go after them to the *Chequer?*—*W. Haines.* I did.

Mr. *Nares.* In how long Time after?

W. Haines. About an Hour or two after them.

Mr. *Nares.* How long did you ſtay with them?

W. Haines. I only drank a Pot or two of Beer.

Mr. *Nares.* Did you ſee *George Squires* there?

W. Haines. No, I did not ſee him there any Time after that Afternoon; after I went away, I went to *Abbotsbury*, and I met him in the Fields that come from *Abbotsbury*.

John Haines ſworn.

I am Son to *William Haines* of *Porterſham*; I live there with my Father.

Mr. *Willes.* Look at that old Woman; do you know her?

J. Haines. I have ſeen her before at *Porterſham* on the 9th of *January*.

Mr. *Willes.* Do you know her Son and Daughter?

J. Haines. Yes, I ſaw them there the ſame time.

Mr. *Willes.* What Day of the Week was the 9th of *January?*

J. Haines. It was on a *Tueſday*; they lay at the *Chequer*; *William Clarke* came with them; they came there about Nine, Ten, or Eleven o'Clock; *William Clarke* lay there, ſo did they; they went away about Nine or Ten the next Day; it was a very bad, rainy Day.

Croſs-Examination.

Mr. *Williams.* Did you ever ſee this old Woman before that Time?

J. Haines. I ſaw her at *Abbotsbury* on the 6th of *January*, and never before.

Mr. *Williams.* Did you ſee them in the Evening?

J. Haines. I do not remember I ſaw them in the Evening; I ſaw them the next Morning.

Mr. *Williams.* Did you ſee an Exciſeman there?

J. Haines. No, I did not.

Mr. *Williams.* How came you to be ſo particular as to the Day?

J. Haines. The Reaſon is, becauſe I ſaw them at *Abbotsbury* the 6th of *January*, the *Epiphany* Day; I was at *Abbotsbury* then.

Mr. *Williams.* How long have you lived with your Father?

J. Haines. Ever ſince I was born.

Mr. *Davy.* Upon your Oath, is this the *very* Woman?

J. Haines. It is; I cannot be miſtaken

Francis Bewley ſworn.

F. Bewley. I live at *Ridgway*, and keep a ſmall Public Houſe, the Sign of the *Sloop a-Ground*.

Mr. *Davy.* How many Miles is that from *Porterſham?*

F. Bew. It is four or five.

Mr. *Davy.* Look upon that old Woman there, and tell us whether you have ſeen her before?

F. Bew. I have ſeveral Times at my Houſe.

Mr. *Davy.* Did you ſee her at any Time about a Year ago at your Houſe?

F. Bew. I did on *Wedneſday* the 10th of *January*.

Mr. *Davy.* Were the Son and Daughter with her at that Time, and *Clarke* of *Abbotsbury?*—*F. Bew.* They were.

Mr. *Davy.* What Time might they come to you?

F. Bew. I believe, betwixt Nine and Eleven in the Morning.

Mr. *Davy.* Did they come in all together?

F. Bew. I don't know whether they came all together, but they were there all together in a ſhort time.

Mr. *Davy.* What had they to eat or drink?

F. Bew. At firſt they had ſome Roll and Cheeſe; I carried it myſelf; and they had ſome Beef-ſteaks for Dinner, at about One or Two o'Clock, or after; it was not much off of that.

Mr. *Davy.* Do you remember the Circumſtance of any body having a dead Horſe?

F. Bew. Yes, Sir; a Woman going from *Siron* Market to *Weymouth* Market, the Horſe was taken ſick upon the Road, and ſhe hired my Horſe to ride to *Weymouth* Market: She bid me take care of this Horſe, and get a Blackſmith to do ſomething to him, and the Horſe died on the *Wedneſday* Morning, at almoſt Day: I got a Man to lend me a Horſe to draw him out of my Stable to a Place behind my Houſe, under a Hedge: When the Woman came back, ſhe deſired me to give Somebody Six-pence to ſkin him, and the Horſe was a-ſkinning as they came along into the Yard.

Mr. *Davy.* Did *Clarke* ſtay at your Houſe that Night?

F. Bew. No, he did not: A Man was ſelling Turnips, with two Horſes, about the Pariſh; and *Clarke* had ſpoke to him, as far as I heard, to come to *he* to carry him Home on one of thoſe Horſes: It was a terrible wet Day as ever I know'd.

Mr. *Davy.* Where did the Gypſey-Woman, her Son and Daughter lie?

F. Bew. They lay at my Houſe that Night.

Mr. *Davy.* Before you was up in the Morning, did any body come to your Bed-ſide?

F. Bew. Yes, *George Squires* did, with his Mother: He told me he had a Pattern of a Waiſtcoat, *(he produces a Remnant of Nankeen)* this is the Stuff.

Mr. *Davy.* What did he ſay to you?

F. Bew. The firſt he ſaid was, he aſked me if I wanted a Waiſtcoat, and ſaid he had been to *Abbotsbury*, and Money was ſhort, and I ſhould have it cheap. I ſaid, I did not underſtand it, and I never had ſuch a Waiſtcoat in my Life, and I did not want it: With that his Mother came in, and ſaid, they were ſhort of Money, and deſired to leave it in my Hand, and deſired I'd take it for the Reckoning, which I did, and have had it ever ſince. They told me they would either ſend the Money, or bring it.

Mr. *Davy.* Had you ever, before this Time, ſeen the Gypſey-Woman and her Daughter?

F. Bew. I can't ſay juſtly to the old Woman; I once ſaw the Son and Daughter dancing at our Houſe, when they lodged at *Broadway* once.

Mr. *Davy* to *George Squires.* Look at this Piece *(he takes the Nankeen in his Hand)*.

Squires. I can't ſwear this is the ſame that I left with him, but it is very much like it; it is the ſame Sort of Stuff.

F. Bew. I wrote my Name upon it, before I let it go out of my Cuſtody to any body; my Name is now on it *(ſhewn to the Jury, and appeared with his Name on it)*.

Mr. *Davy.* How do you remember the Time particularly?

F. Bew. I am ſure it was that Time, by reaſon it was ſuch Weather, and the *Blandford* Seſſions were ſitting at Court; it was a Flood, and the dying of the Horſe, and ſeveral Circumſtances.

Mr. *Davy.* How far is *Blandford* from *Ridgway?*

F. Bew. It is fifteen computed Miles. We know that Seſſions is always kept the 8th or 10th of *January*; many of my Neighbours were at the Seſſions, and told me, when they came Home, what a Flood there was in going.

Croſs-Examined.

Mr. *Moreton.* Are you ſure this was *January* 53?

F. Bew. It was *January* was Twelve-month.

Mr. *Moreton.* Are you ſure you have ſeen *George* and his Siſter a-dancing before this?

F. Bew. Yes, Sir, I have, three or four Years back; but I can't ſay I had ſeen the old Woman; they lodged at *Broadway* then.

Mr. *Moreton.* What Trade did they carry on?

F. Bew. Upon my Word, I cannot tell.

Mr. *Moreton.* Did not you know of their dealing in Nankeens?

F. Bew. I never know'd they did; they brought this to me; I never ſaw them have a Bit in my Life before.

Mr. *Moreton.* How far is *Ridgway* from the Sea?

F. Bew. It is about two Miles.

Mr. *Moreton.* Was you up here when *Mary Squires* was tried?

F. Bew. No, I was not.

Mr. *Moreton.* Was you not apply'd to by *George* or *Lucy* to come up to that Trial?

F. Bew. No, I was not. I read in the News of a *Mary Squires* tried for a Robbery, but I did not know that it was this *Mary Squires*; I ſaid there were others of that Name.

Mr. *Davy.* Did you ever know a *Mary Squires* with ſuch a Face as this?—*F. Bew.* No, Sir.

Thomas Mockeridge ſworn.

Mr. *Davy.* Inform the Court who you are, and whether you have ever ſeen thoſe three Perſons, and when and where?

T. Mockeridge. I live at *Abbotsbury* now; I had been at *Ridgway* and *Upway* ſelling Turnips (it was very bad Weather) on the 10th of *January*, by the preſent Stile; it was the *Wedneſday* after Old *Chriſtmas-Day*. I found the old Woman, her Son *George*, and her Daughter *Lucy*, and *William Clarke*, at Mr. *Bewley*'s Houſe, at the Sign of the *Ship*; I had made an End of ſelling my Turnips before I came there; I came in, I believe, between Twelve and One at Noon, and think I ſtopp'd there till between Two and Three.

Mr. *Davy.* Had you ſeen the old Woman *Mary Squires* before?

T. Mockeridge. I had ſeveral Times. I remember ſeeing her at *George Clements*'s Houſe, going down towards the Sea, (we call it *Gracechurch-Street*) about three Years ago before that.

Mr. *Davy.* Are you ſure thoſe are the People you ſaw there that Day?

T. Mockeridge, I am upon my Oath, and will not come here to ſpeak a falſe Word for the World.

Mr. *Davy.* Do you know of any Accident that happened to a Horſe on this Day?—*T. Mockeridge.* No, I do not.

Croſs-Examined.

Mr. *Nares.* Where did you go back to afterwards?

T. Mockeridge. To *Abbotsbury:* I had two Horſes; I rode one, and *William Clarke* the other; he went to *Porterſham*, where he lodged, and I went Home with my Horſes; he took leave of thoſe People at *Ridgway*.

John Taylor ſworn.

J. Taylor. I live at *Fordington*, at the Sign of the *Coach and Horſes*.

Mr. *Davy.* Whereabouts is that?

J. Taylor. It is joining *Dorcheſter*; it is not a Stone's-caſt apart; many do miſtake it for Part of the Town.

Mr. *Davy.* Do you remember this unhappy old Woman?

J. Taylor. I know her perfectly well; I have ſeen her above once or twice.

Mr. *Davy.* Do you know that Girl and the young Man there?

J. Taylor.

J. Taylor. I do, and have known them ſome Years; they are her Son and Daughter; I ſaw them at *Fordington* on *Thurſday* the 11th of *January*; they were not in my Houſe, they were in my Stable on the 10th; there was ſuch a Rain, they could not paſs along the Road; the Waters were ſo high, they went through a Neighbour's Houſe and my Stable the back Way.

Mr. *Davy.* Are you a Miller?

J. Taylor. No, but there is a Mill lies cloſe by my Door.

Mr. *Davy.* How did they get through the Water?

J. Taylor. The old Woman took up her Coats and went along through it, and the young Woman was carried over by the Miller's Boy on Horſe-back.

Mr. *Davy.* Did you ſee the old Woman croſs on Foot?

J. Taylor. Yes, Sir, to be ſure, I ſaw it as plain as I ſee you.

Mr. *Davy.* When was this?

J. Taylor. It was on *Thurſday* the 11th of *January* 53, in the Forenoon, betwixt the Hours of Eight and Eleven.

Mr. *Davy.* Did you ſee her walk all the Way through the Water?

J. Taylor. I ſaw her go along Part of it, I did not ſee it all, becauſe it is two or three Rivers; I ſaw her go over two of the Rivers.

Mr. *Davy.* Did you ſee any body carry her over?

J. Taylor. Nobody carried her, ſhe went on Foot.

Mr. *Davy.* Did you ſee the old Woman croſs all the Rivers?

J. Taylor. She went over the Bridges, as far as I know of it; ſhe forded the Water at my Stable-door, or as near it as it is croſs the Court-yard; I did not ſee her walk through all the Water; I had no Buſineſs to watch her; *George* had told me they lodged at Mr. *Bewley*'s, at *Ridgway-Foot*, the Night before.

Mr. *Davy.* Did they tell you whither they were going?

J. Taylor. I can't tell where they were going; they were in the *Blandford* Road.

Croſs-Examined.

Mr. *Williams.* You ſay you ſaw the Miller's Boy carry over the Daughter?

J. Taylor. He carried her over all of it: The Place where he took her up ſhe waded through, and after that there be Bridges; one is Stone, and the reſt are wooden ones.

Mr. *Williams.* How far is it from your Houſe to *Chettle?*

J. Taylor. I cannot tell; I believe it ſeventeen or eighteen Miles; but I don't know where it is.

Thomas Hunt ſworn.

T. Hunt. I live at *Chettle*, I am a Threſher.

Mr. *Willes.* Look at that old Woman, her Son and Daughter: Have you ſeen them before?

T. Hunt. I have at *Chettle*, on *Friday* the 12th of *January* 53, about Four in the Afternoon: The old Woman came into our Back-ſide, to the Barn-door to me, and begged Lodging of me; there was no Public-Houſe in the Place; I let her lie in an Out-houſe on ſome clean Oat-ſtraw; it belongs to Mr. *Watts* of *Cranborne*: I aſked her, if ſhe had any body belonged to her? ſhe told me ſhe had none but a Couple of Children, and immediately called, Why don't you come along? and immediately there came a Man and Woman.

Mr. *Willes.* Look at that Man and Woman near her; do you know them?

T. Hunt. The Man I can ſwear to ſafely; the Woman I do not ſo much, becauſe ſhe was covered over: I know the Man full well, as I know my right Hand from my left; I let them in at Night, and there I found them in the Morning; and the Morning being very wet, they remained there till Ten or Eleven o'Clock, or it may be ſomething more.

Mr. *Willes.* Had you ever ſeen the old Woman before?

T. Hunt. I had not; but I am very ſure it is the Woman, before God and the World.

Mr. *Willes.* How can you fix upon the Time?

T. Hunt. It was a very remarkable Day, the Old New Year's-day, which proved, by altering the Stile, to be the 12th of *January*.

Croſs-Examined.

Mr. *Moreton.* Did you ever ſee them before?

T. Hunt. No, never before that *Friday*.

Mr. *Moreton.* Have you ſeen them ſince?

T. Hunt. I have, in the City, about a Month before *Michaelmas*.

Mr. *Moreton.* Do you know where they came from, that Day you ſaw them at *Chettle?*——*T. Hunt.* No, Sir, I don't.

Mr. *Moreton.* How far is *Ridgway-Foot* from *Chettle?*

T. Hunt. I don't know.

Mr. *Moreton.* How far is *Chettles* from *Dorcheſter?*——*T. Hunt.* They count it twenty Miles; but I never was there in my Life.

John Elderton ſworn.

J. Elderton. I am a Servant-man; a Carter to one Farmer *Thane*, at *Martin*; I have ſeen that old Woman, and the young Woman, and the young Fellow.

Mr. *Gaſcoyne.* Where?

J. Eld. At *Martin*, on *Saturday* Seven-night after Old *Chriſtmas-day*, in the Year 53, in the Afternoon, about Four o'Clock; they all three lay in an Out-houſe where I live; the old Woman came firſt, and aſked my Maſter leave to lie there.

Mr. *Gaſcoyne* Did you hear her?——*J. Eld.* I did.

Mr. *Gaſcoyne.* Was there Straw or Hay?

J. Eld. Straw; I ſaw them all in the Out-houſe about Four in the Evening, and on the Morning before they went away.

Mr. *Gaſcoyne.* What Time did you ſee them in the Morning?

J. Eld. I ſaw them about Eight o'Clock; they were getting up; I am ſenſible they are the three People.

Mr. *Gaſcoyne.* Had you ever ſeen the old Woman before?

J. Eld. No. I had not.

Mr. *Gaſcoyne.* Is your Maſter Farmer *Thane* here?

J. Eld. No; he was coming up, but was taken ſick on the Road; he came to *Saliſbury* in Company with us, and there we left him; he came to give Evidence in this Trial.

Croſs-Examined.

Mr. *Nares.* What Time did they come to your Maſter's?

J. Eld. About Four o'Clock.

Mr. *Nares.* Did they all come together?

J. Eld. The old Woman came a little before the others: When Maſter had granted Lodging, ſhe went and called them; then they came.

Mr. *Nares.* What is getting up out of a Barn?

J. Eld. It is dreſſing themſelves; putting on their Cloaths, or tackling themſelves up.

Mr. *Nares.* Did you ſee any Sheets they had?

J. Eld. No, I did not ſee any.

Mr. *Nares.* Did you ſee any of their Cloaths off?

J. Eld. No, I did not; they were tying their Cloaths up.

Mr. *Nares.* Did you ſee their Gowns off, or Caps off, or Petticoats off?

J. Eld. No, Sir.

Mr. *Davy.* Did the Straw appear as if they had laid on it?

J. Eld. It did; there were Marks where they had laid.

William Hort ſworn.

W. Hort. I live at *Martin*.

Mr. *Davy.* Look at that old Woman; did you ever ſee that Face before?

W. Hort. Yes, Sir, I have, at *Martin*.

Mr. *Davy.* Do you know that Girl behind her, and that Man near her?

W. Hort. Yes, Sir, I do; they are the Woman's Daughter and Son, for what I know.

Mr. *Davy.* When did you ſee them before?

W. Hort. I ſaw them all three at *Martin*, on *Saturday* Seven-night after old *Chriſtmas-day*; they lay in an Out-houſe at Farmer *Thane*'s.

Mr. *Davy.* What do you mean by an Out-houſe?

W. Hort. By that I mean a Barn, or Place where was Straw.

Mr. *Davy.* How did they lie?

W. Hort. I don't know; I did not ſee them lie in Bed: I am Farmer *Thane*'s Servant; they aſked Leave of Maſter to lie there.

Mr. *Davy.* What did they lie upon?

W. Hort. I cannot ſay what they lay upon, there was Straw.

Mr. *Davy.* Do you take upon you to ſay theſe are the ſame three Perſons?

W. Hort. I do, by my Life; That I ſay in the Preſence of God.

Mr. *Davy.* Look upon them again.

W. Hort. I do, I am ſure they are the ſame.

Croſs-Examined.

Mr. *Williams.* How long did they ſtay?

W. Hort. They came in the Evening, and went away the next Morning.

Mr. *Williams.* Did you ſee them at any other Time?

W. Hort. I ſaw the old Woman in Maſter's Houſe by the Fire, and her Daughter was joining China for them.

John Blandford ſworn.

J. Blandford. I live with Farmer *Thane*, at *Martin*.

Mr. *Willes.* What are you?——*J. Bland.* I am a Blackſmith.

Mr. *Willes.* Look at that old Woman.

J. Bland. I ſaw her there on the *Saturday* Evening, ſeven Nights after Old *Chriſtmas*, about Four o'Clock, or ſomething after, which is the 13th of *January*.

Mr. *Willes.* Did you ſee only the old Woman?

J. Bland. No, I only ſaw her, becauſe ſhe came in before them.

Mr. *Willes.* Had you ever ſeen her before that Time?

J. Bland. No, I don't know that ever I did.

Mr. *Willes.* Did ſhe lie at Farmer *Thane*'s?

J. Bland. She did ſomewhere, but I cannot tell where; I did not ſee her afterwards then.

Croſs-Examined.

Mr. *Moreton.* How long might you ſee her?

J. Bland. It might be Half a Quarter of an Hour, or ſomething leſs.

Mr. *Moreton.* Have you ſeen her ſince that Time?——*J. Bland.* I have.

Mr. *Moreton.* When?——*J. Bland.* Laſt *Wedneſday*.

Mr. *Moreton.* Yet you can ſwear to her after a Year and Half?

J. Bland. Yes, Sir, if it was twenty Years I could.

Joſeph Hayter ſworn.

J. Hayter. I live at *Coombe*, and am a Maltſter.

Mr. *Gaſcoyne.* Do you know that old Woman, and young Man and Woman?

J. Hayter. I do all three: I ſaw them between *Martin* and *Coombe* the *Sunday* Seven-night after Old *Chriſtmas*: I met them on the Road as they were coming for *Coombe*, about Eleven in the Morning.

Mr. *Gaſcoyne.* What Year do you mean?

J. Hayter. I mean in the Year 53; the young Man was a little before them, and the old Woman had hold on the Daughter's Hand: The young Man aſked me, how far it was from *Coombe?* I ſaid, I thought he knew as well as I did (as I had ſeen him before); the old Gentlewoman was half a Dozen *Luggs* behind him; ſhe aſked me, and I told her, it was two Miles and a Half.

Mr. *Gaſcoyne.* Had you ſeen them both before?

J. Hayter. I had, but I can't ſay I had ſeen the young Woman before.

Mr. *Gaſcoyne.* What is the Reaſon you know that particular Day?

J. Hayter. By reaſon my Wife was gone over to keep *Chriſtmas*, and I was going to fetch her home from *Martin*: And I ſaw them again the ſame Day at *Coombe*; I came back to *Coombe* again the ſame Night: I ſaw them on the *Monday* Morning at Seven o'Clock; I ſaw them at Mrs. *Greville*'s, the Sign of the *Lamb*; *Thomas Greville* is dead; I went down to aſk him if he had a Load of Furz, I wanted a Load; there this old Gentlewoman ſat in the Corner, and *George* ſtood up in the Middle of the Houſe, and *Lucy* ſtood by him; I never ſpoke a Word to them then.

Croſs-Examination.

Mr. *Nares.* How long before this was it that you had ſeen this old Woman before?——*J. Hayter.* I cannot ſay, it may be two Years.

Mr. *Nares.* What did you take them to be?

J. Hayter. I took them to be what we call Gypſey People.

Mr. *Nares.* Where had you ſeen *George* before?

J. Hayter. I had ſeen him often at *Coombe*.

Mr. *Nares.* Without his Mother?

J. Hayter. Yes, and with his Mother some Years back; but she might be there at that Time, and I not see her.

Mr. *Nares.* Is *Coombe* a Market-Town?

J. Hayter. No, it is a Village; I heard of her being indicted for robbing a Girl, and I was applied-to to come up.

Mr. *Nares.* Was you here when *Greville* was indicted?

J. Hayter. No, I was not here Time enough.

Mr. *Nares.* Did you come up to the old Woman's Trial?

J. Hayter. I was not applied-to to come up; I told it, as soon as ever I heard *Greville* went, that I met her in such a Place.

Mr. *Nares.* Why did you not appear to give Evidence before?

J. Hayter. I was not subpœna'd, is the Cause I did not come.

Mary Greville sworn.

M. Greville. I live at *Coombe.*

Mr. *Davy.* What Relation are you to *Thomas Greville*, who was indicted for Perjury here?

M. Grev. I am Sister to him; he is dead.

Mr. *Davy,* Look at that old Woman, and the Girl in a Capuchin, and the Man behind her.---*M. Grev.* I know these three Persons.

Mr. *Davy.* Where did you see them?

M. Grev. I saw them on the 14th of *January,* on a *Sunday,* at my Mother's House, the Sign of the *Lamb* at *Coombe*; I live in the same House; they went away on the *Monday* Morning.

Mr. *Davy.* Do you speak with absolute Certainty that these are the very Persons you saw, and no other?

M. Grev. These be the very Persons indeed.

Mr. *Davy.* May you not be mistaken?---*M. Grev.* It is impossible I should; I am very well satisfied I am not mistaken in them.

Mr. *Davy.* Had you ever seen them before?

Mr. Grev. I don't remember I ever did.

Mr. *Davy.* Did you notice the old Woman?---*M. Grev.* Yes, I did.

Mr. *Davy.* I speak of her Features, not her Profession.

Mr. Grev. That is what I mean; and that is the very Son and Daughter indeed.

Cross-Examined.

Mr. *Williams.* Who waited upon them?

M. Grev. My Mother did; they were by the Kitchen Fire.

Mr. *Williams.* What Time did they come in?

M. Grev. They came in between Two and Three in the Afternoon.

Mr. *Williams.* When did they go away?

M. Grev. They went away between Seven and Eight in the Morning.

Mr. *Williams.* How far is *Coombe* from *Martin?*

M. Grev. It is four Miles.

George Towil sworn.

G. Towil I live at *Coombe*; I have seen that old Woman and her two Children before.

Mr. *Willes.* When did you see them before?

G. Towil. I saw them the *Sunday* was Seven-night after Old *Christmas-Day*, which was the 14th of *January.*

Mr. *Willes.* Are you certain of it?---*G. Towil.* I am very certain.

Mr. *Willes.* Where did you see them?

G. Towil. At *Mary Greville*'s, at the Sign of the *Lamb.*

Mr. *Willes.* Were you in Company with them?

G. Towil. No, I was not; Nobody but the Landlady and I drank together; we were passing our Accounts.

Mr. *Willes.* How long was you there?

G. Towil. I believe I was there from Two o'Clock to Four.

Mr. *Willes.* Had you ever seen the Gypsey-Woman before?

G. Towil. I don't know that ever I did: There was another Man in Company with them; I believe he was a Carpenter; he had a leather Apron on: He ask'd me, if I was a Carpenter; I said, I was a Well-wisher to it.

Cross-Examined.

Mr. *Moreton.* When was you called?

G. Towil. The first Time I was subpœna'd was in *May.*

Mr. *Moreton.* Have you been to see the old Woman since?

G. Towil. I have, and am sure it is the same Woman.

Mr. *Moreton.* Are you sure to them all?

G. Towil. I am.

Richard Aimer sworn.

R. Aimer. I live at *Coombe*, and am Servant to Farmer *John Harris.*

Mr. *Gascoyne.* Look at that old Woman: Who is she?

R. Aimer. Mary Squires; and she in the Capuchin is her Daughter *Lucy*; and the other Person by her is her Son *George.*

Mr. *Gas.* Where have you seen them before?

R. Aimer. I saw them at *Coombe* on *Sunday* the 14th of *January* 1753, just after One o'Clock; they were travelling upon the Road.

Mr. *Gas.* Did you speak to them?---*R. Aimer.* Her Son ask'd me, how far it was to *Sutton?* I said, I could not tell, for I was never there.

Mr. *Gas.* What Conversation had you with the old Woman?

R. Aimer. It was in the Way of bantering and telling of Fortunes.

Mr. *Gas.* Did you speak to the young Woman?

R. Aimer. I never said a Word to her; I saw the old Woman afterwards; she came to our Master's Door.

Mr. *Gas.* Do you know what for?

R. Aimer. No, I don't; and I saw her Son on the *Monday* Morning at the Widow *Greville*'s, at *Coombe*, but I never spoke a Word to him there, or he to me.

Mr. *Gas.* Did you see the old Woman or Daughter on the *Monday?*

R. Aimer. No, Sir, I did not.

Cross-Examined.

Mr. *Nares.* When they spoke to you between *Sutton* and *Coombe*, did you know them?---*R. Aimer.* No, Sir.

Mr. *Nares.* Then how do you know that this is *George* and *Lucy?*

R. Aimer. I know that only as they told me since, for I never saw them before in my Life.

Mr. *Nares.* Did the old Lady tell you your Fortune?

R. Aimer. Yes.

Mr. *Nares.* All is come true, I hope?

R. Aimer. I did not think any Thing was true when it was done.

Mr. *Nares.* What did you give her for telling you your Fortune?

R. Aimer. Two-pence.

Mr. *Nares.* Were her Daughter and Son by?

R. Aimer. They went on while we talked together.

Mr. *Nares.* What Time did you see her at *Coombe?*

R. Aimer. Upon my Return there in the Evening I saw her.

Mr. *Nares.* Have you seen her since?

R. Aimer. I never saw her since, till I saw her in *Newgate.*

Robert Merchant sworn.

R. Merchant. I live at *Coombe*, I am a Carter.

Mr. *Davy.* Do you know that old Woman?

R. Merch. I do, very well.

Mr. *Davy.* Do you know her Son and Daughter?

R. Merch. They were gone on, when I saw the old Woman.

Mr. *Davy.* Where did you see the old Woman?

R. Merch. At *Coombe*, the 14th of *January.*

Mr. *Davy.* Do you know the Day of the Week?

R. Merch. No, Sir.

Mr. *Davy.* How do you know it to be the 14th of *January?*

R. Merch. By my Master's Account and the Farrier's; I ask'd Master that Day, what Day of the Month it was?

Cross-Examined.

Mr. *Williams.* When did your Master tell you it was the 14th of *January?*

R. Merch. We had a Horse bad that very Day the Woman was there; and Master and the Farrier disputed it to the best of their Knowledge, that *that* was the Day that I saw her.

Mr. *Williams.* What is your Master's Name?

R. Merch. My Master is Farmer *John Harris.*

Mr. *Williams.* When had you this Dispute?

R. Merch. We had no Dispute at all.

Mr. *Williams.* When did you hear your Master say it was the 14th of *January?*

R. Merch. The same Day the Woman was there.

Mr. *Williams.* How came you to be talking of the Day of the Month?

R. Merch. Being the Horse was bad, Sir; and because the Horse was bad, they set down the Day of the Month.

Mr. *Williams.* What, were they settling their Accounts?

R. Merch. They were, so far as I know: Master was to pay the Farrier Money for curing the Horse.

Mr. *Williams.* Was there any Talk then about the Gypsey?

R. Merch. No, Sir, I heard no Talk about the Gypsey.

Martha Waters sworn.

M. Waters. I live at *Coombe.*

Mr. *Willes.* Did you ever see that old Woman before?

M. Waters. Yes, I have at *Coombe*, on the 14th of *January.*

Mr. *Willes.* Were her Son and Daughter with her?

M. Waters. No, Sir; I saw her at a Farmer's House where I live.

Mr. *Willes.* How came she to come there?

M. Waters. She came and asked for some Small-Beer.

Mr. *Willes.* Had you ever seen her before?

M. Waters. No, I never did; but I am sure she is the Woman.

Cross-Examined.

Mr. *Moreton.* How long did she stay there?

M. Waters. She stayed there about the Value of a Quarter of an Hour.

Mr. *Moreton.* Did she tell thee thy Fortune?

M. Waters. No, she did not; I did not want it.

Mr. *Davy.* Your Lordship may remember, that *George Squires* could give no Account of Places between *Coombe* and *Basingstoke*, therefore we could not collect any Evidence between these Towns; so the next Witness comes from *Basingstoke*, which you will find to be forty Miles from *Coombe*, and that is four Days Journey, according to their Rate of Travelling: They were at *Coombe* on the 14th of *January*, and you will find them at *Basingstoke* on the 18th.

Mary Morris sworn.

M. Morris. I live at *Basingstoke*, at the *Spread-Eagle.*

Mr. *Davy.* Look at that old Woman.

M. Morris. That old Gentlewoman is *Mary Squires*, and the young Woman is *Lucy Squires*, and the young Man is *George Squires.* I wrote a Letter for the young Woman on the 18th of *January.*

Mr. *Davy.* What Day of the Week was it?

M. Morris. Really I will not be positive; it was on a *Thursday* or *Friday*; it was for one *Clarke* at *Abbotsbury.*

Mr. *Davy.* Look at this Letter; is this your Writing?

M. Morris. (She takes it in her Hand)—Sir, it is my Hand-writing, Directions and all; my little Boy carried it to the Post-Office, and Mr. *Squires* gave him a Half-penny because he did not stay.

(The Letter read, directed "To the Post-House in *Dorchester*, to be directed to *Abbotsbury* for Mr. *William Clarke*, Cordwainer. This with "Care."

"*Basingstoke, Jan.* 18, 175*.

"*SIR.*

"This, with my kind Love and Service to you, and all your Family, "hoping you are all in good Health, as I be at present. This is to acquaint you, that I am very uneasy for your troublesome Journey, hoping you received no Illness after your Journey; so no more at present "from

"*Your most obedient and humble Servant,*

"LUCY SQUIRES.

"I desire to hear from you as soon as possible. Direct for *Lucy Squires* "at *Brentford*, near *London. George* and Mother give their Compliments "to you, and all your Family."

Mr. *Davy.* You are sure this is your Hand-writing?

M. Morris. This is my own Hand-writing, which I wrote at *Basingstoke*, at the Request of *Lucy Squires.*

* The other Figure being in the Corner was supposed to be torn off.

Mr. *Davy.* Were the old Woman and Son there then?

M. Morris. They were in the Houſe all the Time; they would have lodged at my Houſe, but I had not Lodgings; they had a Pint or two of Beer, and eat a Bit of Bread, and went on to *Old Bayſing.*

Mr. *Davy.* How far is *Old Bayſing* from *Baſingſtoke?*

M. Mor. It is about two Miles.

Mr. *Davy.* Is it not poſſible you may miſtake theſe People for any other Gypſies?

M. Mor. I am poſitive that theſe are the very People I ſaw at my Houſe.

Croſs-Examined.

Mr. *Nares.* Had the old Woman ever been at your Houſe before?

M. Mor. She had lain at my Houſe about a Year and three Quarters before.

Mr. *Nares.* None but the old Woman?

M. Mor. No; I never ſaw the Son and Daughter before.

Mr. *Nares.* Are you ſure this Letter was wrote the Day it bears Date?

M. Mor. I am poſitive ſure it was.

Mr. *Willis* ſworn.

Mr. *Willes.* How far is *Coombe* from *Baſingſtoke?*

Willis. It is about forty Miles.

Mr. *Willes.* Where had you this Letter?

Willis. When I came to the Poſt-office at *Dorcheſter*, which is the neareſt Poſt-office to *Abbotsbury*, the Directions being very blind, the Poſt-maſter had ſent it under Miſtake to one *Clarke*, as I underſtood, at *Charlſter*, who ſent his Wife with it immediately.

(The Court look upon the Back of the Letter, and diſcover two Poſt-marks upon it.)

Thomas Ravenhill ſworn.

T. Ravenhill. I belong to the Poſt-office; I am Aſſiſtant-Clerk to the Weſtern Road.

Mr. *Davy.* Look at the Poſt-mark upon that Letter, and tell us where the Letter was marked.

T. Raven. This is a Mark of the General Poſt-office in *London.*

Mr. *Davy.* What Day of the Month does it appear to be ſtamped?

T. Raven. The Stamp is very imperfect; I cannot take upon me to ſpeak with Certainty.

Mr. *Davy.* Of whoſe Hand-writing is the Poſt-charge?

T. Raven. This is mine, that is the Charge, which is Seven-Pence; the original Place where it came from to *London* is Three-Pence; that is Three-Pence up, and Four-Pence down: it is directed to be left at the Poſt-houſe in *Dorcheſter*, that is Four-Pence.

Mr. *Davy.* See what Part of the printed Mark do you find plain?

T. Raven. The Stamp is ſo very imperfect, that I cannot with any Degree of Certainty tell; the 9 is very plain; whether it is 19 or 29 I cannot ſay; it is not the 9th, for if it was, that Figure would have been in the Center.

Mr. *Davy.* Look at the Letters at the Bottom of the Circle.

T. Raven. The ſecond Letter ſeems to be an A.

Mr. *Davy.* I think your Stamps are marked MR for *March?*

T. Raven. They are.

Mr. *Davy.* Then there can be the Name of no Month, the ſecond Letter of which is A, but *January* and *May.*

T. Raven. I do not recollect that the ſecond Letter of any Stamp is A, but that of *January* and *May.*

Mr. *Davy.* Can you get the Stamps from the Poſt-office, that the Court may ſee them?

T. Raven. Yes. (*He goes, and returns with ſeveral Impreſſions on Paper, as* Jan. 9, Jan. 19, Jan. 29, *and* May 1, March 26.) Theſe are all the Stamps where A is the ſecond Letter; all the inland Stamps have the Figure on the Top of the Letter, and the foreign Stamps have it at the Bottom; the Figure 9 is placed not in the Center, but juſt over the ſecond Letter.

Mr. *Davy.* Look at this Letter; do you believe that Stamp to be *January?*

T. Raven. I cannot form an Opinion of it, more than any Stranger to it; I believe it to be the 19th or 29th, rather than the 9th.

Croſs-Examined.

Mr. *Moreton.* What are thoſe Stamps made of?

T. Raven. They are made of Box.

Mr. *Moreton.* Do you ſtamp a Letter for 52 with the ſame Stamp of 51?

T. Raven. No, we do not; we uſe every Day one, and they laſt no longer; ſometimes, at the latter End of the Day, it is ſo defaced and clogged, that it will hardly laſt a Day; and after they have been uſed, they are thrown into a Drawer, where they remain five or ſix Months, and then we burn them.

Mr. *Moreton.* Are you ſure this Mark of the Charge is your Mark?

T. Raven. I am very ſure it is.

Mr. *Davy.* Has *Baſingſtoke* a Stamp to it?

T. Raven. I can't ſay whether it has or no.

Mr. *Davy.* Is there a Poſt-Maſter there?

T. Raven. There is.

Mr. *Davy.* Have not all Poſt-Maſters Stamps?

T. Raven. I can't ſay whether they have or not.

Mr. *Davy.* Look at this, and ſee if there is a Poſt-mark upon it.

T. Raven. I ſee very plainly there is a Mark; but it is ſo blind, I can't diſtinguiſh what it is.

Mr. *Davy.* Is it a Mark of two Lines?

T. Raven. I believe it may be a Poſt-mark of two Lines.

Mr. *Davy.* Why have ſome two Lines, and ſome but one?

T. Raven. Thoſe of two Lines are generally where the Town's Name is a long one.

Elizabeth Edwards ſworn.

E. Edwards. I live at *Brentford.*

Mr. *Willes.* Look at that old Woman, and theſe two People with her.

E. Edwards. I ſee her, and her Daughter and Son; they came all three into my Houſe; I don't know the Day, but we had a Neighbour's Child chriſtened at the Time they were there; (*ſhe produces the Copy of the Regiſter*) this is a true Copy of the Regiſter of the Child when it was chriſtened; Mr. *Gaſcoyne* went himſelf and took it out of the Book.

Mr. *Willes.* Can you tell by any other Circumſtance?

E. Edwards. No, I cannot.

Mr. *Willes.* What Day was it the Child was chriſtened?

E. Edwards. By this it was the 22d Day of *January*, and the old Woman went away on the 23d, being on a *Tueſday*; but they came to my Houſe on the *Saturday* before.

Mr. *Willes.* Do you keep a Public-Houſe?

E. Edwards. No, I do not; I keep a Shop: they lodged at my Houſe: *George* went out on the *Sunday*, and brought his other Siſter to our Houſe on the *Monday*, and they went all away together on the *Tueſday* Morning betimes towards *London.*

Mr. *Willes.* What did they call the other Siſter's Name?

E. Edwards. I have forgot what he called her, but one of them he called *Lucy.*

Mr. *Willes.* Was that ſhe that he brought on the *Monday?*

E. Edwards. No, it was not.

Mr. *Willes.* Are you ſure they were at your Houſe at that Time?

E. Edwards. I am poſitive they were.

Suſannah Burwill ſworn.

S. Burwill. I live at *Brentford*; the laſt Witneſs is my Mother; ſhe has had two Huſbands, which is the Reaſon our Names differ.

Mr. *Gaſcoyne.* Do you know that old Woman there?

S. Burwill. I do: I never ſaw her before ſhe came to my Mother's. I know them all three; they all came together on a *Saturday* Night, the 20th of *January*; they aſked for Lodgings, and ſaid they were recommended by a Friend of my Mother's, and my Mother let them lie there: On the *Sunday* the old Gentlewoman and her Daughter ſtayed there, and the Son went to *London*, and did not come home till the *Monday*, and then he brought a Siſter (as he called her) with him.

Mr. *Gaſcoyne.* What Time did he return?

S. Burwill. I can't tell the Time directly; it was ſome Time of the Day.

Mr. *Gaſcoyne.* Did they lie there on *Monday* Night?

S. Burwill. They did, Sir, and went all four of them away on the *Tueſday* Morning.

Mr. *Gaſcoyne.* Did they ſay where they were going?

S. Burwill. They ſaid they were going to *Epping* in *Eſſex.*

Mr. *Gaſcoyne.* Can you tell what Time they went away?

S. Burwill. I really cannot; they went away ſome Time in the Morning.

Croſs-Examined.

Mr. *Nares.* Had you ever ſeen them before?

S. Burwill. No, I never had, to my Knowledge.

William Tredget ſworn.

W. Tredget. I live at *Tottenham*, at the *Seven Siſters*, the Sign of the *Two Brewers.*

Mr. *Davy.* How far is that from *London?*--*W. Tredget.* It is four Miles.

Mr. *Davy.* How many Miles is it from *Enfield-Waſh?*

W. Tredget. I cannot juſtly tell: I know the Place.

Mr. *Davy.* Look at thoſe three People,—that old Woman, and the Daughter and Son.

W. Tredget. I remember the old Woman very well, and the Daughter and Son too.

Mr. *Davy.* Where did you ſee them?

W. Tredget. I ſaw them at *Tottenham* on the 23d of *January*, which was on a *Tueſday*: I am ſure to the Day and the People.

Mr. *Davy.* Where did they ſay they came from?

W. Tredget. They ſaid they came from *Brentford.*

Mr. *Davy.* Did they lie at your Houſe?

W. Tredget. No, they did not; I told them I had no Lodging, and directed them over the Way to a Farm-houſe, one Mr. *Philips*'s; but cannot ſay whether they lay there or not.

Mr. *Davy.* What Time of the Day did they call at your Houſe?

W. Tredget. It might be about Four; it was a little before Candle-lighting.

Mr. *Davy.* Had you ever ſeen them before?

W. Tredget. I cannot ſay I ever did, unleſs it was the old Gentlewoman; I believe I had ſeen her about three Years before; I had taken Notice of her Face, that ſhe was a Woman not common to be ſeen, the laſt Time.

Mr. *Davy.* Had you taken Notice of her Face before that Time?

W. Tredget. No.

Mr. *Davy.* When you ſaw her upon the 23d of *January*, did you recollect that you had ſeen her before?

W. Tredget. No; but when they came to aſk me to come and ſee her in *Newgate*, then I recollected that it was the Face I had ſeen three Years before.

Mr. *Davy.* Do you now ſay, upon your Oath, that theſe are the very People whom you ſaw upon the 23d of *January?*

W. Tredget. It is the very ſame Woman; I ſaw her then at *Page-Green*; then her Son and Daughter were with her, but not when I ſaw her before, as I know of.

Croſs-Examined.

Mr. *Williams.* How many People did you ſee at *Page-Green*, that aſked for Lodging on the 23d of *January?*

W. Tredget. I ſaw none but the old Woman, *George* and *Lucy.*

Mary Tredget ſworn.

M. Tredget. I am Wife to the laſt Witneſs; we live at *Page-Green*; I ſaw the old Gypſey at my Houſe on *Tueſday* the 23d of *January*; ſhe aſked us for Lodgings; I did not let them have any, but recommended them to a Farm-houſe over the Way.

Mr. *Willes.* What is the Farmer's Name?

M. Tredget. His Name is *Philips.*

Mr. *Davy.* My Lord, we have now gone through the Proof of the *alibi* of *Mary Squires*, and brought her to *Page-Green*, within two or three Miles of *Enfield-Waſh:* We will leave her there for the preſent, and proceed to another Part of our Caſe, which goes in Contradiction to the whole of the Defendant's Evidence: We ſhall therefore call Witneſſes to prove, that her Information before Mr. Alderman *Chitty*, on the 31ſt of *January*, differed in many Inſtances from what ſhe ſwore afterwards; and that ſhe at firſt gave a falſe Deſcription of the Place ſhe pretends to have been

been confined in, and varied in her Story after she had been carried to *Wells*'s House at *Enfield-Wash*, on the 1st of *February*: We will also give your Lordship and the Jury a true Description of this supposed Prison, and of what happened there on the 1st of *February*. We beg Leave first to examine Mr. Alderman *Chitty*; but I must let the Gentlemen concerned for the Defendant know the Names of the Witnesses we intend to call to this Part of our Case, that they may also be examined separately; Mr. *Chitty*, Mr. *Nash*, Mr. *Hague*, Mr. *Aldridge*, and *William White*.

WEDNESDAY the 1st of *May*.

Alderman *Chitty* sworn.

Mr. *Gascoyne*. Be pleased, Sir, to give an Account of what passed before you on the 31st of *January* 1753, relating to *Elizabeth Canning*.

Alderman *Chitty*. I was the Sitting Alderman at that Time; *Elizabeth Canning* was brought before me, but as it is about a Year and Half ago, I cannot give a distinct Account of it. I remember it was on the 31st of *January*, about Half an Hour after Twelve, or One o'Clock. Mr. *Lyon* and another Person (I believe it was Mr. *Nash*) came to me. There were a few Notes taken for my own Memorandum, which I believe are in Court, which are the Substance of what passed.

Mr. *Gascoyne*. Were they signed by her?

Alderman *Chitty*. No; I took it on Paper, as I generally do; but not thinking it would have been the Subject of so much Inquiry, I did not take it so distinct as I could wish. *(He produces a Paper.)*

Mr. *Gascoyne*. Is this your Hand-writing?

Alderman *Chitty*. It is; this is not what I had taken at that Time, but what I took since from that Paper I took then of her's, and other Persons that were brought before me.

Mr. *Gascoyne*. Then is this the Substance of that Account of her's you took?——Alderman *Chitty*. It is.

Mr. *Gascoyne*. You may refresh your Memory by looking on it, and give the Court an Account of it; you may read it.

He reads. "A Copy of the Minutes taken by *Thomas Chitty*, upon "the Examination of *Elizabeth Canning*, at *Justice-Room*, *Guildhall*, *Jan.* "31, 1753.

"*Elizabeth Canning* swore, that on last New-Year's Day, as she was "returning from her Uncle's, about *Saltpetre Bank*, as she came along "by the dead Wall against *Bed'am*, in *Moorfields*, about or near Ten "o'Clock at Night, she was met by two Men, who stripped her, and "robbed her of Half a Guinea, three Shillings, and a Halfpenny."

Mr. *Davy*. Are you sure she said a Halfpenny?

Alderman *Chitty*. I am sure she did; also her Gown from her Back. (Now I would observe, here I asked her, What else? she said, a Hat; she said it was a Straw or Chip Hat; I did not put that down, but I as well remember it as if it was but Yesterday.) She said, "A Hat from "her Head; she struggled and made a Noise; one stopped her Mouth "with something like a Handkerchief; and swore, if she made any Noise "or Resistance, they would kill her, and then hit her a Blow over the "Head, and stunned her, and *forced her along* Bishopsgate-Street, each "holding her up under her Arms; but did not remember any Thing "more that passed, and did not come to herself till about Half an Hour "before she came to *Enfield-Wash*, as she had learned since, to *Wells*'s "House there, and there were several Persons in the Room; they said, "she must do as they did, and if so, she should have fine Cloaths, *&c.* "She said, she would not, but would go Home, and refused Compliance; "and then a Woman forced her up Stairs into a Room, and, with a Case-"knife she had in her Hand, cut the Lace of her Stays, and took her "Stays away, and told her there was Bread and Water in the said Room, "and if she made any Noise, she would come in immediately and cut her "Throat; then went out, and locked the Door; and never saw her nor "any one of them since, till after her Escape; which Bread was in Quan-"tity about a Quarter of a Peck Loaf in Pieces, and three Quarters of a "Gallon of Water, or a little more, in a Pitcher, as she supposed; on "which only she subsisted, and one Penny Mince-pye she had in her "Pocket, till she got away, which was on the 29th of *January*, about "Half an Hour after Three o'Clock or Four in the Afternoon, and then "made the best of her Way to Town to her Mother's, at the Bottom of "*Aldermanbury*. She farther said, on Inquiry, she had no Stool all that "Time, only made a little Water; and said, there was an old Stool or "two, an old Table, and an old Picture over the Chimney, two Win-"dows in the Room, one fastened up with Boards, the other, Part ditto "and Part Glass, in which latter she made a Hole by removing a Pane, "and forced Part open, and got out on a small Shed of Boards or Pent-"house, and so slid down and jumped on the Side of a Bank on the Back-"side of the House, and so got into the Road, and proceeded to her "Mother's that Night, which was about Ten o'Clock. Her Mother "said she was faint, so she got her some Wine and Water, but it would "not go down, the Passages being swelled, therefore sent to the Apothe-"cary for Advice. Mr. *Lyon*, her Master, gave her an exceeding good "Character, and so did her late Master, Mr. *Wintlebury*." There were a great many Questions asked her, which are not down here. There was an Examination for I believe near an Hour; and after I had examined her, I sent for Alderman *Fludyer*; but he did not chuse to examine her, and put her over to the Sitting Alderman, which happened to be my Turn.

Mr. *Gascoyne*. During the Time of this Examination, did she mention *any Hay?*

Alderman *Chitty*. She said, there was nothing in the Room but those Things she had mentioned; *not one Tittle of Hay*, neither do I remember what she said she lay upon.

Mr. *Gascoyne*. Did she describe any Gypsey, or any remarkable Woman?

Alderman *Chitty*. I asked her, whether she should know the Woman again? she said, she believed she should; but she did not make mention of any extraordinary Woman doing this.

Mr. *Gascoyne*. Did she say when she drank all her Water?

Alderman *Chitty*. She said, a little Water was left when she made her Escape. I asked her, whether she knew what the Quantity of a Quartern Loaf was? she said, she did, for her former Master kept a Public-House; I asked her, what Sort of Bread this was? she said, there were four or five Pieces, to the Quantity of a Quartern Loaf.

Mr. *Gascoyne*. Are you sure she said four or five Pieces?

Alderman *Chitty*. I am sure she said four or five, or five or six Pieces.

Mr. *Davy*. Did she mention any such Thing as a Tobacco-mould, a Bason, a Saddle, Hay, or a Barrel?

Alderman *Chitty*. I heard of no such Things; She said, there was nothing in the Room but what Things she had mentioned: She apprehended then, it might be the Woman of the House that had served her thus; but it appears, as it comes out, she had no Notion who that Woman was. I asked her, whether or no she had seen any body in all that Time? she said, she had not but once; she looked through the Key-hole, and saw some one Person pass below.

Mr. *Gascoyne*. Please to look at this Paper.

Alderman *Chitty*. This is my Hand-writing; it is my Warrant for the apprehending the People that she charged.

Mr. *Gascoyne*. Did she mention the Name of *Wells*, or whose House she had been at?

Alderman *Chitty*. I was a little unwilling, at this extraordinary Account, to grant a Warrant: I said to her, Be sure what you say; say nothing but what you can swear to: And as she swore all to be true, upon this Information I granted her a Warrant, but told her I could not believe the Story she had told me.

Mr. *Gascoyne*. Do you recollect whether, in the Time she was in Confinement, she heard any Thing by which she could discover the Names of any of the People?

Alderman *Chitty*. The Name of *Wells* was not mentioned at all by her.

Mr. *Gascoyne*. How came you to grant a Warrant in particular against *Wells?*

Alderman *Chitty*. Because they had learned the Name since of the Keeper of the House, and That they supposed to be this *Wells*.

Mr. *Gascoyne*. Were there any particular Features described of the Person? — Alderman *Chitty*. No.

Mr. *Gascoyne*. Who mentioned the Name of *Wells*, as *Canning* never mentioned that Name?

Alderman *Chitty*. I cannot remember that: It was mentioned, Mother *Wells* was the Occupier of this House.

Mr. *Gascoyne*. Was one *Scarrat* there?

Alderman *Chitty*. There were above fifty People there; I did not know them.

Mr. *Gascoyne*. During this Examination, did she mention any Fit she had?

Alderman *Chitty*. I don't remember she did, but the Mother did; she said, she had been subject to Fits from her Infancy.

Mr. *Gascoyne*. Did she say she went down *Bishopsgate-Street?*

Alderman *Chitty*. She did, between two Men, one held under one Arm, and the other under the other; but said, how she came there, she could not tell; that she was not so far stunned, but that she knew a little, as she went along that Part; but how she went afterwards, she did not know: She said, she might have been put in some House, for what she knew, but she could not tell that.

Mr. *Gascoyne*. Previous to this Examination, had you seen any Advertisement in the Papers of the 6th of *January*, which gave an Account of a young Woman taken out of a Hackney Coach?

Mr. *Moreton*. That is not a proper Question.

The Warrant read.

"To all Constables and other Peace-officers.

"*London*, *to wit*. These are in his Majesty's Name to command you, "and every one of you, upon Sight hereof, to take and bring before me, "or some other of his Majesty's Justices of the Peace, the Body of a Per-"son that goes by the Name of Mother *Wells*, at *Enfield-Wash*, in the "County of *Middlesex*,—

Q. from a Juryman. Who put that Name in the Warrant, or who gave the Name?

Alderman *Chitty*. I cannot recollect who mentioned the Name *Wells*: I apprehend they had got that Name before they came to the *Justice-Room*: I asked the Girl, whether that was the Mistress of the House or no? she said, she could tell nothing of the Woman's Name.

The Conclusion of the Warrant.

"of whom you shall have Notice, to answer to such Things that shall be "alledged against her by *Elizabeth Canning*, for violently assaulting her, "and robbing her of a Pair of Stays, and confining her in a Room in the "said House, and keeping her on Bread and Water for upwards of three "Weeks, as Oath has been made before me,

"*Jan.* 31, 1753. *Thomas Chitty.*"

Gawen Nash.

G. Nash. I belong to *Goldsmith's-Hall*, and keep a Coffee-house in *Gutter-Lane*. On the 31st of *January* 53, I went to Mr. *Lyon*'s House in *Aldermanbury*; he is a particular Acquaintance of mine, and has been some Years; there was he and his Wife. I asked them, whether that Paragraph in the Paper, about their Servant's coming Home in such a Condition, was true? he told me it was.

Mr. *Davy*. Was you present in the *Justice-Room*, when the Defendant was there before Mr. Alderman *Chitty?*

G. Nash. I was, as a Friend to this Girl; the City-Marshal's Man was there: I was there a little before the others; I asked leave to let the Room be cleared, there being many People in the Room: I had never seen the Girl till that Day; but had Compassion for her from the Account I had heard of her hard Usage.

Mr. *Davy*. Was Mr. *Adamson* there?——*G. Nash*. I think he was.

Mr. *Davy*. Was Mr. *Scarrat* there?

G. Nash. I do not know whether he was or not. The Girl gave an Account of the Place where she had been in: Mr. Alderman *Chitty* asked her, (how it might slip his Memory, I cannot tell) what Sort of a Room she had been confined in? her Answer was, *that it was a little, square, darkish or dark Room, with Boards nailed up before the Windows.*

Mr. *Davy*. Are you sure the Words *little* and *square* were mentioned?

G. Nash. I am sure of it, I remember it very well.

Mr.

Mr. *Davy*. Did she say *Windows* in the plural Number?

G. Nash. She did; she said, through the Cracks of the Boards she could see the *Hertfordshire* Coach pass by upon the Road, that had used to carry her Mistress. Upon being asked what was in the Room? she said, there was an old broken Stool or a Chair, and in the Chimney an old Iron Grate, and a few old Pictures hung over the Chimney.

Mr. *Moreton*. Did you take this in Writing?

G. Nash. No, I never did: Upon being asked what she lay upon, I remember very well she said, she lay on the Boards; which melted my Heart indeed: I felt an inward Affection for the Girl, upon recollecting it was cold Weather at that Time; for I think we had a good deal of Frost at that Time.

Mr. *Davy*. Have you heard what the Alderman said in his Evidence?

G. Nash. I have.

Mr. *Davy*. What did she say about Bread in the Room, and how many Pieces were there?

G. Nash. She said, there was about the Value of a Quartern Loaf thrown about the Room in Crusts, which were blue and mouldy; the Number of Pieces I do not remember she said.

Mr. *Davy*. Do you remember she said she slid down a Pent-House?

G. Nash. I do not; she said, she pulled down one of the Boards of the Window, after she had strove at it many Times; and in getting out at the Window, she tore her Ear by a Nail by the Side of the Window in turning herself about; and her Mother standing by, said, her Ear was then bloody; her Ear then seemed to be very sore. There was a Warrant granted upon this against one *Wells*. The Alderman does not remember what it was that induced him to grant it against her in particular: I recollect it, because it was in a Paragraph in the News-Paper, that she had been at the House of Mother *Wells* at *Enfield-Wash*.

Mr. *Davy*. What Charge was there before the Alderman against Mother *Wells*? for he could not grant a Warrant by Information from the News-Paper.——*G. Nash*. I recollect she was asked where she had been, and that she, or somebody else, said she had been at the House of Mother *Wells*, at *Enfield-Wash*.

Mr. *Davy*. Recollect, if you can, whether it was she, or another Person, who said so.

G. Nash. Upon my Word, I cannot positively tell which; but it was repeated aloud, that she had been at the House of Mother *Wells* (that is a notorious bad Woman); she being asked how she came to know she had been at Mother *Wells*'s, she said, she had heard her called so while she was under Confinement in the Room.

Mr. *Davy*. Did she describe any Person she saw in the House?

G. Nash. There were no particular Descriptions given by her of any one Person in the House.

Mr. *Davy*. Was the Name of *Virtue Hall* mentioned then?

G. Nash. I never heard it indeed before the Alderman.

Mr. *Davy*. Do you remember any other Particulars of the Description of the Room, or any other Circumstances?

G. Nash. I do not recollect any other Description than I have hitherto told: Upon this a Warrant was granted.

Mr. *Davy*. Did you, upon that, go down with any Persons to *Enfield-Wash*, and when, in order to apprehend the People, or see the House?

G. Nash. I really can't recollect whether Mr. *Lyon* took the Warrant out of the Clerk's Hand or I, but we went on cheek-by-jowl to the Hall-Yard; I know Mr. *Lyon* paid the Shilling for the Warrant: When we were in the Yard, we were consulting what to do in this Affair; fearing it should gather Wind in the Country, and the People all get away before we got down there. Upon this, Mr. *Lyon* and I being very intimate, went Home to my House; my Wife was very unwilling I should lie out of Town that Night, otherwise we had gone down immediately, to have apprehended the People that Night. We agreed to go the next Morning in a Coach, and he asked me to take a Friend or two, which I did; they were Mr. *Edward Aldridge* and Mr. *John Hague*. We went (this was on the 1st of *February*) at our own Expence, and took Coach in *Chiswell-Street*, and desired the Coachman to proceed as fast as he could, fearing we should miss what we aimed at. When we came to about *Hounds-Field*, somewhere by *Ponder*'s-*End*, we had several People met us, riding as hard as they could, to give us Intelligence that they had seized all the People in the House.

Mr. *Davy*. As you had heard the Defendant give a Description of the Room, did you mention that to Mr. *Hague* and Mr. *Aldridge*?

G. Nash. I told them what I had heard.

Mr. *Davy*. At the Time you were going down with them, did you declare any Intention you had to take a Survey of the Place, and see whether it answered her Description?

G. Nash. I can't tell whether I said so, but it was my Intention so to do, and to see the Warrant executed.

Mr. *Davy*. What Time did you arrive there?

G. Nash. I guess it was about Eleven o'Clock, which was about an Hour before *Elizabeth Canning* came there: The Coachman drove us up to the *Sun and Punch-Bowl*, almost opposite to Mother *Wells*'s House; there were People, some on Horseback, and some on Foot, all in an Uproar. Mr. *Hague*, Mr. *Lyon*, and Mr. *Aldridge* went into the House. I pushed over to the House, in order to find if the Description of the Room answered: I saw some People in the Room on my left Hand, which they call the Parlour; then I went up the Stair-Case leading from the great Door that comes into the Street, and, to my great Surprize, I looked about the three Rooms, and found nothing there like it; there were Beds in them, which seemed to have been laid in that Night; then I came down again, and went into the Kitchen, and saw a Man with a Broom-stick in his Hand; I said to him, Friend, do you know any Thing of this House? he said, there is a Room here: He unbuttoned a Button, and opened the Door; I saw a Door on each Side, one opened to a Cellar full of Water, another opened to a Place like an Oven, and the other led me to a Place where were a few Steps or Stairs, which led up into this Hay-Loft, a nasty Room: I have since told the Steps; I think there were eight of them; I am sure there was nothing like her Description there at that Time. I cannot say I observed the Key-Hole, but I was thereabout afterwards, and believe there has not been a Lock upon that Door for many Years; there were no Signs where a Lock could have been placed; I saw no Marks of a Lock fastened thereon; I am sure there had been no Lock there; neither was there any Bolt; there was a large Bar that secured the three Doors.

Mr. *Davy*. Are the Steps without or within side the Door?

G. Nash. They are on the Inside the Door; the Stairs are Part of the Room.

Mr. *Davy*. Can you mention the exact Length and Breadth of the Room?

G. Nash. I never measured it; it is a very long Room; you may as well call this Table a Square (*meaning a long Table in the Sessions-House*); that Man and I went up into it by ourselves.

Mr. *Davy*. Did you take any particular Notice of what Things were in the Room?

G. Nash. At that Time I cannot say I did, because I had not found out the Room according to the Girl's Description. I came down, and saw Mr. *White*, one of my Lord-Mayor's Marshal-Men, who went down to execute the Warrant: I said to him, For God's sake, what do you think of this Affair? he said, he believed we were got into the wrong Box, and he believed the Girl had never been there: Then I went over to my Companions that came down along with me; this was before *Canning* came. We went over to the House again; we went up into this Room: Some Persons, I cannot tell who, said, This must be the Room; Mr. *Lyon* stood near me; said I, This cannot be the Room according to her Description, for she said it was an empty, dark Room; Mr. *Lyon* said, These Things may have been put here since: There were Numbers of Things then in it.

Mr. *Davy*. Mention the Things you saw there.

G. Nash. There was to the Quantity of Half a Load of Hay; an old Nest of Drawers, about four Feet long, and three high; there was a high Tub with Pollard in it; two Side-Saddles, and an old Man's Saddle: On my right Hand coming up Stairs, there seemed to be a Place as if some poor People had laid upon it; it was some Part Hay that was taken from the Heap, and some Wool put into a Sack for a Bolster, made up in the Form of a Bed: Over this nasty Bed (if I may so call it) were some Pullies and a Line belonging to a Jack; and at the Head of this Bed was a Hole, through which, it seems, formerly the Line did run, that had some Hay stuffed in it to keep out the Wind; I took it out; it was a long Square, about six by eight Inches; there is a Jack in the Kitchen, to which the Line had been fastened; the Hole looks directly into the Kitchen; it is a very thin Partition; it is Lath and Plaister: Through that Hole might be seen every Thing in the Kitchen, except just under it; and there was a Window in the Kitchen, which looks out into the Road, and from that Hay-Loft a Person might see through that Window cross the Road.

Mr. *Davy*. Could you, when standing in the Kitchen, see through into that Room?

G. Nash. You might see the Window that fronts the Kitchen, through the Hole.

Mr. *Davy*. How high is the Hole from the Floor of the Kitchen?

G. Nash. I believe it might be about seven or eight Feet, to look through from the Kitchen; a Person might elevate himself, or look upwards; and when in the Room, the Hole is about five or six Inches above the Pillow of this Hay-Bed, which was made on the Floor. In this Room was a Chimney, which I apprehended was for the warming a Glew-Pot; and over this Place was a little Ledge, upon which stood an old Iron Casement all dusty; the Chimney stands in the Corner of the Room; as near as I can think, it is to the South; there was Cobwebs and Nastiness upon the Things; it is impossible they should have been newly put there.

Mr. *Davy*. Were there any Cobwebs on the Casement?

G. Nash. There were; they seemed to fix the Casement to the Chimney-Ledge; it had such an Appearance to me, I did not move it; it was all over Cobwebs, and seemed to be soldered to the Wall with them; I did not move it.

Mr. *Davy*. Was there any Grate in the Chimney?

G. Nash. No, there was not; it appeared to me as if there never had been any.

Mr. *Davy*. Was there a Hearth to the Chimney?

G. Nash. I think there was not.

Mr. *Davy*. Was the Hearth-Place, I mean the Floor of the Chimney, covered with Dust?

G. Nash. At that Time I did not particularly observe whether it was or no.

Mr. *Davy*. Was there any Appearance to you of any Pictures having been over the Chimney?

G. Nash. I believe there never was a Picture hung up in that Room in this World.

Mr. *Davy*. Did you observe the Window at the North End of the Room?

G. Nash. I did; that Window was nailed up with Boards, and the Muntam was betwixt; there were two Windows in the Room, one at the End, and the other almost facing the Stairs, going up out of the Kitchen; the Window at the End seemed to have had a Light; the Casement was whole, with the Boards nailed up upon the Top, and Boards nailed to the Muntams, and the Glass Casement shut.

Mr. *Davy*. What do you mean by a Muntam?

G. Nash. It is the upright that divides the Window in Halves: The Western Side was boarded up, and the Eastern Side was Glass; the which Casement commanded the *Hertford* Road, with a Pond at the End of the House, that came within eight or ten Feet of it; a Person standing at that Window might see all the People that pass upon the Road. The other Window was not then boarded up, nor, I believe, ever had been; that was only a Casement. I made particular Observations on it, to see if there ever had been any Nails on either Side, and could see no Appearance of any; that is, large enough for me to get out at; I have since shook Hands with my Wife out at it, she standing on the Ground without, and I in the Room; it was easily opened, only by turning a long Hook; this looks out to a little narrow Lane or Ditch, and over the Hedge is a large Common Field.

Mr. *Davy*. Was the Room light or dark?

G. Nash. It is what you may call a light Room; rather than dark, by means of these two Windows, and the Tiles never were pointed; the Light came in from the Roof; it could never be a dark Room.

Mr. *Davy*. What Sort of Tiles were they?

G. Nash. They were Pan-Tiles.

Mr. *Davy*. How far was that Window from the Ground?

G. Nash. I believe, was I to hang out at the Window by my Hands, I should not be above three Feet from the Ground. The Ground is higher at that Window than it is at the North Window a good deal.

Mr. *Davy*. Did you obſerve an old Sign in the Room?

G. Naſh. I don't recollect there was.

Mr. *Davy*. Were there any Trees in that Hedge near the Eaſt Window?

G. Naſh. There were, ſo near the Window, that was I within-ſide with a hunting Whip, I could reach the Boughs.

Mr. *Davy*. Did you obſerve the Boughs, whether they had been lopped lately?——*G. Naſh*. I did not.

Mr. *Davy*. Were there any Cobwebs on the Drawers, ſo as to fix them, as it were, to the Wall?

G. Naſh. I did not obſerve that.

Mr. *Davy*. Was *Canning* come at this Time, while you was obſerving the Room?

G. Naſh. No, ſhe was not.

Mr. *Davy*. Was *Adamſon* there?

G. Naſh. He was in the Room long before ſhe came; there were a great Number of People there.

Mr. *Davy*. Whether any Thing remarkable happened from *Adamſon*'s Conduct?

G. Naſh. Whether it was from his Zeal I know not, but he took hold on the Boards, and pulled them down from the North Window: I ſaid, Gentlemen, this cannot be the Room, for the Girl gave no Account of any Hay being in the Room.

Mr. *Davy*. What Part of the Room did the Hay lie in?

G. Naſh. It lay toward the Eaſt, on the ſame Side the Window was on, betwixt the North and Eaſt Window; and the Bed was on the right Side the Stairs, under the Jack-line Hole, in the South-weſt Part; we agreed by and bye to go over the Way again.

Mr. *Davy*. Did you ſee the Pitcher while you was in the Houſe?

G. Naſh. I can't ſay I ſaw one, or look'd for one; it might be there, and I overlook it.

Mr. *Davy*. Where were the People of the Houſe then?

G. Naſh. We had left them in Cuſtody in the Parlour, which is the left-hand Room coming into the Houſe; when we were over the Way, I ſaw Mr. *Adamſon*, and another Man whom I did not know, toſs up to know who ſhould go to meet *Canning*; and *Adamſon* went to meet her, and came back before her.

Mr. *Davy*. For what Purpoſe did they want to go to meet her?

G. Naſh. I conjectured it was to ſee if they had not gone to a wrong Houſe: We were all impatient to ſee her; for if I had had a Horſe, I would have gone myſelf: When I and Abundance of other People were returned to Mother *Wells*'s Houſe, *Adamſon* came riding up, ſeemingly with a good deal of Pleaſure, waving his Hat with his left Hand, and ſaid, We are all right yet, for ſhe ſays there is a little Hay in the Room. Preſently after the Chaiſe appeared, in which the Girl was: When ſhe came, ſome were for carrying her over to the Public-Houſe; others were for bringing her to the Houſe of Mother *Wells*, which they did; ſhe was brought, and ſet on a Dreſſer in the Kitchen, on the left Hand of the Door, fronting the Fire-place; and the Door where ſhe afterwards ſaid ſhe had been confined was on the left Hand, and the Door at that Time open; if ſhe had turned her Head that Way, ſhe might have ſeen the Stairs; but whether ſhe did turn her Head that Way, or whether ſhe might have ſeen up into the Room, I cannot ſay; I believe ſhe might have ſeen Part of it. Then there was a Propoſal to ſend for a Bottle of Wine to refreſh thoſe People that had been in the Landau with her in the Cold. She remained on the Dreſſer about four or five Minutes; then ſhe was removed to the Middle of the Kitchen, on a broken Stool, with her Back toward the Fire-place, with the Door of the Hay-loft on her right Hand, looking towards the Dreſſer; the Door of the Room was then remaining open, and ſhe might have ſeen that Part of it that the Stairs led up to: I believe ſhe might ſit thus, firſt and laſt, twenty Minutes: It was the Time they went and got a Pint of Wine, and mulled it.

Mr. *Davy*. When it came, did ſhe drink much?

G. Naſh. She drank but very little: Then Somebody put the Thing thus, Now let us call Mother *Wells* in: I ſaid, Hold, Gentlemen, this will be an *Old-Bailey* Story, and whoever is fixed upon for the committing the Fact, they'll certainly be hanged: Let the Room be filled full of People, and let her go and find out the People whom ſhe accuſes with robbing her; and propoſed to carry her into the Parlour, where were a great many People: She was carried in; and *Mary Squires* ſat on the right Hand of the Chimney, upon a low Chair, almoſt doubled together, with a black Bonnet on; I am ſure I could not ſee her Face.

Mr. *Davy*. To what Part of the Room did *Mary Squires* then direct her Looks?

G. Naſh. I believe her Face was pointing to the Window, ſtraight as ſhe ſat, and Mother *Wells* ſat on the left-hand Side of the Fire: I ſaid to *Canning*, Now look for the Woman that robbed you; ſhe immediately pointed to *Mary Squires*, and ſaid, That old Woman in the Corner was the Woman that robbed me.

Mr. *Davy*. Did ſhe ſee her Face at that Time?

G. Naſh. I could not, but I will not pretend to ſay what ſhe could ſee; I ſtood cloſe to her; Somebody ſaid, (I think it was *Mary Squires*'s Daughter) Do you hear what the Gentlewoman ſays? ſhe ſays you robbed her. The old Woman got up from the Stool immediately, and ſaid——

Mr. *Moreton*. I object againſt that being mentioned; it is no Evidence.

Court. He may give an Account of what was ſaid in the Defendant's Hearing and Preſence.

G. Naſh. The old Woman came up to her, and ſaid, Madam, do you ſay I robbed you? (and put herſelf in a particular Poſture, and had a Sort of a Clout about her Face;) Pray, Madam, look at this Face; and ſure, if you have once ſeen it before, you muſt have remembered it, for God Almighty, I think, never made ſuch another; pray, Madam, when do you ſay I robbed you? She anſwered, It was on the firſt Day of this New Year—The firſt Day of this New Year, Madam, do you ſay? Lord bleſs me! I was an hundred and twenty Miles from this Place then. I with my Finger tapped her on the Shoulder, and ſaid, Dame, where was you? She replied, I was at *Abbotſbury* in *Dorſetſhire*, and there are a hundred People I can bring to prove it; and ſome of them have known me twenty, thirty, and forty Years. I think there were twenty People ſaying ſhe has been here but a very little Time. There was a poor Woman they called *Natus*, ſat there, who ſaid, ſhe herſelf had been there, I think, ten or eleven Weeks, and that ſhe had never ſeen *Canning* there before; and ſhe ſaid, *Squires* had been there but a very little Time. After this was done, *Canning* was carried out of the Room, and carried up the Stairs facing the Street-door into all the Rooms; I did not go up with her: After that ſhe was carried up into the Hay-loft; there ſhe ſaid, *ſhe believed that was the Room*.

Mr. *Davy*. Are theſe her Words, *ſhe believed?*

G. Naſh. I think I can take upon me to ſwear they were her Words. I aſked her, what ſhe knew in the Room? ſhe turned about on her left Hand, and ſaid, *This is the Room, for here is the Hay I lay upon, but I think there is more of it than there was then*, pointing to the looſe Hay on her left Hand. Upon that, ſhe was aſked by the People, that had her under the Arms, what could ſhe note more in the Room? They took up a Pitcher that ſtood upon the Ground, and held it up to her; ſhe ſaid, *Yes, that is the Jug I had my Water in:* Then a Gentleman that was there took hold of a Tobacco-mould, which was in a Corner, and aſked her, if he remembered that? *ſhe ſaid, ſhe remembered that.* He aſked her what elſe ſhe remembered, (I think that was Mr. *Hague*) and added, Do you remember theſe three Saddles? (that were in the Room) ſhe ſaid, I believe there might be one; the Saddles ſeemed to be all over Duſt, they ſeemed to have been laid up there out of the Way for a long Time: Then ſhe was aſked, if ſhe remembered the Neſt of Drawers? ſhe ſaid, ſhe did not remember them. A Gentleman made Anſwer, Have you been here twenty-eight Days, and never remember them Drawers? ſhe ſaid, ſhe did not remember them. Then Mr. *Hague* aſked, why ſhe did not ſtrive to get out at that Window? (that is the Eaſt Window fronting the Stairs) ſhe ſaid, ſhe thought it had been faſtened.

Mr. *Davy*. Did ſhe ſay ſhe had tried to ſee if it was faſt?

G. Naſh. I don't remember ſhe ſaid ſhe had.

Mr. *Davy*. Did *Natus*'s Wife ſay any thing about her lying in the Room?

G. Naſh. *Natus*'s Wife ſaid in the Parlour, that her Huſband and ſhe had laid there, in this Hay-loft, ten or eleven Weeks: *Canning*'s Mother was in the Room, lamenting ſadly, that *that* was the Hay that her poor dear Girl had laid upon.

Mr. *Davy*. Was the Girl aſked whether ſhe remembered the Jack-line?

G. Naſh. She was; ſhe ſaid, ſhe did not remember ſeeing it.

Mr. *Davy*. Was the Tub of Pollard mentioned to her?

G. Naſh. I think it was not.

Mr. *Davy*. Did ſhe continue poſitive that *Squires* was the Woman who robbed her?

G. Naſh. I heard no Contradiction to that.

Mr. *Davy*. What has led you to recollect, at this Diſtance of Time, all theſe Particulars?

G. Naſh. It was ſo remarkable, it could not ſlip out of my Head; it was at that Time the Subject of Converſation: It is well known I told my Sentiments the ſame Night to Abundance of People that came to know about it.

Mr. *Davy*. Knowing all theſe Particulars, which would have been extremely neceſſary to have been proved in the Defence of *Mary Squires* and Mother *Wells*, how came you, when theſe People were to be tried, the one for a capital Felon, and the other as an Acceſſary, not to be an Evidence then?

G. Naſh. I was here ſome Part of the Time the Girl was giving her Evidence, and really was a little diſcontented in my Mind, about her giving her Evidence at that Time, and her varying from the Particulars ſhe firſt related before Mr. Alderman *Chitty*, and then to us: We had a very large Feaſt at *Goldſmiths-Hall*, and I was obliged to give my Attendance, becauſe I am Butler to the Company; I had the Care of, may-be, three or four thouſand Pounds Worth of Plate; ſo that I ſtayed in Court but till Eleven o'Clock, being obliged to be there, and I did not think there was any Danger of her being convicted upon ſuch an incredible Story.

Mr. *Davy*. Had you a Subpœna?——*G. Naſh*. No, I had not.

M. *Davy*. Did you then know that *Mary Squires* was upon Trial for her Life?

G. Naſh. I did, and I did not think ſhe would have been caſt, indeed.

Mr. *Davy*. Had you apprehended her in Danger of being convicted, ſhould you have thought yourſelf excuſable in not giving Evidence?

G. Naſh. If ſhe had died, and I not gave my Evidence, I ſhould not have forgiven myſelf; I ſhould have been very angry with myſelf; but in my own ſingle Opinion I did not think ſhe would have been convicted; I thought the whole Circumſtance of the Thing collected together could not amount to full Proof, and apprehended the Woman was in no Danger.

Mr. *Davy*. If you had apprehended it poſſible that the Woman ſhould have been convicted, would you not have ſtayed and given Evidence?

G. Naſh. I would have gone and made an Excuſe, and come again.

Mr. *Davy*. Have you been always of the Opinion you are now, that *Canning*'s Evidence was untrue?

G. Naſh. I have always inſiſted upon the ſame I have now related. At the Trial of *Mary Squires*, I went Home and told Mr. *Flower*, the Aſſiſtant of the Goldſmiths Company, how far I had heard of the Trial, and ſaid, I think it is impoſſible, with all the Circumſtances, that ſhe can be convicted; and he ſaid, he thought ſo too.

Mr. *Davy*. How came you not to acquaint the Court, that you, of your own Knowledge, knew ſhe was guilty of Perjury?

G. Naſh. I can give no Reaſon for that.

Mr. *Davy*. What Conduct did you purſue after the Conviction of *Squires*, in order to atone for your not giving Evidence for her?

G. Naſh. Some Time after that, I heard the old Woman had a Reſpite; I immediately waited on my Lord-Mayor, and told him, I believed I could let him into the whole Affair, as well as any Man could.

Mr. *Davy*. Did you do this voluntarily?

G. Naſh. I did; I was very glad to hear there was ſome Deſign of ſaving the poor Woman; I did it not out of Spite to the Girl, but merely in Juſtice to the Gypſey.

Croſs-Examined.

Mr. *Moreton*. Did you hear the Girl poſitively charge *Mary Squires* with robbing her at *Enfield-Waſh*, on the Trial of *Mary Squires?*

G. Naſh. I did.

Mr. *Moreton.* Did you hear her finish her Evidence?

G. Nash. I cannot tell whether she had quite done or not, for I looked at my Watch, and found it was Time to go; so went away.

Mr. *Moreton.* What did Mr. *Flower* say?

G. Nash. He said, they never could convict her.

Mr. *Moreton.* Whether your Dissatisfaction that you have given an Account of, was not owing to the Observation you made at Mother *Wells*'s, upon the Answers the Girl gave there on the 1st of *February?*

G. Nash. I did then think she was mistaken in the Woman.

Mr. *Moreton.* Whether you heard the Girl give any Account of this at her Mother's?---*G. Nash.* I never was at her Mother's.

Mr. *Moreton.* When the old Woman made her Face so odd, by putting herself in a particular Posture, as you described, did the Girl alter in her Opinion?---*G. Nash.* No, I did not hear she did.

Mr. *Moreton.* Was *Canning* in the Room, when *Natus*'s Wife said she had laid in the Room ten or eleven Weeks?

G. Nash. She first said she had laid in the House; whether it was before we went up into the Room, I cannot say; but I am certain she said so in the Parlour, when *Canning* was by.

Mr. *Moreton.* Did you continue to have a good Opinion of *Canning?*

G. Nash. I dropped my Opinion quite about her being innocent.

Mr. *Moreton.* Look at this Letter, is it your Hand-writing? *(He takes a Letter in his Hand.)*---*G. Nash.* It is my Hand-writing.

Mr. *Moreton.* When was it wrote?---*G. Nash.* The Day it bears Date.

Mr. *Moreton.* Who is it wrote to?---*G. Nash.* To Mr. *Lyon.*

John Hague sworn.

J. Hague. I am a Goldsmith, and live in *Noble-Street*, and am acquainted with Mr. *Nash:* He came to me on the 31st of *January* 53, at Night, and told me of an extraordinary Affair; the Contents were what he had heard before Mr. Alderman *Chitty* from *Elizabeth Canning*; he desired me, and I agreed to go down to *Enfield-Wash* with him. Mr. *Nash*, Mr. *Lyon*, Mr. *Aldridge*, and myself, went together in a Coach on the next Morning. Before we got down, we met a Man on Horseback (who it was, I do not know); he came to the Coach-Side, and said, We have taken them all. When we came there, we went to Mrs. *Wells*'s directly; we first went into the Parlour on the left Hand, there we saw the People that were taken; after we had talked with them, we went to take a View of the House; we went up the Stairs, and saw the Rooms; then we came down, and went up into the Hay-loft or Workshop, and finding nothing that answered the Description the Girl had given before Mr. Alderman *Chitty*, as Mr. *Nash* had said to us, he said, Here is no Room answers the Description she gave: We went over to *Cantril*'s, and got a Glass of Wine to refresh ourselves.

Mr. *Willes.* Was Mr. *Adamson* in the Room called the Hay-loft, when you was?

J. Hague. He was; he and *Scarrat* were saying to one another, Do you go, and Do you go, and at last they tossed up a Halfpenny, and it fell to *Adamson*'s Lot to go; he took his Horse and went, and came back with great Triumph, with a Whip lashing over his Head, saying, By G---d we are all right, she says there is a little Hay in the Room; and in about a Quarter of an Hour after this, *Canning* came; she was first brought to Mother *Wells*'s Door, and was taken into the Kitchen on the right Hand; she was set upon the Dresser in the Kitchen on the left Hand, and the Door opening to the Hay-loft was then open, which she could not miss to see; but she did not mention a Word that *that* was the Place where she had been in; she sat there a few Minutes; then they took her off, and set her in a Chair; she never opened her Lips about her Stays being cut off there.

Mr. *Willes.* How long do you think she was in the Kitchen?

J. Hague. In sitting on the Dresser and in the Chair, I believe she had been there a little better than a Quarter of an Hour; then they carried her into the Parlour, and set her upon a Table; Mother *Wells* sat very close to her; as they were bringing her in, Mother *Wells* said, with a Sort of a Sneer, Why, the Girl is sick; there was no Answer made to that; as *Canning* was sitting, she pointed to the Gypsey-Woman, and said, That is the Woman that cut my Stays off.

Mr. *Willes.* Was the Gypsey in such a Situation, that she could then see her Face?

J. Hague. Upon my Word, I think she could not; I was close to her, she was smoaking a Pipe.

Mr. *Willes.* Upon that, what did the Gypsey say or do?

J. Hague. *Lucy Squires* went up to her Mother, and said, Mother, the Girl says that you have cut her Stays off: Then the old Woman got up, and, in a great Trembling, she took her Bonnet off, and stroked her Hair up, and said, Madam, consider what a remarkable Woman I am; would you go to take a Life away? I was at *Abbotsbury* at that Time.

Mr. *Willes.* Did she say how many Miles that was from Town?

J. Hague. I don't remember she did; but *George Squires* then said it was a hundred and twenty miles from *London.*

Mr. *Willes.* Have you heard Mr. *Nash* give Evidence a little Time ago?

J. Hague. I have not heard a Word of his Evidence.

Mr. *Willes.* Did any body else take Notice how long the Gypsey had been at *Enfield?*---*J. Hague.* No, I don't remember any body did.

Mr. *Willes.* Do you remember seeing *Judith Natus?*

J. Hague. I cannot say I heard her say any thing.

Mr. *Willes.* How long had *Canning* been in that Room, before you took her up into the Hay-loft?

J. Hague. I believe, about Half an Hour; I led her up Stairs myself; I had hold on one Arm, and another Person on the other, but I do not know who it was; he has not appeared since; but before we went there, we went into several other Rooms: she was very quick, and said, This is not it, and That is not it.

Mr. *Willes.* What did she say upon her first coming into the Hay-loft?

J. Hague. When we got to the Top of the Stairs, she turned upon her right Hand next to the Chimney, and took no manner of Notice of any thing: Then turning to the left, *This is the Room*, says she, *that I was confined in:* Then her Mother said, Ay, this is the Room where my poor Child was confined in. Said I, Good Woman, was you confined here with her? No, says she, but I believe every thing my Daughter says: Then I said, Pray hold your Tongue, and do not answer any Questions. There I saw a very large Hole on the right Hand coming up Stairs, large enough for a large Cat to go through; it was open.

Mr. *Willes.* How high is it from the Floor?

J. Hague. It is close to the Floor; the Jack-line run through it, and a Pully just over it; if there had been a Mouse in the Room, she might have seen it.

Mr. *Willes.* Was you in that Room as soon as *Nash* and *Aldridge?*

J. Hague. No, they had been there before me. There I saw also a dirty nasty Hay-bed on the Ground, nothing but Hay, which I suppose was taken from the other Hay, where we were told *Fortune Natus* and his Wife lay. I asked *Canning* whether she remembered the Pully? she said, No, she never saw it. There is a little narrow Chimney, about fifteen or sixteen Inches wide; there was no Grate, or Appearance that there ever had been one in the Chimney; it was full of hardly any thing else but Cobwebs, which seemed to have been there a considerable Time, they were so nasty and dirty.

Mr. *Willes.* Were the Cobwebs so spread about the Chimney, that it was impossible there should have been a Grate there two Days before?

J. Hague. Yes, Sir. There was an old Casement over the Chimney that was very dirty and dusty: I said to *Canning*, Child, did you take this for a Picture? she said, No. When I took it away, all the Cobwebs came with it from the Top to the Bottom; and on the Place from whence it was taken, there appeared a Print of it, that looked as if it had been there a Year or two.

Mr. *Willes.* Was there any Mark of any Place, as if the Picture had been there?---*J. Hague.* No, Sir.

Mr. *Willes.* Did you observe the Window that looks towards the East?

J. Hague. I did; it is a Casement large enough for me to get out at; that is it which fronts the Stairs: I asked her how she came not to get out there, and opened it when I had hold of her Arm; she said, Sir, I believe it was nailed; then I looked to see if there were any Appearance of Nails being there, and could see none at all.

Mr. *Willes.* How high is this Window from the Ground?

J. Hague. It might be about ten Feet; it went into a little narrow Kind of a Ditch, about half a Yard wide, where was a Bank up against it, and a Hedge and a Field behind it; in the Hedge were several Trees near the Window.

Mr. *Willes.* Did the Branches look as if they had been lopped lately?

J. Hague. Yes, they did.

Mr. *Willes.* How much Hay do you think there might be in the Room?

J. Hague. I believe about half a Load; it lay in the Room on the same Side the Window was on; it seemed to have laid there a long Time: There was another Window opened into the Road, boarded up on one Side, and a Casement on the other that opened, that is to the North, and there is a Lane at the Corner of it; I looked out at it; there was no Pent-house or Shed under it; it was perpendicular. Mr. *Adamson* turned some of the Hay over to look for the Stays. I saw also a Chest of Drawers, which, I dare venture to say, had been there more than a Year, if not two; they were so very dusty betwixt the Drawers and the Wall, that I did not care to meddle with them.

Mr. *Willes.* Do you remember a Barrel or Tub in the Room?

J. Hague. I cannot say I do; there was a Tobacco-mould over *Fortune Natus*'s Bed; Somebody asked her, if she knew that? she said, she did. There were two Women's Saddles, and a Man's Saddle; I asked her, if she saw them? she said, she believed there was one; they all appeared to have been there a long while, they were very nasty and dusty.

Mr. *Willes.* Did you observe the Door that leads to this Room, how it fastened?

J. Hague. I did particularly; I could not perceive there ever was a Lock upon it; I believe there never was one; it fastened only by a Latch and a Button; I will not be positive there was a Latch; I said to the Girl, Zounds, Child, I cannot think you was ever here at all.

Mr. *Willes.* What Answer did she make to that?

J. Hague. She made me none at all.

Mr. *Willes.* Did you hear *Judith Natus* say any thing in *Canning*'s Presence about the Room?

J. Hague. I cannot say whether I did or not.

Mr. *Willes.* Did you go away satisfied with what you had seen?

J. Hague. No, I went away very much dissatisfied. When we were in the Coach going Home, Mr. *Nash*, and Mr. *Aldridge*, and I gave our Opinions to Mr. *Lyon*, that we did not think she was there; we said, she must be mistaken: He was so angry at it, that he did not speak to us all the Way Home, and That, I suppose, is the Reason we were not subpœna'd or called.

Mr. *Willes.* How came you not to come and give your Opinion in Favour of *Squires?*

J. Hague. I was in Court all the while, and I'll give my Reasons why. When they were first taken up, *Canning* said, *Virtue Hall* was one of the Girls that stood by when her Stays were taken off; at the same Time *Virtue Hall*, with all the seeming Innocency, laughed in her Face, and said, God forgive you, Madam, I never saw you in this House in my Life. She had challenged her and *Lucy Squires* with being by: *Lucy Squires* said the very same as she did. Seeing such seeming Innocence in her there, and when in Court to hear her swearing such a Thing that I thought to be as false as the Gospel is true, I protest I had not Power to speak; I believed she was perjured in all she said; that is the whole Reason why I did not speak; but had I had Spirits, I would have spoke.

Mr. *Willes.* After *Squires* was convicted, did you approve of your own Conduct?

J. Hague. Upon my Word, Sir, I was not easy upon my being silent. I went of my own Free-Will before my Lord-Mayor, and gave an Account of what I knew, the same as now.

Mr. *Willes.* Had you any Acquaintance with Alderman *Gascoyne* then?

J. Hague. No, I do not know that ever I had seen him before.

M. *Wilks.* How long after the Trial was it, that you went to my Lord Mayor?

J. Hague. It was about a Fortnight or three Weeks after; it was long before *Squires* was respited.

Mr. *Wilkes.* Had you any Knowledge of *Canning* before you went down with her?——*J. Hague.* No, I never saw her before in my Life.

Mr. *Wilkes.* Did you go with her as her Friend?

J. Hague. I did, as much her Friend as any one that went along with her; and before she came down, did as much abuse old Mother *Wells* and *George Squires*, and the People in the House.

Cross-Examined.

Mr. *Nares.* Was you present at the whole Trial of *Mary Squires*?

J. Hague. I was.

Mr. *Nares.* How long was you in Court after *Virtue Hall* had been examined as a Witness?——*J. Hague.* She was the second Witness.

Mr. *Nares.* Was you so much alarmed, you could not recover yourself in the whole Trial?

J. Hague. Upon my Oath, I could not recover myself; I really was shocked at it.

Mr. *Nares.* Had you heard *Canning* give her Information of the Room?

J. Hague. No, I had not; I had it from Mr. *Nash.*

Mr. *Nares.* Did you see *Canning*'s Mother in the Hay-loft?

J. Hague. I did; she followed us up there, and said them Words to her as I said before.

Mr. *Nares.* Are you sure you saw her in the Hay-loft?

J. Hague. Yes, I am.

Mr. *Nares.* Did she continue there the whole Time you was examining it?——*J. Hague.* I do not know that.

Mr. *Nares.* How near is the Dresser in the Kitchen to the Stairs?

J. Hague. It is very close to the Stairs.

Mr. *Nares.* Can you from that Dresser see up the Stairs, if the Door is open?

J. Hague. When the Door is open, you may sit on any Part of the Dresser, and see quite up into the Room; to be sure she could see quite up into the Room.

Mr. *Nares.* Was Mr. *Adamson* in the Hay-loft when the Girl was there?

J. Hague. I do not remember I saw him there then; I saw him there before the Girl came down to *Enfield-Wash.*

Mr. *Nares.* Was you in the Room all the Time the Girl was?

J. Hague. I was.

Mr. *Nares.* Did you hear any body ask her, what was to be seen out at the Window?

J. Hague. I did not hear that; I saw him and *Bob Scarrat* going to tear the Boards down before the Girl came there, and they were pulled down before she came.

Mr. *Nares.* What did they do that for?

J. Hague. I do not know; it may be through Prejudice; I do not know the Reason why.

Mr. *Nares.* Whether there was not an Observation of yours, or Somebody else, that those Boards had been but lately done up?

J. Hague. No, not by me, or any body else that I know of.

Edward Aldridge sworn.

E. Aldridge. I live in *Foster-Lane*, and am a Working Silversmith; I am acquainted with Mr. *Nash*, Mr. *Hague*, and Mr. *Lyon.* On the 1st of *February* 1753, I went down along with them to *Enfield-Wash*, having been told how sadly Mr. *Lyon*'s Maid had been used. When we were on the Road, there was a Man came on Horseback, and told us they had taken up the People of the House.

Mr. *Gascoyne.* Have you heard any of the Evidence given by Mr. *Nash* and Mr. *Hague?*

E. Ald. No, I have not. When we got to *Enfield-Wash*, we went to Mrs. *Wells*'s House; I went into the Parlour; there were all the People sitting all round the Fire; then I went into the Kitchen by myself, and so all over the House: I was in the Room where the Girl says she was confined; it is called by the Name of the Hay-loft. I believe I was there before Mr. *Nash* was; I was then alone.

Mr. *Gas.* In what Circumstance was this particular Window that looks towards the North?

E. Ald. It was Part of it Glass, and Part Wood.

Mr. *Gas.* Had the Casement Wood over it?

E. Ald. That I cannot tell; I am sure Part of it was boarded up.

Mr. *Gas.* That Part that was not boarded up, had *that* any Appearance of any thing nailed up?

E. Ald. I was not so curious while I was there to examine it: They had described the Room to me as being a square Room, and a Room with a Grate in it. After I had been there, *Canning* came down, and was carried into the Kitchen, and set on a Dresser.

Mr. *Gas.* Was the Door open that leads up into the Hay-loft?

E. Ald. I cannot be sure of that; I was not in the Kitchen all the Time she was there. She looked about as if she did not know where she was. I was with her when she was carried into the Parlour: As soon as we had taken her in there, Mother *Wells* came to her, and said, Madam, do you know me? No, said she, I do not know that ever I saw you in my Life before: Then *George Squires* came up and said, Madam, do you know me? She said, No, I don't know that ever I saw you in my Life; it was that old Woman in the Corner that cut my Stays off. I was close by *Canning* at the Time.

Mr. *Gas.* Did you see the Gypsey's Face at the Time?

E. Ald. No, I never saw her Face till she got up: Madam, said she, I cut your Stays off! (she throwed her Things open) I am very remarkable; if ever you see me before, you must know me. She mentioned *Abbotsbury*, and several other Places Names, which I have forgot, where she said she was.

Mr. *Gas.* Could *Canning* see the Gypsey's Face in that Position she was in at the Time she charged her?

E. Aldridge. That I cannot tell: When *Canning* went up into the Hay-loft, I followed just after her: I remember seeing the Hole in the Wall; when I went up before, there was a great Wisp of Hay in it, which I took out and put in again; when it was out, I could look all over the Kitchen; it was a Hole where the Jack-line was; it was pretty large, I could get my two Hands in it; there was a Pully hung over it, but it then had no Communication with the Jack.

Mr. *Gas.* Did you ask *Canning* any Question?

E. Ald. No; I heard Mr. *Hague* ask her, why she did not get out at that Window? she said, she believed it was fastened up.

Mr. *Gas.* Did you hear any body ask her, if she remembered that Hole?

E. Ald. No: There was Hay between the Stairs and the Jack-hole, and a little square Chimney just at the Corner.

Mr. *Gas.* Were there any Pictures over it?

E. Ald. There was a Casement over it, that seemed to have been there a great while, because it had Cobwebs over it, and was tied, as it were, to the Wall by them; and the Chimney was covered with Cobwebs from one Side to the other, and full of Dirt, and no Sign that there had been a Grate there at all.

Mr. *Gas.* Did you look at the Window towards the East?

E. Ald. No, I did not. I came down Stairs, and left them above.

Mr. *Gas.* Do you remember a Chest of Drawers being in the Room?

E. Ald. I do.

Mr. *Gas.* Did you hear her asked any Thing concerning them?

E. Ald. No, I did not.

Mr. *Gas.* Do you remember some Saddles, a Tobacco-mould, and about half a Load of Hay being there?

E. Ald. I do: There were three Saddles, and a large Quantity of Hay.

Mr. *Gas.* Did you see ever an old Stool, or Table?

E. Ald. I did not take Notice of any. I went up just after the Chest of Drawers were removed a little Way from the Wall; it seemed as if it had stood there twenty Years. I remember there was a Barrel with some Stuff in it, Bran or Flour, Pollard I believe.

Mr. *Gas.* Did the Hay seem as if it had been there pretty long?

E. Ald. It did, because it was pretty hard.

Mr. *Gas.* Was you satisfied with the Room upon seeing it?

E. Ald. I was satisfied it was not like a Place of Confinement; neither did I believe she was ever there.

Mr. *Gas.* Did you, upon your being in the Room two or three Times, observe the Window towards the Chimney?

E. Ald. Yes; it was a narrow Casement Window, big enough for a Man to get out at.

Mr. *Gas.* How far was it from the Ground?

E. Ald. Any body might drop out of it very easily, without hurting themselves.

Mr. *Gas.* Did you look to see if the Window had been fastened?

E. Ald. I looked, but could not find any Thing like Fastening to it.

Mr. *Gas.* Did you examine the Door, how that was fastened?

E. Ald. Yes; it was not fastened at all, only with a Button; there was no Lock to it; there were some Holes where Locks had been; they looked like Key-holes, pretty large Holes.

Mr. *Gas.* Was it probable to think there had not been a Lock upon the Door for a Month?——*E. Ald.* Yes, and longer than that.

Mr. *Gas.* Might you venture to swear, by the Appearance of the Door, there had been no Lock upon it for a Week before?

E. Ald. That I might, or for a Month before.

Mr. *Gas.* Or a Year?—*E. Ald.* Things alter very much in a Year.

Mr. *Gas.* Did you go down as a Friend of the Girl's?

E. Ald. I did, and at my own Expence.

Mr. *Gas.* After examining these Circumstances, did you return with the Belief of her Story, or not?

E. Ald. I went and stood at the Door, and there came one *Hull*, a School-master, who lives at *Theobalds*, and said to me, What do you think of it? I said, The Girl is mistaken; I believe she never was here.

Mr. *Gas.* Is there any Pent-house under the Window, where 'tis supposed she made her Escape?

E. Ald. No; there was a Cellar-door under it; no Boards, no Pent-house; it was perpendicular to the Ground.

Mr. *Gas.* Did you observe the Wall on the Out-side?

E. Ald. I did; I went out in particular to look at it; there was no Sign of clawing the Wall, or any Thing.

Mr. *Gas.* When you returned to Town, upon the whole, what did you think of it?——*E. Ald.* Upon the whole, I did not think she had been there.

Mr. *Gas.* How came you not to appear as a Witness for *Squires* upon her Trial?——*E. Ald.* I was never subpœna'd.

Mr. *Gas.* Was you in Court on that Trial?

E. Ald. I was at the Beginning of it.

Mr. *Gas.* Why did you not stay all the Time?——*E. Ald.* Because we had a Dinner at *Goldsmiths-Hall*, and I was going to it.

Mr. *Gas.* Was you not very much concerned at your Conduct, when you heard she was convicted?——*E. Eld.* I said to Mr. *White* the Officer, at going out, What do you think of it? he said, he thought she would be acquitted: I said, I thought so too.

Mr. *Gas.* How came you, after this, to go before my Lord Mayor?

E. Ald. My Lord Mayor had heard of me by Mr. *Hague* or Mr. *Nash*: They desired me to go with them.

Mr. *Gas.* Had you any Acquaintance with the Lord Mayor before that?

E. Ald. No, I had not.

Mr. *Gas.* How long after the Conviction of *Mary Squires* was it, that you went before my Lord Mayor?——*E. Ald.* I can't justly tell.

Mr. *Gas.* Was it a Week after?

E. Ald. It was a great deal longer than that.

Mr. *Gas.* Did you give the same Account there, as you have done now?

E. Ald. I believe I gave exactly the same.

Mr. *Gas.* Had you any Acquaintance with *Canning* before?

E. Ald. No, I had not. I went with Mr. *Lyon*, because I had heard

heard a bad Character of *Wells* at *Enfield-Wash*, and was glad to hear she was taken, in order to be brought to Justice.

Mr. *Gascoyne*. Did Mr. *Lyon* and you all return very good Friends?

E. Aldridge. They went before Justice *Tashmaker*, and I was quite tired of the Thing. I went to an Alehouse, and got some Mutton Chops, and Half a Pint of Wine: I thought it was not worth hearing.

Cross-Examined.

Mr. *Williams*. Was you with *Elizabeth Canning* in the Kitchen?

E. Ald. I was: She seemed to stare about her, as though she did not know where she was.

Mr. *Williams*. Did any body ask her if she knew the Place?

E. Ald. No; Nobody did, as I know of.

Mr. *Williams*. How long might she be in the Kitchen?

E. Ald. Not a long Time; she had some Wine brought her there.

Mr. *Williams*. Did she seem to be ill?

E. Ald. She did, to be faint and ill then.

Mr. *Williams*. How long was she before she pointed to the old Woman, after *George Squires* asked her the Question whether she knew him?

E. Ald. It was immediately after.

Mr. *Williams*. Did she speak that of her own accord?

E. Ald. I believe she did; I don't think any body prompted her to it: I saw Nobody talk to her then.

Mr. *Williams*. When did you declare your Dissatisfaction first?

E. Ald. I declared it before I left the House.

Mr. *Williams*. When did you cease to be her Friend?

E. Ald. I soon ceased to be her Friend.

Mr. *Williams*. How long after this was it you had Conversation with Mr. and Mrs. *Howard* about this? and upon what account did you go down there to them?

E. Ald. I was going down to *Enfield-Wash*, I cannot tell how long after; I don't know whether it was not that Week. I hardly knew the Gentleman; I have heard say he is a Surveyor of the Window-lights: I remember I went down to Mr. *Edward Aldridge*'s at *Enfield-Wash*; when I went out, I was desired to take some of the Papers (her printed Case in order for a Subscription) to Mr. *Aldridge* there.

Mr. *Williams*. Did you recommend it to them about subscribing for the Girl?---*E. Ald*. I did not deliver Papers: Mr. *Aldridge* took one in his Pocket with him, and I went with him to Mr. *Howard*'s; we had some Discourse with him, but I can't say what it was justly.

Mr. *Williams*. I'll put you in Mind of one Thing: Did you, or did you not, say you were satisfied with the Girl's Description she gave of the House, either to Mr. or Mrs. *Howard*?

E. Ald. I denied it from the very first.

Mr. *Williams*. Did you say you thought she had been at the House, or did you declare you thought she had not?

E. Ald. If I declared any Thing about it, I declared she was not at the House; whether I did, or did not, I am sure, if I said any Thing, I said she was not confined there.

Mr. *Williams*. Did you any ways recommend this Paper to Mr. or Mrs. *Howard*, or endeavour, with Mr. *Aldridge*, to encourage the Case?

E. Ald. No; I only left the Paper with him; I did not encourage the Case either one Way or other; we did talk about the Gypsey, whether she was there; they could not tell what Time she had been there. I asked them, how long they thought she had been there? Mrs. *Howard* said, she could not call to mind how long she had been there, but said, she thought she had been there some Time, for she knew her very well.

Mr. *Williams*. How many Papers had you there?--*E. Ald*. I had but one.

Mr. *Williams*. How long after the Conviction of the old Woman was it, before you went before my Lord-Mayor?

E. Ald. Mr. *Nash* and Mr. *Hague* had been there two or three Times before I had been there, and they desired me to go with them.

Mr. *Williams*. Was it a Month after?---*E. Ald*. It was that, to be sure.

Mr. *Williams*. How came you, when you heard this poor Woman was reprieved, upon an Information made on her Behalf, when every body was then endeavouring to explain the Matter, not to go before the Magistrate in a Month's Time? Did not you think it a Matter of Justice to go?

E. Ald. When I was called for, I did: It was no Business of mine to trouble my Head about it to go.

William White sworn.

W. White. I am an Officer under my Lord Mayor. I remember going down to *Enfield-Wash*, on the 1st of *February* 1753, to apprehend *Susannah Wells*. There was a Warrant went down before me: I met three Gentlemen there with the Warrant: I apprehended it was to take up Mother *Wells*, for cutting off *Elizabeth Canning*'s Stays: I went over the Way to a Public-House; then Somebody said they saw Mother *Wells* go by; then I said, Let us go over and secure every body in the House: There were four of us, Mr. *Adamson*, Mr. *Wintlebury*, I, and another Person whom I do not know: We went there: When we were in the Parlour, Mr. *Adamson* pointed to Mother *Wells*, and said, That is she; there were two or three other Women in the Room with her. I immediately drawed my Hanger, and said, they were all Prisoners. I put a Centry over them, and went to the other Parts of the House, and took all that were in the House, and put them into the Parlour: Mother *Squires* and her two Daughters were in a fore Room up one Pair of Stairs: *George Squires* was brought into the Room by some of the People: I told him he must be detained: Gentlemen, said he, look over every thing that I have here: I turned them all out, and the old and young Women's Things too, to look for the Stays, but no such Thing was found.

Mr. *Willes*. Did you tell them the Reason of your apprehending them?

W. White. I did not just then: I said, there was a Robbery committed, and they must not go away: I found one of Mother *Wells*'s Daughters, and *Virtue Hall* next, and brought them to the rest: After this, I went into the Kitchen on the right Hand, and looked round: After that, I saw a Woman's Head, by looking over the Door through a Chasm, in a Place they call the Hay-loft. There was at the Bottom of it seven Steps to go up. I went and fetched her down, and put her amongst the rest; this was *Judith Natus*; she appeared to be just getting up.

Mr. *Willes*. What Time of the Day might this be?

W. White. I take it to be about Nine in the Morning. After I could find Nobody else, I went up into the Hay-loft to take a View of it; I just looked round, and saw the Hay, and two Windows, some Saddles, a Chest of Drawers, an old Barrel, a Musket, and a Tub, and a great deal of Lumber that I can't particularly describe.

Mr. *Willes*. How much Hay might there be?

W. White. If it had been bound up, I believe there were about the Value of twelve or fifteen Trusses; it seemed to have laid there a great while: I saw also a little Stove Chimney without a Grate in it. I did not stay to make particular Observation.

Mr. *Willes*. Were there any Pictures over the Chimney?

W. White. No, there were none: I saw the Bed *Judith Natus* had lain in, that was opposite the Fire-place. When I had looked round the Room, I was a little surprized, and thought the Girl was mistaken; so I went out on the Outside, and looked under the Window that fronts the Road, the North Window: I could not observe any Thing particular there, neither the Footsteps of any body dropping from the Window, or Print of their Cloaths by dropping down; it was clay Ground; it was so soft, that a Step of a Dog might make an Impression: There was a Heap of human Dung lay under it, about as high as the Body of a Quart Bottle; there was no Appearance of any body being there for some Time; neither did it appear to me as if any body had been out at that Window: I called Mr. *Adamson* to shew him; he would have persuaded me there were some Scratches on the Wall with her Foot, but I could not see any.

Mr. *Willes*. Was there any Pent-house or Shed between the Ground and the Window?

W. White. No, there was not; the Wall was perpendicular from the Ground. I was in the Parlour amongst them when *Canning* came down, which I believe was about Twelve or One o'Clock; she was carried into the Kitchen, and set upon the Dresser opposite the Parlour; she sat there about four or five Minutes.

Mr. *Willes*. Were the other Witnesses there at that Time?

W. White. There were so many People, I can't tell: After this, she was carried up Stairs to where I fetched the Gypsey from, but I did not go up Stairs with them; neither did I go up into the Hay-loft with her. The Prisoners being all in the Parlour, it was proposed to bring them one at a Time into the Kitchen; I objected against that, and desired they would all go back again into the Parlour, and let *Canning* go in and pick the Woman out from among them all, that had robbed her; I was afraid Somebody would go and give a Signal; then we went into the Parlour; they were all placed in a Circle round the Fire; I believe, before they were moved, *Mary Squires* was on the left-hand Side of the Fire; *Wells* sat with her Elbow against the Fire-place, on the right-hand Side; this was before they got up to come in one at a Time; after this, their Positions were most of them altered; and when *Canning* came in, which could not be above a Minute or two after, upon some Occasion, *Wells* was shifted, and got into *Squires*'s Side, and *Squires* in her Place. *Canning* fixed upon the old Gypsey, as soon as she came into the Middle of them; the Gypsey was sitting in the Corner stooping, I think, with a black Bonnet on: *Canning* said, That is the Woman there, pointing to her: I saw her fix her Eye immediately on that Corner of the Room.

Mr. *Willes*. Was her Face fronting *Canning*?

W. White. No, it was cross the Fire-place, as I apprehend.

Mr. *Willes*. Do you think *Canning* could see her Face then?

W. White. I can't answer for what she could see: I begged of her, before she went in, for God's sake, to be sure before she fixed upon any body.

Mr. *Willes*. Who did you expect she would have fixed upon?

W. White. I expected she would have fixed upon Mother *Wells*, before she went into the Room. When she had fixed upon the Gypsey, one of her Daughters got up, and went to the old Woman, and said, This Gentlewoman says you have robbed her. *Canning* was then standing in the Middle of the Room amongst the People. The Gypsey Woman came up to her, and opened her Face, and said, *Me rob you! I never saw you in my Life before; for God Almighty's sake, don't swear my Life away.* When I said there was a Robbery committed, *George Squires* asked me, when the Robbery was committed? (his Mother and two Sisters were then with him) I said, it was on the 1st of *January*: He said, We were in *Dorsetshire* at that Time, at a Place called *Abbotsbury*; we went there to keep our *Christmas*: Then I took an Opportunity to find out Mother *Wells*'s Daughter by herself.

Mr. *Willes*. Was *Canning* present?

W. White. No.

Mr. *Moreton*. Then what *Wells*'s Daughter said, is not Evidence against the Defendant.

Mr. *Willes*. I meant what was said in *Canning*'s Presence.

W. White. They all said they were at *Abbotsbury*, while *Canning* was in the Room; that is, the Son, two Daughters, and Mother.

Mr. *Willes*. Did they mention keeping their *Christmas* before *Canning*?

W. White. No, they did not mention that in the Parlour, but they did to me before *Canning* came; we stayed some Time; then we went before Justice *Tashmaker* at *Edmonton* with them all in a Cart.

Cross-Examined.

Mr. *Moreton*. I think you are an Officer in *London*?

W. White. I am, but I had a Constable there.

Mr. *Moreton*. Was one *Long*, a Son-in-law to Mother *Wells*, in the House?

W. White. I believe he was there with a Cart to carry them: There were a great many People; I did not know *Long*.

Mr. *Moreton*. After you had collected the People out of all the Rooms, you say you went up Stairs?

W. White. I did.

Mr. *Moreton*. Did you meet with any Obstruction?

W. White. There was a Man made some Obstruction, and said, he would first see the Warrant; upon which I went to the Constable and fetched it, and went up.

Mr. *Moreton*. In whoſe Cuſtody did you leave the Priſoners?

W. White. With the People that went down with me; the Officer that had the Warrant was in the Parlour.

Mr. *Mor*. When you went down, did you leave that Man alone?

W. White. I believe he ſtood upon the Stairs, till I fetched the Warrant; he was at the Door of the Room, but ſaid he would not open it till he had ſeen the Warrant.

Mr. *Mor*. Was that Man's Name *Long*?

W. White. There was one *Long* that carried them to Juſtice *Taſhmaker*'s; but whether that was he, I cannot tell.

Mr. *Mor*. The *Long* I mean, is Son-in-Law to Mrs. *Wells*.

W. White. Then I don't know him.

Mr. *Mor*. Were they all uniform in giving the Account of being at *Abbotsbury*?——*W. White*. They were.

Mr. *Mor*. Mention what the old Woman ſaid.

W. White. She ſaid ſhe was at *Abbotsbury* on the 1ſt of *January*; and *George* and *Lucy* ſaid, they were there; and *Mary* ſaid, ſhe was at her Uncle's in the *Borough*; ſhe ſaid ſhe was there at *Chriſtmas*.

Mr. *Mor*. You ſay *Adamſon* and you had no other Conception but that Mother *Wells* was the Thief?

W. White. We did think ſo.

Mr. *Mor*. Were there any ſhewing any body to *Canning*, when ſhe came in?

W. White. No, Sir, not as I ſaw; ſhe, of her own Accord, voluntarily picked out Mrs. *Squires* as the Perſon that cut off her Stays.

Mr. *Davy*. We ſhall now produce ſeveral Witneſſes, who, at various Times, during the Month of *January* 53, were in the very Room in which the Defendant ſwore ſhe was confined.

Fortune Natus ſworn.

F. Natus. I live at *Waltham-Croſs*, when I am at Home; I have lived there almoſt two Years.

Mr. *Davy*. Was you there before the Year 52?

F. Natus. I was there a good while before that.

Mr. *Davy*. Did you ever live at *Enfield-Waſh*, and when did you come there?

F. Natus. On the *Monday* Fortnight after my Lord-Mayor's Day, of Sir *Criſp Gaſcoyne*'s Mayoralty, I came from the *Wheat-ſheaf* at *Waltham-Croſs*, and went to lodge at Mrs. *Wells*'s Houſe at *Enfield-Waſh*.

Mr. *Davy*. Are you a married Man?

F. Natus. I am, Sir; my Wife's Name is *Judith*; ſhe lived with me all the Time.

Mr. *Davy*. In what Room did you lodge at Mrs. *Wells*'s?

F. Natus. In a Room properly called the Workſhop; that is, the Room that goes up out of the Kitchen, about ſeven or eight Steps to go up.

Mr. *Davy*. Is it a long or ſquare Room?

F. Natus. It is a long Room, no Squareneſs belongs to it, with a Pantile Roof.

Mr. *Davy*. How many Windows are there to it?

F. Natus. There are two; one facing the Feet of my Bed, it was a ſingle Caſement; and the other at the farther End of the Room, upon the left Hand as I lay, a larger than the other, one Half boarded, and the other Half Glaſs, looking into the great Road; and there was a Chimney facing the Foot of my Bed, on the Right-hand Side, in the Corner of the Room next the little Window.

Mr. *Davy*. What was your Bed?

F. Natus. It was made of Hay and Straw mixed together.

Mr. *Davy*. Had you any Pillow or Bolſter, and what was it made of?

F. Natus. I had a Sack of Wool for my Bolſter.

Mr. *Davy*. Did your Wife lie with you on this Bed?

F. Natus. She did, Sir.

Mr. *Davy*. Mention the Furniture of the Room.

F. Natus. When I came firſt into the Room, there was pretty nigh half a Load of Hay, as nigh as I can gueſs; a large Cheſt of Drawers on the Left-hand Side, about half Way in the Room; two or three Side-Saddles, one Man's Saddle; a large Box that had ſome Pollard in it, it was a deepiſh Drawer, and formerly did belong to the Cheſt of Drawers; a Tub to hold ſome Chaff for Mrs. *Wells*'s Horſe, and a Tub with ſome Iron Hoops on it; an old Gun, and a Barrel of a Gun beſides; the Gun ſtood in the Corner upon ſome Pantiles; an old Lanthorn, an old Spit, and an old croſs-cut Saw, that ſtood upright in the Chimney; there was Pullies and a Line that belonged to a Jack, that came through the Hole at the right Hand of my Bed, over my Head; the Hole of the Line came through, was large enough to put three of my Fiſts in, and about a Foot in Length; I uſed to put a Wiſp of Hay in it to keep out the Cold; there was alſo the Sign of the *Crown* there, almoſt at the Feet of my Bed.

Mr. *Davy*. Was the Sign made of Wood or Copper?

F. Natus. It was made of Wood.

Mr. *Davy*. Was there any Grate in the Chimney?

F. Natus. No, there never was a Grate in the Room ſince I knew the Houſe.

Mr. *Davy*. Did you obſerve any Thing elſe in the Room?

F. Natus. I obſerved a Bar there, that belonged to the Bar in the Kitchen, where they uſed to keep all their Liquor; it was old, ſo they brought it up Stairs.

Mr. *Davy*. Were there any Pictures in the Room?

F. Natus. I never ſaw a Picture in the Room in my Life.

Mr. *Davy*. What was over the Chimney?

F. Natus. There was an old Iron Caſement on the Top of the Chimney; it was all Iron, no Glaſs at all, to the beſt of my Remembrance.

Mr. *Davy*. Was there any Lead in it?

F. Natus. There was no Lead in it, as I think, only the Frame of a Caſement.

Mr. *Davy*. How long did you lodge there?

F. Natus. I lodged there ten Weeks, all but three Days, and in no other Place but this Room. I lay out of it but one Night in all the Time, that was on a *Wedneſday* Night; my Wife never lay a Night out of it in that Time, except that Night I can't tell, I not being there.

Mr. *Davy*. Was the Quantity of Hay decreaſed, when you lodged there?

F. Natus. It was; they kept a Horſe, and had ſome for him out of it conſtantly, almoſt every Day.

Mr. *Davy*. How much Hay might there be left, when you laſt lay there?

F. Natus. It might be the Value of Ten or twelve Truſſes, if it had been tied up.

Mr. *Davy*. Was any of the Furniture of the Room taken out while you was there?---*F. Natus*. None at all, but the Sign of the *Crown*, that was bought by *Ezra Whiffin*.

Mr. *Davy*. When did he buy that?

F. Natus. I cannot juſtly ſay that; I did not ſee him take it away.

Mr. *Davy*. How do you know that he bought it?

F. Natus. Becauſe he has now got it hanging up at his Door. There was a large Piece of Wood under the Foot of my Bed, and ſome Irons in it that belonged to the Sign; he has had them ſince he bought the Sign, and the Piece of Wood is in the Chamber now. I was there New and Old *Chriſtmas*, and all the Month of *January*, till I was taken up on the 2d of *February*.

Mr. *Davy*. Look at that young Woman, (*meaning* Canning) did you ever ſee her there in *January*?

F. Natus. I don't know any thing of her; I never ſaw her in the Houſe, or at the Houſe; I only had a Glimpſe of her at Juſtice *Taſhmaker*'s; when they were taken up, I was at Work, and was ſent for Home.

Mr. *Davy*. Did any body beſides your Wife and yourſelf go into that Room?

F. Natus. Yes, one *John Howit*, Mrs. *Wells*'s Son; he came there for ſome Pollard to feed his Mother's Sow and Pigs with, and ſeveral Times for Hay, when I was there; and *Sarah Howit*, his Siſter, ſhe often came for Pollard to ſerve the Pigs; ſhe almoſt always lived at Home: I have ſeen the Widow *Long* there; her Maiden Name was *Elizabeth Wells*; I have ſeen her there ſeveral Times in the Month of *January*; there are two *Longs*; one of them is Mr. *Long*'s own Daughter, ſhe never was there: I have ſeen *Virtue Hall* in that Room.

Mr. *Davy*. Did *Virtue Hall* lodge in the Houſe?---*F. Natus*. She was a Lodger there before I knew the Houſe, in one of the beſt Chambers.

Mr. *Davy*. Do you remember when the Gypſey firſt came there?

F. Natus. I cannot well remember the Day punctually that they came there; they came about a Week and a Day before they were taken up.

Mr. *Davy*. What Rooms did they lodge in?

F. Natus. They lodged up the main Stairs, in one of the beſt Rooms.

Mr. *Davy*. Mention, if you can, what Rooms the ſeveral People lay in.

F. Natus. I can deſcribe none of them, becauſe I never was much in them: *Virtue Hall* lay along with Mrs. *Wells*: I had been in the Rooms, but never to take much Notice of them.

Mr. *Davy*. Deſcribe the ſeveral Rooms to which the Stair-caſe leads.

F. Natus. There was one Room on the left-hand Side the Stair-caſe; there Mrs. *Wells* and *Virtue Hall* lay in one Bed, I believe; the old Gypſey lay in a Room oppoſite.

Mr. *Davy*. Where did *George Squires* lie?---*F. Natus*. I don't know.

Mr. *Davy*. Have you any particular Reaſon for remembering the Time of the Gypſey's coming to *Wells*'s Houſe?

F. Natus. I am no ways exact to the Day, but by Reaſon ſhe looked ſo frightful, that I did not care to be at the Fire with her.

Mr. *Davy*. Had you ever ſeen *Mary Squires*, or her Son, or Daughters, before the Time you mention?

F. Natus. No, I never had, Sir, in all the Courſe of my Life.

Mr. *Davy*. Do you know who came to *Enfield-Waſh* with *Mary Squires*?

F. Natus. No, I don't, becauſe I was then at Work; her Son and two Daughters lodged there all the Time ſhe did.

Mr. *Davy*. Did they board in the Houſe?

F. Natus. No, they went to the Shops to buy their Victuals; they were acquainted with Mrs. *Larney*, who ſells Butter, Cheeſe, Bread, and Bacon; ſhe lives about two Stones-caſt from Mrs. *Wells*'s Houſe.

Mr. *Davy*. Is ſhe a married Woman?

F. Natus. She is; her Huſband is a Bricklayer, I think, named *John*.

Mr. *Davy*. Do you remember any Pitcher in the Houſe?

F. Natus. I remember one very well; it was a largiſh black Pitcher, broken about the Mouth; my Wife made uſe of it over-Night, before we were taken up, to fetch Water from a Pump over the Way, at Mr. *Howard*'s, for my Supper: *Virtue Hall*, and Mrs. *Wells*, and *Sarah Howit*, uſed to go there for Water.

Mr. *Davy*. Do you remember any Bed-gown Mrs. *Wells* had?

F. Natus. No, I don't remember ſhe ever had any at all.

Mr. *Davy*. Look at this Pitcher, Handkerchief, and Bed-gown; do you know either of them?

F. Natus. I'll ſwear to the Pitcher, that is Mrs. *Wells*'s; I never ſaw the Handkerchief and Bed-gown in my Life.

Mr. *Davy*. Do you remember one *Robert White* coming to *Wells*'s Houſe?

F. Natus. I do; he uſed to come there, as far as I know, under Pretence of courting *Sal Howit*, almoſt every Night; I have known him five or ſix Years; he has ſeen me go to Bed in that Room ſeveral Nights.

Croſs-Examined.

Mr. *Nares*. What is your Buſineſs?

F. Natus. I am a poor labouring Man.

Mr. *Nares*. Where have you been ſince you was taken up?

F. Natus. I have been at Work at Mr. *Bell*'s, at the *Four-Swans*, at *Waltham-Croſs*.

Mr. *Nares*. Did you work for him before?

F. Natus. No, I did not, Sir.

Mr. *Nares*. Are you ſure this is the Pitcher that uſed to go ſo often to the Pump?

F. Natus. This is it.

Mr. *Nares*. How came you to go to live at *Enfield-Waſh*?

F. Natus. I went there from *London*, being hired by a Farmer at *Waltham-Croſs*, and I could not have conſtant Lodging there.

Mr. *Nares*. Who directed you to Mother *Wells*'s Houſe?

F. Natus. A Man, whoſe Name is *Payne*, and my Wife, went and aſked for Lodging; I was to pay Nine-Pence *per* Week.

Mr. *Nares.* Why did not you lodge in the other Part of the Houſe?

F. Natus. There were no Rooms empty there.

Mr. *Nares.* Was not there a Garret empty?

F. Natus. I don't know, I never was up them.

Mr. *Nares.* Was not you ſometimes diſturbed of your Reſt by People making a Noiſe in the Kitchen?

F. Natus. They could not come into the Kitchen but I could hear them; I very ſeldom heard much Noiſe; ſometimes I ſlept almoſt all Night.

Mr. *Nares.* What Time do the Family uſe to go to Bed?

F. Natus. The Family generally go to Bed betwixt Nine and Ten o'Clock; I never knew any Harm by the Houſe; the People that belong to the Houſe have got a very bad Character; but from what I know of it, I never ſaw any Harm in it, and it is a very ſober, honeſt Houſe; I never ſaw any ill Tricks, or Irregularity, all the Time I was there.

Mr. *Nares.* What Time of the Day did *Robert White* uſe to come?

F. Natus. He uſed to come when he left off his Day's Work, may-be about Six or Seven o'Clock.

Mr. *Nares.* How long did he uſe to ſtay?

F. Natus. May-be two Hours, ſeldom longer.

Mr. *Nares.* Was there any other Lodger there beſides you?

F. Natus. *Virtue Hall* was another.

Mr. *Nares.* What did ſhe uſe to do for a Living?

F. Natus. She uſed to ſpin.

Mr. *Nares.* She was a very induſtrious Girl; was ſhe not?

F. Natus. I cannot ſay for that, ſhe uſed to work but a little.

Mr. *Nares.* Can you remember when the Sign was carried out?

F. Natus. I cannot ſay when it was really: I do not ſay what Time I miſſed it, but only I remember its being there.

Mr. *Nares.* What Time were the Sign-Irons carried out?

F. Natus. They were not carried out till ſome time in *January*, before I was taken up.

Mr. *Nares.* How long before you was taken up?

F. Natus. It may be more than a Week or ten Days before.

Mr. *Nares.* Now I would aſk you whether you was in Company with *Arthur Newit*?

F. Natus. I have ſeveral Times; I have work'd for him.

Mr. *Nares.* Do you know one *John Jackſon*?

F. Natus. I do; he is a Farmer, and lives about a Mile out of *Ware* Town.

Mr. *Nares.* Do you know *William Hubbard*?

F. Natus. I cannot ſay I do.

Mr. *Nares.* Did you ever take an Oath upon this Affair?

F. Natus. The firſt I ever took was before Sir *Criſp Gaſcoyne*, at the *Manſion-Houſe*.

Mr. *Nares.* How long is that ago?---*F. Natus.* I cannot recollect that.

Mr. *Nares.* Do you think it is more than ſix Months ago?

F. Natus. It muſt be more than that.

Mr. *Nares.* Are you ſure the Girl never was in that Room?

F. Natus. Yes, Sir, I am, the Time I lodged there, which was ten Weeks all but three Days.

Mr. *Nares.* Did you ever fall in Company with Mr. *Newit* after this?

F. Natus. Yes, ſeveral Times.

Mr. *Nares.* Do you remember what Converſation paſſed?

F. Natus. He has taxed me ſeveral Times with ſwearing falſe, and offered to lay a Wager that I lodged in another Houſe at *Enfield-Waſh*, beſides Mother *Wells*'s.

Mr. *Nares.* Was ever ſuch a Wager laid?

F. Natus. I believe there was; but what I ſaid was Truth.

Mr. *Nares.* What was the Wager?

F. Natus. I believe it was a Shilling a-piece, I think ſo; but it was drawn, becauſe he found he was wrong.

Mr. *Nares.* We have thoſe preſent that can give an Account of it, ſo be careful: Say whether or not, upon that Concluſion, you did admit you had lodged at another Houſe?

F. Natus. No, Gentlemen, I am come here to ſpeak the Truth; I never did admit, in their Preſence, that I lodged in another Room, or in another Houſe.

Mr. *Nares.* Did you never admit you had loſt your Wager, and that you had laid in another Room?

F. Natus. I never did admit it; I did not loſe the Wager at all, becauſe it was drawn.

Mr. *Davy.* When was you applied to, to lay this Wager?

F. Natus. It is about a Quarter of a Year ago.

Mr. *Davy.* Where was this?

F. Natus. It was at Mr. *Bell*'s Houſe at the *Four Swans* at *Waltham-Croſs*.

Mr. *Davy.* What was the Wager?

F. Natus. I cannot ſay what Money was laid, I down'd with my Money myſelf.

Mr. *Davy.* Who was in the Room at that Time?

F. Natus. There were ſeveral People there drinking; I cannot ſay whether they were common Men or Gentlemen.

Mr. *Davy.* Was the Money ſtaked?

F. Natus. I cannot ſay whether it was a Shilling; the Money was ſtaked down.

Mr. *Davy.* Who held the Stakes?—*F. Natus.* I don't know.

Mr. *Davy.* Did Mrs. *Bell* hold it?

F. Natus. I don't know that ſhe did; I will not be ſure of that; I had ſome of mine again.

Mr. *Davy.* Why had you it not all again?

F. Natus. I paid for a Decanter of Beer out of it.

Mr. *Davy.* Did Mr. *Newit* pay for any out of it?

F. Natus. He paid for none.

Mr *Davy.* Did you drink Part of the Beer?—*F. Natus.* I did, Sir.

Mr. *Davy.* Was you here upon the Trial of *Mary Squires*?

F. Natus. I had a Subpœna, and did come, and was in the *Old-Bailey* Yard, and up near the Door.

Mr. *Davy.* What prevented your coming into Court to give Evidence?

F. Natus. Becauſe I was not called; none of the Witneſſes were called, never a one.

Mr. *Davy.* Was there any other Reaſon?

F. Natus. No other Reaſon, but they were not called.

Mr. *Davy.* Was you not aſſaulted?

F. Natus. I was, at the Place that turns out of the *Old-Bailey* Yard, three or four Times, and I ſhewed my Subpœna.

Mr. *Davy.* Who aſſaulted you?

F. Natus. There was a talliſh Man that kept the Gate, pitted very much with the Small-Pox, he was the only Perſon that turned me out of the Yard.

Mr. *Davy.* Did any other Perſon uſe you ill?

F. Natus. There were ſeveral other People, but none touched me to turn me out.

Mr. *Davy.* Was you alone?

F. Natus. I was with the other Witneſſes; they ſtood upon the Steps; two or three of them were turned out of the Yard.

Mr. *Davy.* What were the other Witneſſes attending for?

F. Natus. For the ſame as I did.

Mr. *Davy.* What are their Names?

F. Natus. I cannot ſay half their Names.

Mr. *Davy.* Name ſome of them.

F. Natus. There was the Widow *Long* was one; they wanted to mob her.

Mr. *Nares.* I muſt obſtruct this; this does no ways affect *Canning*, if it was the Neglect of the Officers; it cannot be proved that ſhe was privy to it.

Judith Natus ſworn.

J. Natus. The laſt Witneſs is my Huſband; he does Huſbandry-Work; he did work for Mr. *Payne* at *Waltham-Croſs*; and we then lodged at Mrs. *Arnold*'s, a Fortnight; ſhe bid us provide ourſelves, becauſe we were very poor; and at the Fortnight's End we came to Mrs. *Wells*'s Houſe at *Enfield-Waſh*, where we lodged ten Weeks all but three Days, before we were taken up; I cannot tell the Day of the Month when we came there.

Mr. *Willes.* What Month was it in?—*J. Natus.* I cannot tell.

Mr. *Willes.* Was it in *September*, *October*, *November*, or *December*?

J. Natus. I cannot tell.

Mr. *Willes.* Was it before New *Chriſtmas-Day*?—*J. Natus.* It was.

Mr. *Willes.* How long is it ago?

J. Natus. Upon my Word I cannot tell, becauſe I am no Scholar.

Mr. *Willes.* During the ten Weeks all but three Days, how many Nights did you lie out of that Houſe?

J. Natus. I never lay out of it one Night during the whole Time; my Huſband lay out of it one Night, and but one.

Mr. *Willes.* What Room did you lie in?

J. Natus. We lay in a Room they call the Workſhop.

Mr. *Willes.* In what Part of the Houſe is it?

J. Natus. They go through the Kitchen, and up eight Stairs, as near as I can gueſs; our Bed was of Hay and Straw, on the right Hand going up; we had a Sack of Wool for our Bolſter.

Mr. *Willes.* On which Side was the Head of your Bed?

J. Natus. It looked into the Kitchen.

Mr. *Willes.* Was there any Hole near your Bed?

J. Natus. Yes, there was one at the Head of the Bed; we uſed to ſtuff it with Hay to keep the Cold out; it was there before we came there.

Mr. *Willes.* Where did that Hole look into, when it was not ſtopped up?—*J. Natus.* It looked into the Kitchen.

Mr. *Willes.* Deſcribe the Room; is there any Chimney in it?

J. Natus. There is, and a Caſement over it.

Mr. *Willes.* What do you mean by a Caſement over it?

J. Natus. There was an old Caſement, all to Pieces almoſt, over the Chimney, when we came into the Room.

Mr. *Willes.* Was there any Glaſs in it?

J. Natus. There might be about half a Caſement, not much Glaſs to ſignify.

Mr. *Willes.* Was there any Grate in the Chimney?

J. Natus. No, there never was for the Time I was there.

Mr. *Willes.* Was there any Cheſt of Drawers?

J. Natus. There was a Neſt of Drawers, which I uſed to put my Bread and Cheeſe in, becauſe the Mice ſhould not run away with the Cheeſe.

Mr. *Willes.* Was this Cheſt of Drawers on the right or left-hand Side of your Bed?—*J. Natus.* They were on the left-hand Side.

Mr. *Willes.* Was the Hole you uſed to ſtop with Hay of any Uſe?

J. Natus. No, none at all.

Mr. *Willes.* How big was it?

J. Natus. It was about as big as my two double Fiſts.

Mr. *Willes.* What was hung over this Hole?

J. Natus. The Jack-line that was at the Head of my Bed.

Mr. *Willes.* Then cannot you tell the Uſe of the Hole?

J. Natus. I believe it was for the Jack-line to go through.

Mr. *Willes.* Pray, what other Furniture was there in the Room?

J. Natus. I believe, as nigh as I can gueſs, there was about half a Load of Hay, that was there before we came.

Mr. *Willes.* What was there in the Room beſides?

J. Natus. There were Pan-tiles at the farther End of the Room, which had laid there before we came; an old Spit, and an old Lanthorn, juſt by the Chimney; one Man's Saddle, and two Women's Saddles; there was a Saw, and a Tub which Mrs. *Wells* uſed to put Chaff in for the Horſe, and a Box that ſhe uſed to put Pollard in for the Pigs, that ſtood on the left-hand Side.

Mr. *Willes.* Did ſhe uſe to keep Pigs?

J. Natus. Yes, Sir, ſhe did, in a little Sort of a Waſh-houſe. She uſed to go into the Room for Pollard every Day, and feed them with it. There was a Sign of a *Fountain* there; it ſtood in the Room before we came, behind a Tub where the Chaff was.

Mr. *Willes.* Was there ever a Gun there?

J. Natus. Yes, there was a Gun.

Mr. *Nares.* Don't put Words into her Mouth.

Mr. *Willes.* Was there one Sign or two?

J. Natus. There were two, the *Fountain* and the *Crown*.

Mr. *Willes.* Where was the Sign of the *Crown*?

J. Natus. They ſtood together, fronting you as you go up. Mr. *Whiffin* bought the Sign of the *Crown* before Old *Chriſtmas*; the Irons that be-

longed to the Sign-poſt were at the Feet of my Bed, and he bought them: He took them away about a Week or a Fortnight before we were taken up, as nigh as I can gueſs.

Mr. *Willes.* How long had Mrs. *Squires* lodged there, before ſhe was taken up?—*J. Natus.* She had lodged there a Week and one Day.

Mr. *Willes.* Do you know *George Squires?*

J. Natus. I do; I never ſaw him in my Life before he came to lodge there: There were two Daughters, one is named *Lucy.*

Mr. *Willes.* Where did they uſe to lie?

J. Natus. They uſed to lie up Stairs in the other Part of the Houſe; ſhe and her two Daughters lay in a Chamber over the Parlour.

Mr. *Willes.* Were there any other young People in the Houſe?

J. Natus. There were Nobody at all in the Houſe but them and ourſelves.

Mr. *Willes.* In what Room of the Houſe did *Virtue Hall* lodge?

J. Natus. In the Room fronting the Stairs, near where the Gypſies lodged.

Mr. *Willes.* Had there been any Uſe made of this Hay?

J. Natus. They uſed to fetch it for the Horſe.

Mr. *Willes.* Who uſed to fetch it?

J. Natus. *Sal Howit*; ſhe is Mrs. *Wells*'s Daughter; and Mrs. *Wells* herſelf, and *Virtue Hall* uſed to fetch ſome, and ſometimes Pollard for the Pigs.

Mr. *Willes.* How came *Sal Howit* to be Mrs. *Wells*'s Daughter?

J. Natus. Mrs. *Wells* had two Huſbands.

Mr. *Willes.* How was this Houſe ſupplied with Water?

J. Natus. Sometimes we fetched it from a Gentleman's Pump from over the Way.

Mr. *Willes.* Look at this Pitcher.

J. Natus. I cannot ſwear to the Pitcher; but I have fetched Water myſelf many a Time in ſuch a black Pitcher; I think it was not broke ſo much at the Mouth as it is now: One may be like another: I cannot ſay it is the ſame; I think it was not quite ſo big as this.

Mr. *Willes.* Look upon this Bed-gown, examine it well.

J. Natus. I do; I never ſaw this in my Life, before they came and took us up: Mrs. *Wells* had no Bed-gown.

Mr. *Willes.* Look at that young Woman, (meaning *Elizabeth Canning*) did you ever ſee her at Mrs. *Wells*'s?

J. Natus. I never did, before ſhe came with them to take us up, if that was the laſt Word I was to ſpeak.

Mr. *Willes.* Look at this Handkerchief; do you know it?

J. Natus. I never ſaw it in my Life before.

Mr. *Willes.* Was you ſubpœna'd at *Squires*'s Trial, in order to give Evidence?—*J. Natus.* I was; but they would not let me come in.

Mr. *Willes.* You was taken up with the reſt, was you?

J. Natus. I was, and carried before Juſtice *Taſhmaker*, and from thence to Juſtice *Fielding*. *Canning* cleared me; ſhe ſaid ſhe never ſaw me before.

Mr. *Willes.* Did you give the ſame Account as you do now?

J. Natus. I did.

Croſs-Examined.

Mr. *Williams.* Did ſhe charge you with any thing when you was taken up?

J. Natus. No, ſhe did not.

Mr. *Williams.* Did ſhe charge Mrs. *Wells* at all?

J. Natus. No, ſhe did not.

Mr. *Williams.* Did you hear her ſay *Virtue Hall* was by, when Mrs. *Squires* cut the Lacing of her Stays?

J. Natus. I cannot ſay I heard her ſay it.

Mr. *Williams.* What Countryman is your Huſband?

J. Natus. He comes from *Glouceſterſhire.*

Mr. *Williams.* From whence are you?

J. Natus. I was bred and born at *Ware* in *Hertfordſhire.*

FRIDAY the 3d of *May.*

Mary Larney ſworn.

M. Larney. I live at *Enfield-Waſh*, and keep a Chandler's Shop. I have known *Fortune Natus* and his Wife ſome conſiderable Time; they have bought Goods of me, that is, Bread, Butter, Cheeſe and Beer.

Mr. *Davy.* When was the firſt Time you ever ſaw them?

M. Lar. It was ſome Time after *Michaelmas* was Twelve-month, between that and *Chriſtmas* they lodged at Mrs. *Wells*'s Houſe.

Mr. *Davy.* Did you ever hear them ſay in what Part of the Houſe they lodged?—*M. Lar.* No, I never did, indeed.

Mr. *Davy.* How long did they remain there?

M. Lar. They remained there after the Time they were taken up, for they came back after that.

Mr. *Davy.* Do you remember any other Lodgers Mrs. *Wells* had in her Houſe?

M. Lar. *Virtue Hall* uſed to come ſometimes for Things, and I remember the Gypſies coming.

Mr. *Davy.* When was the firſt Time of your ſeeing them?

M. Lar. It was on a *Wedneſday*; and the *Thurſday* was Se'nnight after, in the Morning, they were taken up.

Mr. *Davy.* When you ſaw the Gypſies, how many of them were there?

M. Lar. *Lucy* was the firſt I ſaw of them; ſhe knocked at my Door, and aſked me if I ſold ſmall Bread, on the *Wedneſday*; I ſaid, Yes; I ſold her a Loaf and ſome Cheeſe and Small-Beer, and lent her a Pitcher to carry it Home; (I live oppoſite Mrs. *Wells*'s Houſe) in the Evening of the ſame Day old Mrs. *Squires* came. *George* brought the Pitcher Home the next Morning. He or the Siſter came every Day till they were taken up, and had Things of me, and ſometimes the old Gentlewoman for Tobacco; I ſaw them commonly two or three Times a-Day; that very Morning they were taken up, they had Tea.

Mr. *Davy.* What is your Huſband's Name?

M. Lar. His Name is *John Larney*; he is a Bricklayer.

Mr. *Davy.* Do you know whether Mrs. *Wells* keeps any Cattle?

M. Lar. She keeps a Horſe and a Hog.

Mr. *Davy.* How long have you known her?

M. Lar. I have known her almoſt forty Years; ever ſince I can remember.

Mr. *Davy.* With what did ſhe uſe to feed her Horſe?

M. Lar. I have ſeen them fetch Grains; and I know ſhe bought Hay, for I ſaw it brought in, and by the Badneſs of the Weather it was ſpoiled.

Mr. *Davy.* When was it brought in?

M. Lar. In the ſeaſonable Time of Hay-making, before laſt *Chriſtmas* was Twelve-month.

Mr. *Davy.* Where did ſhe put it?

M. Lar. As ſhe ſaid then, ſhe put it into the Room called the Shop.

Mr. *Nares.* I object againſt that, as legal Evidence.

Mr. *Davy.* I am not aſking any thing Mrs. *Wells* ſaid ſince 1752, but what ſhe ſaid before, when it was impoſſible for her to know of this Affair, when it could ſerve no Purpoſe to ſpeak falſely; that is Evidence.

Mr. *Nares.* There is one plain Rule as to the Evidence of Hearſay; that is, that when you can have that very Perſon that proves this very Fact, ſhe is the Perſon to be called; this is not Evidence at all.

Court. The Court are of Opinion that it will be proper for *Wells* to give her own Evidence.

Mr. *Davy.* Was you ever in this Workſhop at Mrs. *Wells*'s?

M. Lar. No, not till after the People were taken up.

Mr. *Davy.* Do you remember ſeeing any Hay carried to the Houſe after that Time you have mentioned?

M. Lar. No, I do not.

Mr. *Davy.* How much was brought there in the Year 1752?

M. Lar. It was looſe upon the Cart; I don't know how much there was of it; I ſaw it carried to the Door, but did not ſee it put into the Workſhop.

Mr. *Davy.* What Door did you ſee it carried to?

M. Lar. Towards the Stable-door, as they call it.

Mr. *Davy.* Near what Part of the Houſe is the Stable?

M. Lar. The lower Part towards *London*; it lies in a Line with the Houſe.

Mr. *Davy.* Is there any Loft over the Stable?

M. Lar. Not as I know of.

Mr. *Davy.* To what Part of the Houſe was this Hay carried?

M. Lar. I ſaw it ſtanding againſt the Stable.

Mr. *Davy.* Did you ſee it unloaded?---*M. Lar.* No, I did not.

Croſs-Examined.

Mr. *Moreton.* How was this Hay brought?

M. Lar. It was brought in a Cart, and drawed up to the Stable, which ranges along with the Houſe; I ſaw no more of it.

Mr. *Moreton.* What Countrywoman are you?

M. Lar. I was born and bred at *Enfield-Waſh.*

Mr. *Moreton.* How long has Mrs. *Wells* lived in that Houſe?

M. Lar. She lived there before I can remember.

Mr. *Moreton.* A good Sort of a Houſe, was it not?

M. Lar. I did not frequent the Houſe.

Mr. *Moreton* What is the general Reputation of the Houſe?

M. Lar. I ſuppoſe, by the Report, you know what a Houſe it was.

Mr. *Davy.* We will ſuppoſe it to be a moſt infamous Houſe.

Mr. *Moreton.* Did you ever ſee any Gypſies there before?

M. Lar. No, never before that Time, to my Knowledge; I never ſaw any at Mrs. *Wells*'s before. I was very much ſurprized, and put the Money I took of her into a Pail of Water, becauſe I had heard they can get the Money again.

Mr. *Moreton.* Whoſe Money was you afraid would be ſo nimble, *Lucy*'s or the old Woman's?

M. Lar. I had put *Lucy*'s in my Pocket amongſt other Money; it was the old Woman's Money I put in the Water.

Mr. *Moreton.* Do you know *William Smith?*

M. Lar. He lives two or three Miles from me, upon the Chace; he is a Farmer.

Mr. *Moreton.* Do you know *Samuel Arnot?*

M. Lar. I know no ſuch Name, unleſs it be he that lives up in the Town.

Mr. *Moreton.* Do you know Mr. *Howard* and his Wife?

M. Lar. They are People of very good Character, to be ſure.

Mr. *Moreton.* Do you know *Humphry Holding?*

M. Lar. I do; he lives in *Turkey-Street*, about half a Mile from me.

Mr. *Moreton.* Do you know Mr. *Story?*

M. Lar. I have no Acquaintance with him, or Knowledge of him.

Sarah Howit ſworn.

S. Howit. I am Daughter to *Suſannah Wells*, and lived at *Enfield-Waſh* with her at the Time Mrs. *Canning* ſaid ſhe was confined there.

Mr. *Willes.* Do you know *Mary Squires?*

S. Howit. I do, upon the Account of her being at our Houſe a Week and one Day, and *George* and *Lucy*; they were all three together; they came on the *Wedneſday*, and were taken up the *Thurſday* Se'nnight after.

Mr. *Willes.* Look at that Pitcher; do you know it?

S. Howit. There was a Pitcher that uſed to go frequently to Mr. *Howard*'s Pump.

Mr. *Willes.* Is this the Pitcher?

S. Howit. I cannot tell; it was a black Pitcher.

Mr. *Willes.* Did you live there the Time *Fortune Natus* and his Wife were there?---*S. Howit.* I did.

Mr. *Willes.* What Time did they come?

S. Howit. I cannot ſay at what Time they came.

Mr. *Willes.* How long were they there before *Mary Squires* came?

S. Howit. O! a great while; they were there the Time *Squires* was there, and the Time that *Canning* ſaid ſhe was confined there; and they lay in the Room ſhe ſays ſhe was confined in, which was the Workſhop.

Mr. *Willes.* What do you mean by Workſhop?

S. Howit. I mean the long Room that you go through the Kitchen to go up to it.

Mr. *Willes.* What did *Natus* and his Wife lie upon there?

S. Howit. They lay on Hay and Straw.

Mr.

Mr. *Willes.* Can you ſpeak particularly, how long they were there?
S. Howit. They were there two Months.
Mr. *Willes.* What Uſe was made of this Room?
S. Howit. There was a great deal of looſe Hay in it, and Lumber; the Hay was for an old Horſe my Mother had. There was Pollard in a great Drawer, to feed a Sow and Pigs.
Mr. *Willes.* Do you remember about *Chriſtmas*-Time, before *Squires* came there, whether the Room was locked up?
S. Howit. No, there never was a Lock upon the Door in my Memory; I remember it ever ſince I was born almoſt; I was born in the Houſe.
Mr. *Willes.* Was you ever in that Room in that Month of *January?*
S. Howit. I was almoſt every Day.
Mr. *Willes.* Are you ſure of that?—*S. Howit.* I am ſure of it.
Mr. *Willes.* Can you take upon you to ſwear you was at your Mother's all the Month of *December?*—*S. Howit.* Yes, I can.
Mr. *Willes.* Can you, that you was all the Month of *January?*
S. Howit. I lay in that Houſe every Night in the Month of *January?*
Mr. *Willes.* Do you remember, about a Fortnight or three Weeks before *Squires* came to your Houſe, that any body was in that Workſhop with you?
S. Howit. *Virtue Hall* went into it frequently, as much as I: We were there both together at the Time the Trees (againſt the little Window, a Caſement that faces the Stairs) were lopped.
Mr. *Williams.* At what Time was it that the Trees were lopped?
S. Howit. I believe it was on the 8th of *January*; there were *Edward Allen*, *Giles Knight*, and *John Larney*, that lopped them.
Mr. *Willes.* Was the Caſement open or ſhut?
S. Howit. I opened it myſelf at that Time.
Mr. *Willes.* Did any Thing paſs between you and them?
S. Howit. There were Words paſſed, but I cannot tell what the Converſation was.

Croſs-Examined.

Mr. *Nares.* Have you lived at this Houſe of your Mother's all your Life-time?
S. Howit. I was bred up there, and lived there ſome Time, not the greateſt Part of my Life.
Mr. *Nares.* How long have you been abſent from thence?
S. Howit. I have been five or ſix Years from it, and never ſaw my Mother's Houſe in the Time.
Mr. *Nares.* How came you to be at Home at this Time?
S. Howit. I was out of Place, and ſo came Home.
Mr. *Nares.* How long had you been at Home before the Gypſies came there?
S. Howit. I believe about a Year and a Half, or two Years.
Mr. *Nares.* How do you get your Living?
S. Howit. I go out to get my Bread, to work in the Country, ſometimes Harveſt-Work; I have no Family Affair with my Mother; I uſed to be in the Family, when I was not engaged another Way.
Mr. *Nares.* Do you remember what Quantity of Hay your Mother had at this Time?
S. Howit. There was a great deal of it; I believe, not a Load.
Mr. *Nares.* Had ſhe any other Hay for her Horſe?
S. Howit. No, ſhe had not; it was carried to the Horſe from Time to Time.
Mr. *Nares.* How much Hay might there be when *Natus* lay there?
S. Howit. There was a great deal.
Mr. *Nares.* Can't you tell any thing of this Converſation between theſe Men and you?----*S. Howit.* I cannot.
Mr. *Nares.* Did you begin, or they?
S. Howit. I don't know whether *Virtue Hall* began, or who.
Mr. *Nares.* Who converſed with them moſt?
S. Howit. I ſaid ſome Things, but can't tell what; I don't pretend to ſay one Word that paſſed.
Mr. *Nares.* Did they begin with you, or you with them?
S. Howit. I can't tell who begun.
Mr. *Nares.* Were they Acquaintance of yours?
S. Howit. *Edward Allen* went to School with me.
Mr. *Nares.* What Sort of Trees were they?
S. Howit. They are great high Trees.
Mr. *Nares.* Which lopped the Tree?
S. Howit. *Giles Knight*; they were not all at Work at the ſame Time; my Mother gave them a full Pot to lop the Tree; I ſaw them drink it.
Mr. *Nares.* Who had the Lop?
Mr. *Howit.* *Larney* had the Lop?
Mr. *Nares.* Whoſe Trees were they?
S. Howit. They are *Richard Allen*'s Trees; they only cut off ſome Part that hung over the Place.
Mr. *Nares.* How much in Quantity was cut off?
S. Howit. I can't tell; I thought there was a Faggot, but I did not ſee *Larney* make it up; I ſaw him go by with ſome of it.
Mr. *Nares.* Were theſe People ſent there on purpoſe?
S. Howit. No; two were hedging round the Fields.
Mr. *Nares.* What did the others do, while *Knight* lopped the Tree?
S. Howit. They ſtood on the Ground, and looked on.
Mr. *Nares.* How did *Virtue Hall* and you ſtand, by the Side of each other at the Window?
S. Howit. *Virtue Hall* looked over my Shoulder.
Mr. *Nares.* Could the Men ſee you both?
S. Howit. Yes, Sir; but I was the principal Perſon that was looking out at the Window.
Mr. *Nares.* Was there any other Window in the Houſe that looked towards that Part?
S. Howit. No, not directly; there is one, but it ſtands ſlanting.
Recorder. Was you preſent when the Gypſey, her Son and Daughter, and your Mother, were taken up?----*S. Howit.* Yes, I was.
Recorder. Was you preſent when *Elizabeth Canning* was brought there?
S. Howit. I was then ſhut up in the Parlour with the others.
Recorder. Do you remember *Elizabeth Canning* being brought into the Parlour?----*S. Howit.* I do.
Recorder. Recollect what paſſed there.
S. Howit. She ſwore to the Gypſey-Woman, and did not ſee her Face.
Recorder. Are you ſure of that?
S. Howit. She had never ſeen her Face; ſhe ſwore to her before ſhe ſaw her Face; I am ſure of it.
Recorder. What did the Gypſey-Woman ſay upon that?
S. Howit. The poor Woman did not know it was ſhe that ſhe ſwore to, till her Daughter *Lucy* ſaid, Mother, ſhe ſwears you cut off her Stays: then the Gypſey got up and ſaid, Look, Madam, don't ſay it is me that cut off your Stays; and puſhed up her Hat; look, for God's Sake, and don't ſwear to me; don't ſay it is me, for I am innocent; or to that Purpoſe; I may not repeat directly the Words in particular.
Recorder. Did ſhe ſay where ſhe was at the Time?
S. Howit. No, ſhe did not, but *George* did; but what he ſaid, I can't tell.
Recorder. Can you deſcribe in what Sort of a Poſture the Gypſey ſat, when *Canning* came into the Parlour?
S. Howit. She was ſat with her Pipe in her Mouth, by the Fire-ſide, with a Hat and Cloak on, with her Hand upon her Knee.
Recorder. Upon your Oath, whether *Elizabeth Canning* could ſee her Face at that Time?----*S. Howit.* She could not.
Recorder. Did ſhe give any Reaſon, why ſhe deſired her not to ſwear againſt her?
S. Howit. I did not hear any Reaſon; after ſhe ſwore to her, then ſhe ſhewed herſelf, and puſhed her Hat up.
Mr. *Nares.* Had *Elizabeth Canning* ſeen your Mother's Face before the Time ſhe ſpoke to the Gypſey?
S. Howit. Yes, Sir; yes, in the Room.
Mr. *Nares.* Did ſhe charge your Mother?----*S. Howit.* No, ſhe did not.
Mr. *Nares.* Did ſhe pitch upon the Gypſey of her own accord?
S. Howit. I don't know whether ſhe did or no.
Mr. *Nares.* Did you hear any body tell her to pitch upon her?
S. Howit. No, I did not.
Mr. *Nares.* How came you not to be examined upon the Trial of your Mother?
S. Howit. I was not ſubpœna'd up; I have but two Subpœna's, one before the Grand Jury, and the other here.
Recorder. What was the Reaſon you was not ſubpœna'd upon your Mother's Trial?
S. Howit. I was not; I know not the Reaſon.

John Larney ſworn.

J. Larney. I am Huſband to *Mary Larney*; I live at *Enfield* at the Two Bridges; I am a Bricklayer. I was along with *Edward Allen* and *Giles Knight*, near the Houſe of *Suſannah Wells*, *January* 8, 1753. *Giles Knight* lopped a Tree; he told me, if I would come over, I ſhould have the Lops: When we were there, *Edward Allen* flung ſome Duſt into the Window of the Workſhop near the Trees, to *Sal Howit* and *Virtue Hall*, who were within-ſide.
Mr. *Gaſcoyne.* In what Poſition did they ſtand?
J. Larney. *Sal Howit* looked over *Virtue Hall*'s Head.
Mr. *Gaſ.* What Converſation paſſed upon this?
J. Larney. Upon my Word, I can't tell; there were Words paſſed, but I don't believe there were many; when he *bulled* the Duſt in, they bid him be eaſy.
Mr. *Gaſ.* Where was *Knight* at the Time?
J. Larney. He was then in the Tree, and I ſtood upon the Ground by the Tree.
Mr. *Gaſ.* How long did you talk to them through the Window?
J. Larney. It might be the Value of ten Minutes.
Mr. *Gaſ.* Did they both look out at the Window at the ſame Time?
J. Larney. They did, and kept talking to us.
Mr. *Gaſ.* Who had the Boughs of this Tree?---*J. Larney.* Mrs. *Wells.*
Mr. *Gaſ.* Who carried them to her?
J. Larney. I don't know; I believe they were flung over the Hedge to her; I had the Arms, and ſhe the ſmall Lop.
Mr. *Gaſ.* What did you do with them?
J. Larney. I carried them Home, and we burnt them: We had half a Dozen or a full Pot of Beer for lopping the Tree; I don't know which.
Mr. *Gaſ.* Who do theſe Trees belong to?
J. Larney. They belong to *Richard Allen.* This Window looks into the Room properly called the Workſhop.
Mr. *Gaſ.* Is there ever another Window that looks the ſame Way as this does?
J. Larney. There is one above upon the Stairs going into the Garret, that belongs to the Houſe.
Mr. *Gaſ.* Are you ſure it was not that Window at the Garret Stairs, that theſe two Women were looking out at?
J. Larney. I am very ſure it was not.
Mr. *Gaſ.* Nor a Cellar Window?
J. Larney. No, it was not. There were three other Windows in the Workſhop, and I plaiſtered them up, and left two, one at the North-End, and the other at the Eaſt, that they looked out at.
Mr. *Gaſ.* What was this Room built for?
J. Larney. It was built for a Carpenter's Shop. Mrs. *Wells*'s firſt Huſband was a Carpenter.
Mr. *Gaſ.* How far was this Eaſt Window from the Ground, that they were looking out at?
J. Larney. I believe it may be about ſeven or eight Foot.
Mr. *Gaſ.* In what Condition is the Wall?
J. Larney. It is Lath and Plaiſter, very ſlight; there are a great many Holes in it; that Part towards the South you might ſhake down with your Hand.
Mr. *Gaſ.* Was it in that Condition at the Time you were lopping the Tree?
J. Larney. I can't ſay that, becauſe People have been up in it, and beating it about.
Mr. *Gaſ.* Were there ſo many Holes in it, when you were lopping the Tree, as there are now?
J. Larney. There were not; but I did not much mind it.
Mr. *Gaſ.* Which is the talleſt of the two, *Virtue Hall*, or *Sarah Howit?*
J. Larney. *Sarah Howit*, it may be, by two Inches.
Mr. *Gaſ.* Recollect, as well as you can, whether you can poſitively ſay, who was the undermoſt, and who the uppermoſt?
J. Larney. To the beſt of my Knowledge, *Virtue Hall* ſtood neareſt.

Croſs-

Croſs-Examined.

Mr. *Williams.* Whereabouts do you live?

Larney. I live oppoſite *Wells*'s Houſe.

Mr. *Williams.* Have you been much at her Houſe?

J. Larn. I have often, and all over her Houſe.

Mr. *Williams.* When was it you were lopping the Trees?

J. Larn. On the 8th of *January*; I believe on a *Monday*.

Mr. *Williams.* Pray, how came you to be ſo particular as to the Time?

J. Larn. Becauſe the Arms of the Trees that I carried Home ſet my Chimney on Fire on the 10th, and I chriſtened my Child on the 12th, and Mrs. *Wells* was at my Houſe at the Chriſtening.

Mr. *Williams.* What Quantity of this Lop might you have?

J. Larn. About half a Dozen pretty large Sticks, about as big as my Wriſt. *Knight* was buſy there, and came and begged a little Small-Beer, and ſaid, if I would come, he'd give me the Lop.

Mr. *Williams.* Had you ſeen *Virtue Hall* or *Howit* that Day before?

J. Larn. I can't ſay; I may forget, if I had.

Mr. *Williams.* Was you at the Tree before they were at the Window?

J. Larn. They came there partly as ſoon as we.

Mr. *Williams.* Did they continue there till you had done?

J. Larn. They did partly.

Mr. *Williams.* How long might you be there in all?

J. Larney. It might be about ten Minutes.

Mr. *Williams.* Can you recollect what was ſaid at flinging the Dirt up?

J. Larn. I believe ſhe ſaid, Don't, you'll break the Windows.

Mr. *Williams.* Who ſtood foremoſt?

J. Larn. They ſtood both together.

Williams. Did they ſtand a-breaſt of each other?

J. Larn. No, the Window is not big enough. *Virtue Hall* looked under *Sal*'s Breaſt, and *Sal* ſtood over the Shoulder of *Virtue Hall*.

Williams. Does that Window upon the Stair-caſe look upon the Trees?---*J. Larn.* It does.

Mr. *Williams.* Is it directly over the other Window?

J. Larn. No, it is partly over it.

Mr. *Williams.* Are you ſure they looked out at the lower Window?

J. Larn. I am poſitive of that.

Mr. *Williams.* When was the firſt Time you gave this Account you have given here, about your having ſpoke to theſe Women on the 8th of *January*?---*J. Larn.* I never was ſworn before.

Mr. *Williams.* Do you remember the Trial of the Gypſey?

J. Larn. I do.

Mr. *Williams.* When you heard of that, what did you ſay about *Canning*'s being confined in that Room? Did you ever ſay it was true or falſe?

J. Larn. I mentioned ſeveral Times the Circumſtances of the Women looking out at the Window.

Mr. *Williams.* To whom?---*J. Larn.* To different People.

Mr. *Williams.* Did you then mention the Day?

J. Larn. Yes, the 8th of *January*.

Mr. *Williams.* Did you ever mention it before *Mary Squires* was tried?

J. Larn. Yes.

Mr. *Williams.* To many Perſons?---*J. Larn.* Yes.

Mr. *Williams.* Why was you not ſubpœna'd up?

J. Larn. My Wife was. I did not know it was very material to give an Account of it; and did not think proper to put myſelf forward, and I was obliged to get my Bread another Way.

Mr. *Williams.* Who was in the Tree?---*J. Larn. Giles Knight.* I was right againſt the Tree on the Ground.

Mr. *Williams.* What Year were theſe other Windows plaiſtered up in?

J. Larn. In the Year 1750; the Date of the Year is there; I put the Stones up myſelf.

Mr. *Williams.* You ſay the South Side is very rotten; how was it when you were lopping the Trees?

J. Larn. I did not ſee it then, the Hedge parted us.

Mr. *Williams.* When was the firſt Time you ſaw *Mary Squires?*

J. Larn. The *Saturday* before ſhe was fetched away, and never before, to my Knowledge.

Giles Knight ſworn.

G. Knight. I live at *Enfield*, and have theſe forty-two Years. I am a Gardener by Trade.

Mr. *Davy.* How far do you live from Mrs. *Wells*'s Houſe?

G. Knight. About a Mile and a half; I was hedging near her Houſe; I lopped ſome Boughs off a Tree, within about a couple of Yards from her Houſe, at the North Corner, near a Window.

Mr. *Davy.* Is there a Window in the Garret of that Houſe?

G. Knight. Yes, there is.

Mr. *Davy.* Was you ever in the Garret?---*G. Knight.* No.

Mr. *Davy.* Did you ſee any body looking out at that Window, when you was lopping the Tree?

G. Knight. No, but I did out of a Window below that; they were *Virtue Hall* and *Sarah Howit*.

Mr. *Davy.* What Room do they call that, at the Window of which you ſaw theſe Women?

G. Knight. I do not know; the Window is about ten Feet high.

Mr. *Davy.* Who were with you?

G. Knight. John Larney and *Edward Allen* were.

Mr. *Davy.* Did *Virtue Hall* and *Sarah Howit* both look out together?

G. Knight. Yes; *Sarah Howit* was looking over *Virtue Hall*.

Mr. *Davy.* Had you any Converſation with them?

G. Knight. I had not: I believe *Edward Allen* ſpoke to them.

Mr. *Davy.* Did you hear the Women ſpeak?

G. Knight. I did; but don't know what they ſaid; I think *Allen* throwed a Couple of Clods of Dirt in to them.

Mr. *Davy.* Where did he ſtand?

G. Knight. Juſt againſt the Window.

Mr. *Davy.* Who had the Lops of the Tree?

G. Knight. I gave it to *John Larney*; he had the biggeſt, I don't know who had the reſt. *Allen* was at Work with me that Day hedging in the Field for one Mr. *Allen*.

Mr. *Davy.* Did you ſee Mrs. *Wells* at that Time?

G. Knight. Yes; we had ſome Beer from *Cantril*'s; Mother *Wells* paid for it.

Mr. *Davy.* When was this?

G. Knight. This was on the 8th of *January*.

Mr. *Davy.* How do you know it to be preciſely on the 8thof *January*?

G. Knight. Becauſe it was on the *Monday* after Old *Chriſtmas-Day*.

Mr. *Davy.* What led you to take particular Notice of the Time?

G. Knight. Mrs. *Picket* had a Cart, loaded with Chalk, broke down on Old *Chriſtmas-Day*, but it came Home that Day.

Mr. *Davy.* Have you ſeen any of the other Witneſſes ſince they have been examined?

G. Knight. No, I have ſeen none of them.

Mr. *Davy.* What Time of the Day was it, when the two Women were looking out at the Window?

G. Knight. It was in the Morning, I believe, or ſome Time in the Forenoon.

Mr. *Davy.* Do you remember the Trial of the old Gypſey here?

G. Knight. Yes, I was here; I was ſubpœna'd on Mother *Wells*'s Side.

Mr. *Davy.* What prevented your appearing in Court as a Witneſs?

G. Knight. Becauſe I was not called; I was in the Yard.

Mr. *Davy.* Was it in your Power to have come in if you had a Mind?

G. Knight. I did not know for that: I did not know the way of it.

Mr. *Davy.* Was you ever a Witneſs in any Cauſe before now?

G. Knight. No, I never was, till I went before the Grand Jury upon this.

Mr. *Davy.* How large was that Window, at which the Women were looking out?

G. Knight. I believe big enough for me to get out at.

Mr. *Davy.* How big is the Garret Window?

G. Knight. That is bigger than this below.

Mr. *Davy.* Is the Garret Window in a direct Line over the other?

G. Knight. I don't know that.

Croſs-Examined.

Mr. *Moreton.* Was that directly over the other Window?

G. Knight. No; that above was directly over-againſt the Tree I lopped.

Mr. *Moreton.* How many Boughs did you lop off?

G. Knight. Six or ſeven.

Mr. *Moreton.* Who had it?---*G. Knight. John Larney.*

Mr. *Moreton.* What Wood was it?---*G. Knight.* It was Elm.

Mr. *Moreton.* Should you have been afraid of ſetting your Chimney on Fire with it?

Mr. *Davy.* What Weather was it?

G. Knight. It was froſty Weather.

Edward Allen ſworn.

E. Allen. I live at *Enfield* High-way.

Mr. *Willes.* What Buſineſs do you follow?

E. Allen. I am a Coſtermonger; I go a-hedging and ditching: *Richard Allen* is my Brother: He has a Field near Mother *Wells*'s Houſe: *Giles Knight* and I were ſtopping the Gaps round it on the 8th of *January:* There is a Tree that hangs over a Lane by her Houſe; we cut ſome Boughs off it; *John Larney* was there; he came to have the biggeſt of the Wood, which he had, and the reſt was thrown over to Mother *Wells*'s. She gave us a full Pot of Beer for doing it. The Beer was fetched from Mr. *Cantril*'s. At the Time *Giles Knight* lopped the Tree, I ſaw *Virtue Hall* and *Sarah Howit* looking out at a little Window; I toſſed up ſeveral Chumps of Dirt to them; the Place they were in was a Sort of a *Leantoo*, on the back Part of the Houſe.

Mr. *Willes.* How high is that Window from the Ground?

E. Allen. It may be about ten Feet to the Bottom of the Window.

Mr *Willes.* Do you remember what Words paſſed between you?

E. Allen. No, I do not.

Mr. *Willes.* Is there ever another Window belonging to that Houſe, which looks out as that does?

E. Allen. There is one at the Top of the Houſe partly, that may be twenty Foot above the other, where they were.

Mr. *Willes.* Was you ever in this Room in the *Leantoo?*

E. Allen. Yes, I have twice ſince this Talk of the Girl's being confined there.

Mr. *Willes.* What Sort of a Room is it?

E. Allen. It is a long Room, with ſome Hay and Stuff in it.

Mr. *Willes.* Do you remember the Trial of *Squires* and Mother *Wells?*

E. Allen. I do.

Mr. *Willes.* How came you not to come up then, and give Evidence?

E. Allen. I was not ordered to come; I had no Subpœna.

Mr. *Willes.* When did you firſt tell this Circumſtance of lopping the Tree?

E. Allen. I told it, when I was aſked the Queſtion.

Mr. *Willes.* Have you mentioned theſe Circumſtances before *Squires*'s Trial?

E. Allen. I have ſeveral Times.

Croſs-Examined.

Mr. *Nares.* Were they both at the Window?---*E. Allen.* They were.

Mr. *Nares.* Can't you remember what paſſed between you?

E. Allen. Upon my Word, I do not know.

Mr. *Nares.* Had ſhe ſaid any Thing to you to provoke you to throw Dirt?

E. Allen. No; we did not throw it in Malice.

Mr. *Nares.* Was you acquainted with them before?---*E. Allen.* I was.

Mr. *Nares.* How did they ſtand at the Window?

E. Allen. They ſtood one by the Side of the other.

Mr. *Nares.* Did you ſee *Squires* and *Wells* taken away?

E. Allen. I did; I ſaw them get into the Cart.

Mr. *Nares.* Did you mention this of ſeeing them at the Window then?

E. Allen. I did.

Mr. *Nares.* To whom?

E. Allen. I cannot tell to what Perſon particularly; it was to ſeveral that were in the Room.

Mr. *Nares.* Did you go before Juſtice *Taſhmaker?*

E. Allen. No, I did not.

Recorder. Did you hear at that Time, that *Elizabeth Canning* was ſo long in that Room?——*E. Allen.* I did.

Recorder. Was you not ſurprized, when you heard ſhe was confined there?

E. Allen. I was ſurprized; and ſaid, if ſhe was there, I thought we ſhould have heard ſomething of her; and if I had, I ſhould preſently have fetched her out.

Mr. *Nares.* Whether, at the Time you heard *Canning* had ſaid ſhe was confined in that Room, from the 1ſt of *January* to the Time of her making her Eſcape, did you tell this Story, that you had been at the Window lopping a Tree?——*E. Allen.* Yes, I did.

John Cantril ſworn.

J. Cantril. I live not above a hundred Yards from *Wells*'s Houſe; I keep a Public-Houſe: *Giles Knight* and *Edward Allen* came to my Houſe on *Monday* the 8th of *January*; they ſaid they had done but an indifferent Day's Work, for they had been at Play with Mother *Wells*'s Daughter, out at the back Window, throwing Clods of Dirt in at the Caſement, and they had been lopping of Trees, and a-hedging.

Mr. *Gaſcoyne.* What is your Reaſon for being particular to the Day?

J. Cantril. They came to Breakfaſt; they wanted to know if I had got any ſmall Meat; I ſaid, I ſhould roaſt a large Piece on the Morrow, which I did, it being the 9th; I ſeldom roaſt leſs than five Stone, to give to my Cuſtomers for *Chriſtmas* Beef: I have done it for Years: Mother *Wells* uſed to buy her Liquor of me ſometimes.

Mr. *Gaſ.* When did you firſt ſee the old Gypſey?

J. Cantril. I never ſaw her till that Morning ſhe was taken up; then ſhe came into my Houſe to light her Pipe: I think I ſaw her Son the *Wedneſday* before that; he came into my Houſe very ſharply, and ſaid, Let's have a Halfpennyworth of Gin.

Mr. *Gaſ.* Had you ever ſeen him before?

J. Cantril. No, nor but once ſince.

Mr. *Gaſ.* Do you know any Thing about any Hay of Mrs. *Wells*'s?

J. Cantril. I ſaw the Hay loaded in the Field where it growed, by the *New-River* Side; I was then a-fiſhing, and I ſaw it unloaded at this very Window, that this young Woman ſays ſhe got out at. [*He looks at the Model.*] That is the Window at the End of it.

Mr. *Gaſ.* What Hay-harveſt was this Hay brought in?

J. Cantril. It was the Hay-harveſt before the laſt.

Mr. *Gaſ.* Do you know the Stable?——*J. Cantril.* I do very well.

Mr. *Gaſ.* Is there a Loft over that?—*J. Cantril.* Yes, there is.

Mr. *Gaſ.* Can you aſſign any Reaſon, why the Hay was not put up there?

J. Cantril. There uſed to come Bargemen and others, that would rob her when ſhe put the Hay there, therefore ſhe put it in this Place to prevent that.

Croſs-Examined.

Mr. *Williams.* How many Loads did you ſee loaded?

J. Cantril. I ſaw but one Load; it was a little Cart, and one Horſe to draw it.

Mr. *Williams.* Had ſhe a Horſe?

J. Cantril. She had; but it was the Man's Horſe that drawed his Cart, to the beſt of my Memory.

Mr. *Williams.* How much Hay might there be of it?

J. Cantril. It is poſſible there might be half a Score Truſſes.

Mr. *Williams.* What Sort of a Window is it, that they put the Hay in at?---*J. Cantril.* One Part of it was Glaſs, and the other boarded over.

Mr. *Williams.* Was it ſo when they were pitching the Hay in?

J. Cantril. I can't ſay how it was then.

Mr. *Williams.* Was the Board on the Side of the Glaſs, or over it, or under it?

J. Cantril. One Half to the Upright in the Middle was boarded, the other Side Glaſs, to the beſt of my Memory.

Mr. *Davy.* Did you know *Natus* and his Wife?

J. Cantril. I did; they uſed to lodge at Mrs. *Wells*'s; but I can't ſay how long; but I think they had been there backwards and forwards, about three Months; the Woman uſed to come to our Houſe for Gin.

Mr. *Davy.* Do you know in which Room they lay?

J. Cantril. No, I do not.

Ezra Whiffin ſworn.

E. Whiffin. I live at the *White-Hart and Crown* at *Enfield-Waſh*, a Public-Houſe: I was told by a Glazier, he knowing I wanted ſome Irons to a Sign, that *Suſannah Wells* had a Sign ſawed down in the Rebellion Time, and ſhe had the Irons to diſpoſe of; I went to her Houſe on the 18th of *January* 1753, and aſked her; ſhe ſaid, ſhe could find them; ſhe and I went together through the Kitchen into a Room called the Lumber-room; it had formerly been a Workſhop, or a Shuffle-board Room; it is a long Room; it is about ſeven or eight Steps up out of the Kitchen.

Mr. *Davy.* Did you take any Notice what was in the Room?

E. Whiffin. I can't ſay I did; but *Judith Natus* was in Bed in that Room upon ſome Hay, with a Sheet over it. The Bed was on the right Hand going in. As we were looking about for the Irons, Mrs. *Wells* ſaid, Now I recollect myſelf, it lies under the Feet of this poor Creature's Bed: We looked and found them in a Piece of Wood there. Then *Fortune Natus*'s Wife raiſed herſelf up upon her Elbow, and ſaid, What are you going to do, or, What are you about? Mrs. *Wells* ſaid, We are only looking for a Piece of Wood. I took it, and ſet it upon an End, and ſaid, Well, Girl, what muſt you have? She ſaid, I will not ſell the Wood, it is of Uſe to this poor Creature's Bed; the Irons I'll have a Shilling for: I gave it her directly, and ſaid, I have a Son below Stairs, if you'll let him take it Home, and take the Irons out, he ſhall bring the Wood again; he took it, and carried it Home, and took the Hooks out and carried the Wood back again, and there it is now.

Mr. *Davy.* What are the Circumſtances by which you recollect the Time?

E. Whiffin. I owed Mr. *Proſſer*, a Brewer, at the *White Lion*, *Ratcliff-Highway*, 11 *l.* 7 *s.* and on the 8th of *January*, *Alexander Livingſtone* joined in a Note with me; it was upon Demand; but he gave me ſome Time to pay it, and I was going to borrow five Guineas, to enable me to pay it, of *Robert Mitcham*, at the *Globe* at *Wormleigh*; ſo I went directly there, as ſoon as I had ſent my Son Home with the Wood to take the Irons out; but he was gone to *Cambridge*; ſo I came back and went to *London* that ſame Day, and carried what Money I had; and that ſatisfied the Perſon, and in about three Weeks Time I paid the Remainder.

Mr. *Davy.* To whom was the Note made payable?

E. Whiffin. To *Bomar Lovit*, at the *Iron-Gate*, *Tower-Hill*; he is an Officer, he arreſted me on the 8th of *January*, on Mr. *Proſſer*'s Suit.

Mr. *Davy.* Are you ſure this was on the 8th of *January?*

E. Whiffin. As I hope to be ſaved, that was the Day; I have the Note here.

Mr. *Davy.* Produce it *(which he did, and the Note was read)*; *Alexander Livingſtone* and I ſigned this the Day it bears Date.

Mr. *Davy.* Who was in the Room at that Time beſides Mrs. *Wells*, *Judith Natus*, and you?

E. Whiffin. Nobody elſe as I know of.

Mr. *Davy.* Did you look about the Room?

E. Whiffin. I did, and ſaw Nobody elſe; I removed ſome of the Hay, and ſhould have removed a great deal more, had ſhe not found it.

Mr. *Davy.* A great deal of Hay! How much was there?

E. Whiffin. I believe there might be five hundred Weight, that is, ten Truſſes; the Top of it lay as high as I could reach.

Croſs-Examined.

Mr. *Moreton.* What is the Glazier's Name?

E. Whiffin. *William Metcalf*; he painted my Sign, that is, only the *Crown*.

Mr. *Moreton.* Was it put up in *January?*

E. Whiffin. No, it was not until *February*.

Mr. *Moreton.* When did he mention theſe Sign-Irons to you?

E. Whiffin. I don't remember that; but it was before the 18th of *January*.

Mr. *Moreton.* When was your Sign brought Home?

E. Whiffin. I don't know whether it was in *January* or *February*.

Mr. *Moreton.* Did he mention theſe Irons before the Sign was brought Home?

E. Whiffin. My Sign ſtood in my Houſe a Month, I believe, before it was put up; ſo I cannot tell whether it was before or after.

Mr. *Moreton.* What Time did you keep *Chriſtmas?*

E. Whiffin. I went by the New Stile, for I dropped the Old Stile, and hope all other People did.

Mr. *Moreton.* What Day of the Week was the 18th of *January?*

E. Whiffin. It was on a *Thurſday*.

Court. Conſider that.——*E. Whiffin.* My Lord, it is true.

Mr. *Moreton.* Do you know Mr. *Harrington?*—*E. Whiffin.* I do.

Mr. *Moreton.* Had you ever any Talk with him about this Matter?

E. Whiffin. I talked with him about the Time I was in this Room.

Mr. *Moreton.* When did you talk with him?

E. Whiffin. I don't know the Time; but it was not my Buſineſs to tell every body what I knew, but I anſwered him as I thought proper.

Mr. *Moreton.* Don't you know what Week it was when you talked with him?

E. Whiffin. No, I do not; I don't know within a Week or a Fortnight of the Time; he aſked me Abundance of Queſtions, and I was not in a Mind to reſolve him; I thought he was not a proper Man to aſk me Queſtions, and I anſwered him juſt as I pleaſed.

Mr. *Moreton.* What Month was it in?—*E. Whiffin.* I do not know.

Mr. *Moreton.* What Year was it in?

E. Whiffin. It was ſome Time in the Year 1753.

Mr. *Moreton.* How long is it ago?

E. Whiffin. It is above a Year ago.

Mr. *Moreton.* Was you aſked by any body, whether you could fix the Time you went into the Room?

E. Whiffin. I don't remember any body aſked me that; but if they did, it was a ſilly Queſtion.

Mr. *Moreton.* What was you aſked by Mr. *Harrington?*

E. Whiffin. He talked a great deal more than what became him: He aſked me, what Day of the Year? I told him it was the 18th of *January*, and I never told any body any Time elſe.

Mr. *Moreton.* Are you ſure of that?

E. Whiffin. I am.

Mr. *Moreton.* Did you ſay any thing of ſeeing any body elſe in the Room at that Time?

E. Whiffin. I don't know whether I did or not.

Mr. *Moreton.* Or that *Judith Natus* was in the Room?

E. Whiffin. I might.

Mr. *Moreton.* Did he aſk you, if you ſaw the Woman's Face?

E. Whiffin. I told him, I did not force my Diſcourſe to him; I told him, I ſaw *Judith Natus* in Bed; he aſked ſeveral Queſtions, but I reſolved him no farther; I ſaid, I ſaw her Face, and that I knew her plainly.

Mr. *Moreton.* Was you aſked whether ſhe ſpoke to you?

E. Whiffin. No, I don't remember that.

Mr. *Moreton.* Do you remember you ſaid you did not hear her ſpeak?

E. Whiffin. No, I don't remember that.

Mr. *Moreton.* Was you at the Trial of *Mary Squires?*

E. Whiffin. I was ſubpœna'd up, but was not admitted in.

Mr. *Moreton.* Did you try to come in?

E. Whiffin. There was a Conſtable in the Yard that denied my coming into the Yard for a good while, and ſo he did *Fortune Natus*'s Wife a good while.

Mr. *Moreton.* Was you preſent when they were denied?

E. Whiffin. I was not.

Mr. *Moreton.* Have you been examined before?

E. Whiffin. I have been examined by my Lord-Mayor, and gave the ſame Account as now.

Mr. *Davy*. Look at the Priſoner; did you ever ſee her before?

E. Whiffin. No, I never ſaw her Face before in my Life, as I know of.

Mr. *Davy*. Upon your Oath, do you believe ſhe was in that Room?

E. Whiffin. Upon my Oath, I did not ſee her in the Room.

Mr. *Davy*. Upon your Oath, is ſhe the Woman that lay in that Bed?

E. Whiffin. Upon my Oath, ſhe is not; I have made Oath of that before.

Q. from a Juryman. Where did you buy the Sign?

E. Whiffin. I bought it of Mrs. *Wells*, but it was a good while before; it was about three Weeks before *Chriſtmas* was Twelve-months.

Alexander Livingſtone ſworn.

Mr. *Willes*. Look at this Note; is this your Hand-writing?

A. Liv. My Name at the Bottom is.

Mr. *Willes*. When did you ſign it?

A. Liv. I think I ſigned it the Day it bears Date: *Ezra Whiffin* ſigned the ſame Day; he was then arreſted by *Bomar Lovit*.

Mr. *Willes*. Was there any Mention made of dating it before or after?

A. Liv. No, none.

Mr. *Willes*. Who wrote the Body of the Note?

A. Liv. *Bomar Lovit* did.

Mr. *Willes*. Did you ſign it the ſame Day it was drawn?

A. Liv. I did, at the Houſe of *Whiffin* at *Enfield-Waſh*; I was a Boarder with him then.

Mr. *Willes*. How long after *Chriſtmas* was it that you ſigned it?

A. Liv. It was ſigned directly after it was wrote, the Day it bears Date; I have no Reaſon to believe to the contrary. *(The Note is ſhewn to the Jury.)*

John Whiffin ſworn.

J. Whiffin. *Ezra Whiffin* is my Father. I have been Coachman to a Gentleman at *Hertford* ever ſince *February* 14, 1753; before that I was at my Father's from Old *Chriſtmas-Day*; I went with my Father to Mrs. *Wells*'s Houſe on the 18th of *January*, New-Stile; he was going to the *Globe* at *Wormleigh*, to Mr. *Mitcham*. When we went into Mrs. *Wells*'s, ſhe was gone over the Way; we ſtayed there till ſhe came in; then my Father and ſhe went and fetched that Piece of Wood, and I carried it Home, and took the Hooks out, and brought the Wood back to her Houſe again.

Mr. *Gaſcoyne*. In which Room did you ſtay while they went for the Wood?

J. Whiffin. I ſtayed in the firſt Room on the left-hand Side.

Mr. *Gaſ*. Did you ſee your Father and Mrs. *Wells* go into that Room where that Wood was?

J. Whiffin. No; I did not go out of the Room where I was, till they came to me again.

Mr. *Gaſ*. When did you return the Piece of Wood again?

J. Whiffin. I did in three or four Days.

Mr. *Gaſ*. Did you know of the Debt your Father owed Mr. *Proſſer?*

J. Whiffin. I did; and Mr. *Livingſtone* entered his Hand to the Note to pay it to Mr. *Lovit*.

Croſs-Examined.

Mr. *Nares*. Was you at Home with your Father from the Old *Chriſtmas-Day*, to the 14th of *February*, 1753?---*J. Whiffin*. I was.

Mr. *Nares*. Did you ſee Mr. *Metcalf* at your Father's in that Time?

J. Whiffin. I did.

Mr. *Nares*. Did he paint a Sign for your Father?---*J. Whiffin*. He did.

Mr. *Nares*. When was that brought Home?

J. Whiffin. It was brought Home before I was at my Father's; I went there on Old *Chriſtmas-Day*; it ſtood then in the Parlour.

Elizabeth Long ſworn.

E. Long. I am Daughter to Mrs. *Wells*; I have been a married Woman; my Huſband is dead; my maiden Name was *Wells*; I uſed very frequently, every Day in the Year 1753, to go to my Mother's; I lived but three Houſes from her.

Mr. *Davy*. Was you at her Houſe in the Month of *January* in that Year?

E. Long. I believe I was there every Day in that Month, and all over the Houſe, excepting the Garrets.

Mr. *Davy*. Who lived in the Houſe the firſt and ſecond Weeks of *January?*---*E. Long*. My Mother, and my Siſter, and *Virtue Hall*, and *Fortune Natus* and his Wife.

Mr. *Davy*. When did you ſee *Fortune Natus* and his Wife there?

E. Long. I had ſeen them there from before *January*; they were there, from firſt to laſt, about ten Weeks.

Mr. *Davy*. Did you uſe to go up into this Hay-loft?

E. Long. I have for *Judith Natus*, for her to come to my Houſe to help me to do what I wanted to be done: I have frequently gone into that Room to her; ſhe uſed to lie there; I have ſeen her and her Huſband in Bed in the Month of *January* there.

Mr. *Davy*. Did you ever ſee any body elſe in that Room, in the Month of *January?*---*E. Long*. No, Sir.

Mr. *Davy*. Look at that young Woman there *(meaning* Elizabeth Canning).

E. Long. I never ſaw her there; ſhe never was at my Mother's Houſe, till ſhe came down, and they were taken up.

Mr. *Davy*. Do you remember the Furniture of that Room?

E. Long. Yes, I do; the Chimney is on the right Hand going up Stairs, at the Foot of *Fortune Natus*'s Bed.

Mr. *Davy*. Was there a Grate in it?

E. Long. No, there never was in this World; I have remembered it twenty-two Years; there was a great Neſt of Drawers, three Women's Saddles, and a Man's Saddle, a Tub that my Mother kept her Chaff in for the Horſe, and a great deal of Hay, and a Drawer of Pollard for the Sow and Pigs.

Mr. *Davy*. Who fed the Horſe, Sow and Pigs, during that Time?

E. Long. I know I went in, in *January*, to fetch ſome Pollard out of the Drawer to feed the Pigs; but I went in ſo frequently, I can't tell the particular Days.

Mr. *Davy*. Are you ſure there were three Women's Saddles and a Man's Saddle in the Room?---*E. Long*. Indeed, there were.

Mr. *Davy*. Look at this Pitcher.

E. Long. It looks like my Mother's Pitcher, but I will not be poſitive; ſhe had ſuch a one with a broken Mouth, which ſhe uſed every Day.

Mr. *Davy*. Did you ſee it in the Month of *January?*

E. Long. Yes, I have ſeen our People fetch Water with it in *January*.

Mr. *Davy*. Look at that Bed-gown.

E. Long. I never ſaw this in my Life, till I was at my Lord-Mayor's; my Mother, my Siſter, nor I, never wore it; it is none belonging to our Family; my Mother has never a Bed-gown as I know of; there was Nobody at my Mother's Houſe had a Bed-gown, that I am ſure of.

Mr. *Davy*. Look at this Handkerchief; do you know it?

E. Long. No, I do not; I never ſaw that till at my Lord-Mayor's.

Mr. *Davy*. When did *Mary Squires* come to your Mother's Houſe?

E. Long. She came on a *Wedneſday*, and was there, from firſt to laſt, a Week and a Day, before ſhe was taken up, which was on a *Thurſday*.

Mr. *Davy*. Had you ever ſeen her before?

E. Long. No, never in my Life; if I had, I muſt have known it; her Face is a very remarkable one.

Mr. *Davy*. Do you remember her Family that came with her?

E. Long. There were two Daughters and a Son; the old Woman called one *Lucy*, the other *Polly*, and the Son *George*.

Mr. *Davy*. Was you in the Houſe when *Elizabeth Canning* came down there to take your Mother up?

E. Long. I was coming out of the Parlour, when ſhe was carried into the Kitchen; I had heard a great Diſturbance, and I went to my Mother's Houſe, after the Gentlemen were got there.

Mr. *Davy*. Was the Door going up into the Workſhop open, when ſhe ſat upon the Dreſſer?---*E. Long*. I think it was.

Mr. *Davy*. Was ſhe removed to any other Part of the Kitchen?

E. Long. Never, as I know of.

Mr. *Davy*. Did any body aſk her, if ſhe knew that Room?

E. Long. Not as I heard; when ſhe was brought into the Parlour, my Mother, Mrs. *Squires*, her two Daughters and Son, and *Virtue Hall*, and my Siſter, were ſitting round the Fire; ſhe pointed to *Mary Squires*, and ſaid, That is the Woman that cut my Stays off; ſhe was ſitting on the right Hand of the Chimney-place.

Mr. *Davy*. Could you ſee *Squires*'s Face then?

E. Long. The Gentlemen were all before me; I could not ſee her Face, and ſhe did not turn her Face, as I ſaw; ſhe had a Hat and Cloak on, and a Clout on her Head, inſtead of a Cap, and ſat holding her Head down.

Mr. *Davy*. Was ſhe ſmoaking a Pipe?

E. Long. I can't tell whether ſhe was or not.

Mr. *Davy*. Did ſhe ſit upright?

E. Long. I think ſhe did not; ſhe is not an upright Woman. *Canning* ſpoke twice before *Mary Squires* heard her. One of her Daughters got up, (I don't know which it was) and ſaid, Mother, the young Woman ſays you cut her Stays off. Then ſhe got up, and ſaid to the young Woman, Young Woman, you are miſtaken; I am a very remarkable Woman, and have got the Evil in my Face, and you may know me by Night or by Day. She ſhewed her Face by putting her Hand up to her Clout on each Side to make her Face bare.

Mr. *Davy*. Did you hear the young Woman mention the Time of the Robbery?---*E. Long*. I can't ſay I did, or any body elſe.

Mr. *Davy*. Did *George* or *Lucy* then ſay where they were on the 1ſt of *January?*---*E. Long*. Not then, as I remember.

Mr. *Davy*. Did you come as a Witneſs, when your Mother was tried with Mrs. *Squires?*

E. Long. I came into the *Old-Bailey* Yard, and the People would not let me come in; there were other Witneſſes; I ſubpœna'd them myſelf.

Mr. *Davy*. How many Witneſſes did you ſerve with Subpœna's to attend at that Trial?

E. Long. Eight: I had the Subpœna's of a Lawyer, Mr. *Talmaſh*; he lives in *Red-Lion-Street:* I delivered one to *Fortune Natus*, and another to his Wife, one to *Mary Larney*, one to *Giles Knight*; I can't recollect them all: Somebody knowed me to be Mother *Wells*'s Daughter, and they puſhed me out, and would not let me come in; they frightened me very much, and I went back again, and up two or three Pair of Stairs in a Houſe in the *Old-Bailey*, and heard the Mob cry out, *Mother* Wells's *Daughter!*

Croſs-Examined.

Mr. *Williams*. Who was with you at that Time?

E. Long. *Mary Larney* and *Giles Knight* were with me; I ſaw them go into the Yard with me; I cannot ſay whereabouts they were.

Mr. *Wil*. Did *John Larney* go into the Yard?

E. Long. I did not ſubpœna him.

Mr. *Wil*. Are you ſure *Giles Knight* was refuſed being in the Yard?

E. Long. I am not.

Mr. *Wil*. How long had you been parted from your Mother?

E. Long. Not long; I had not been married quite a Year, and I lived at Home a Quarter of a Year after I was married.

Mr. *Wil*. Was you away a Month?

E. Long. I am ſure I was not; I lived in that Houſe three Quarters of a Year, and don't know I miſſed a Day in all that Time going to my Mother's Houſe, and uſed to go into the Workſhop ſometimes for Aſhes to carry Home for my own Uſe.

Mr. *Wil*. What *January* do you ſpeak of?

E. Long. I mean that *January* the young Woman ſays; I think it is above a Year ago.

Mr. *Wil*. What Month is this?

E. Long. I can't juſtly tell of a ſudden.

Mr. *Wil*. Is it *May*, or *November*, or *December?*

E. Long. May, I think.

Mr. *Wil.* Was you before Juſtice *Taſhmaker*, when they were carried there?---*E. Long.* They did not take me away, and I did not go there at all.

Mr. *Davy.* Was you often at this Workſhop, within a Week, or Fortnight, or three Weeks before your Mother was taken up?

E. Long. I was there every Day; I uſed to go frequently to Breakfaſt there.

John Howit ſworn.

J. Howit. I am a Carpenter; Mrs. *Wells* is my Mother; I have lived at *Enfield-Waſh* about ſeven Years; I uſed to go to her Houſe now and then; I was at Work at *Broman-Green*, about ſeven Miles from thence; having done Work, I was diſcharged from that Place on the 19th of *January*; about Six o'Clock at Night I came to my Mother's Houſe.

Mr. *Willes.* Do you know the Hay-loft?---*J. Howit.* I know the Workſhop, and was in it on the 19th, 20th, and 21ſt of *January*.

Mr. *Willes.* What led you to go there?

J. Howit. My Mother ſent me up to ſerve the Sow; and I had brought my Tools, and lodged them in that very Room; and on *Sunday* the 20th I went to fetch my Axe and Saw, to cut ſome Wood for my Wife.

Mr. *Willes.* Was any body in the Room then?

J. Howit. Yes, *Fortune Natus* and his Wife were.

Mr. *Willes.* What Buſineſs had they there?

J. Howit. They lay in that Room.

Mr. *Willes.* How do you know they lay in the Room?

J. Howit. Becauſe I ſaw them in Bed, or what they call a Bed; it was on the right-hand Side going up; they had Sacks to lay their Heads on, and what they thought fit to cover them.

Mr. *Willes.* Had they a Pillow, or Bolſter?

J. Howit. I can't ſay they had.

Mr. *Willes.* Look at *Elizabeth Canning*; did you ever ſee her there in that Room?—*J. Howit.* No, I never did.

Canning. I never ſaw him before, as I know of.

Croſs-Examined.

Mr. *Moreton.* You ſay you wanted your Axe and Saw to cut Wood for your Wife: Where does ſhe live?

J. Howit. We live juſt by the Ten-mile Stone, about a Quarter of a Mile from my Mother's.

Mr. *Moreton.* Did you go Home firſt to your Houſe, or to your Mother's on the *Saturday*?

J. Howit. I went to my Mother's firſt, and there I left my Tools.

Mr. *Moreton.* Which is neareſt your Maſter's, where you came from?

J. Howit. My Mother's is.

Mr. *Moreton.* How came you to leave your Tools at your Mother's?

J. Howit. By reaſon that was neareſt, and I was tired of them.

Mr. *Moreton.* What Time of the Morning of the *Sunday* was it you went for them?—*J. Howit.* About Nine o'Clock.

Mr. *Moreton.* Are you ſure you ſpoke to *Fortune Natus* and his Wife, as they were in Bed in that Room?—*J. Howit.* I am poſitive of it.

Mr. *Moreton.* How came you not to be here, when your Mother was tried?

J. Howit. Becauſe I was never aſked any Queſtions before, nor had I a Subpœna at all.

Mr. *Moreton.* Had you heard that this Girl ſaid ſhe was confined in this Room?—*J. Howit.* Yes, but I can't ſay how long.

Mr. *Moreton.* Then how came it, you did not come and give Teſtimony againſt it?--*J. Howit.* I was aſked no Queſtions, and I was not to come without; I was up here, but the Mob would not let us come in.

Mr. *Moreton.* Did you deſign to come in as a Witneſs?

J. Howit. Yes, I did; we went to Mr. *Legg*'s in *Green-Arbour-Court*, and had like to have been knocked on the Head, them that had got Subpœna's, and them that had not.

Mr. *Moreton.* Who was your Mother's Attorney at that Time?

J. Howit. Mr. *Talmaſh.*

Mr. *Moreton.* Did you ever go to him, and tell him about your coming Home, and going into that Room three Days together in *January*?

J. Howit. No, I never did.

Q. from a Juryman. We ſhould be glad to know, whether that Drawer was in the Cheſt of Drawers, or a ſingle Drawer of itſelf?

J. Howit. It is one of them Drawers, but it was not in it; it was ſwelled, and would not go in.

Robert White ſworn.

R. White. I live at *Enfield*, and am a Day-labourer; I have been at Mother *Wells*'s Houſe a great many Times.

Mr. *Gaſcoyne.* Was you there in the Year 1753?

R. White. I was, in Old *Chriſtmas*, and New *Chriſtmas* too; I was there commonly four or five Times a Week.

Mr. *Gaſ.* What Day in *January* was you there?—*R. White.* I am not ſo well learned to give an Account of the Day of the Month.

Mr. *Gaſ.* What *Chriſtmas* do you mean?

R. White. I mean laſt *Chriſtmas* was Twelvemonth: *Natus* had quartered at my Brother's, and I knowing him, uſed to go and keep him Company, and uſed to ſtay there ſometimes till Eight or Nine o'Clock, and uſed to come as ſoon as I had done my Labour, at about Seven.

Mr. *Gaſ.* Which Room had you uſed to be together in?—*R. White.* I uſed to be in the Kitchen, at the right Hand going into the Houſe.

Mr. *Gaſ.* Do you know the Door that goes into the Hay-loft?

R. White. Yes, I do; it is the Room that *Natus* and his Wife lay in, but I was not in it the Time they lay there.

Mr. *Gaſ.* Did you ever ſee that Door open that goes up into the Hay-loft?

R. White. Yes, I have, and have ſeen *Fortune Natus* and his Wife both go in, and come out again; I remember they did on a *Sunday* Morning in particular.

Mr. *Gaſ.* Have you ever ſeen any body elſe go into that Room?

R. White. No, Sir.

Mr. *Gaſ.* How long might you keep going to this Houſe?

R. White. I believe it might be almoſt two Months, or nine Weeks.

Mr. *Gaſ.* Was you ever in the Kitchen any Time when *Mary Squires* was there?---*R. White.* No, I never was.

Mr. *Gaſ.* Do you know the Day of the Month ſhe came there?

R. White. No, I do not.

Croſs-Examined.

Mr. *Nares.* Did you ever ſee *Mary Squires*?

R. White. I ſaw her go by the Barn where I labour, about four or five Days before ſhe was taken up; but I did not ſee her Face then.

Mr. *Nares.* Did you ever ſee any of the young ones?

R. White. I ſaw one of the Daughters once go into the Parlour one *Sunday*.

John Donoval ſworn.

J. Donoval. I ſurveyed the Room (*Elizabeth Canning* ſaid ſhe was confined in) on *Eaſter-Eve*, the 13th of *April* laſt.

Mr. *Davy.* Give the Court the Dimenſions of it.

J. Donoval. It is thirty-five Foot, three Inches and a Half, from Quarter to Quarter in the Inſide of the Room upon the Floor, by nine Foot eight Inches.

Mr. *Davy.* Is this, that is produced here, a true Model of it, according to its Proportion?

J. Donoval. This Model is exactly in Proportion with it, and there is the Scale upon the Roof. (*There was the Hole for the Jack-line, a Window on the oppoſite Side to the Stairs, another at the End, and a Chimney at one Corner, a Cheſt of Drawers, and Saddles, and Jack-pullies, drawn on the Wall*, &c.)

George Talmaſh ſworn.

G. Talmaſh. I having ſome Knowledge of Mrs. *Wells*, and hearing of this extraordinary Story, I went out of Curioſity to *Bridewell* to ſee her: When I came there, ſhe addreſſed herſelf to me, and deſired I would be concerned for her, as her Attorney; I did not care to be concerned in it: After that, her Daughter came to my Houſe, with a Liſt of Witneſſes to the Number of Eight, and deſired me to take out Subpœna's for them. I ſued them out; I remember one was for *Fortune Natus*, another for *Judith Natus*, and another for *Ezra Whiffin*; I can't pretend to tell all the reſt of their Names now. I delivered them to the Woman, and gave her Directions to ſerve them.

Mr. *Willes.* When that Trial came on, can you tell why thoſe People did not appear?

G. Talmaſh. No, no more than what they told me: I was concerned no more in it.

Elizabeth Mayle ſworn.

E. Mayle. I am a Midwife; I brought this Girl, *Elizabeth Canning*, into the World, and laid her Mother of more Children; I am intimately acquainted in the Family.

Mr. *Davy.* Was you at Mrs. *Canning*'s Houſe in *February* laſt was Twelve-month?—*E. Mayle.* I was in the Beginning of *February*; I ſaw the Mother, and the Daughter alſo.

Mr. *Davy.* Can you mention the Day?

E. Mayle. It was the 2d or 3d; it was the firſt Week, I am ſure.

Mr. *Davy.* Where does ſhe live?—*E. Mayle.* She lives in *Aldermanbury Poſtern*; the Daughter was then lying on a Bed in her Mother's Houſe.

Mr. *Davy.* Had you any Converſation with the Mother, in the Daughter's Preſence, about the Daughter's Misfortunes?—*E. Mayle.* I had.

Mr. *Davy.* Was the Daughter awake?

E. Mayle. She was; I had Buſineſs by the Houſe, and I went in, in order to inquire if ſhe had heard of her Daughter *Elizabeth*. As ſoon as I came in, Mrs. *Canning* ſaid, Madam! O Lord, Madam! have you heard of my Misfortune? I ſaid, I had read it in the News-papers in the Month of *January*, and aſked her if ſhe had heard of her Daughter; ſhe ſaid, Yes, ſhe is come Home as naked as ſhe was born.

Mr. *Davy.* Are you ſure ſhe mentioned theſe Words, *Naked as ſhe was born*?

E. Mayle. I am poſitive of it: I immediately ſaid, O Lord! what, without a Shift on? She ſaid, No, ſhe had a Shift on. Then I aſked her, where her Daughter was? She ſaid, behind me. I turned about to the Girl, and ſaid, Lord bleſs me! *Bet*, how came this about? She ſaid, I was coming over *Moorfields* one Night, and two Men came up to me, one took hold of my two Hands and pulled me along, and the other robbed me: I ſaid, Of what, Child? She ſaid, Of half a Guinea and three Shillings *and ſome Half-pence*, my Gown and my Cloak. I ſaid, My Dear, don't trouble yourſelf about theſe Things, for God Almighty will raiſe you Friends to get you more; I hope the Men did not uſe you ill, ſo as to debauch you: She ſaid, ſhe could not tell, for ſhe had her Fits. Said I, What did they do with you after they had robbed you? She ſaid, They carried me to *Enfield-Waſh*. I aſked her where *Enfield-Waſh* was? She ſaid, Out of Town. I aſked, what they did with her there? She ſaid, they carried her into a Houſe, and as ſoon as ſhe came in, there was an old Gypſey took a Knife and cut her Stays off, and put her Hand into her Pocket and pulled a Farthing out, and put it in again, and hit her a Slap on the Face, and called her Bitch, and bid her go up Stairs. I ſaid to her Mother, Mrs. *Canning*, have you got this Shift your Child went abroad in? Sure never was ſuch a Caſe before. I ſaid, I'll tell you if any body has debauched your Child, if you'll let me ſee it. She immediately reached it, and I looked at it, and ſaid, Mrs. *Canning*, is this the Shift your Daughter went away in? She ſaid, Yes: Then I ſaid, I ſuppoſed it was waſhed ſince ſhe had been gone: She ſaid, No, how could that be? for ſhe was in a Room where Nobody came to her,

Mr. *Moreton.* Was the Priſoner preſent, and heard all this?

E. Mayle. She was. We ſtood by her Bed-ſide. She ſaid, ſhe had been confined in a Room, where ſhe lived upon nothing but Bread and Water. I ſaid, I think the Shift is too clean, except you have had it waſhed ſince ſhe came Home. She ſaid, No, it had not been waſhed. I ſaid, Then, my Dear, you may make yourſelf eaſy, for I can ſee by it, that no Man has debauched your Child; but it is uncommonly clean to be wore ſo long. Then the Mother ſaid, ſhe never had a Stool all the Time ſhe was gone: Then, I ſaid, ſhe muſt have a Glyſter given her; but I can aſſure you no Man has debauched your Child in this Shift, unleſs it has been waſhed ſince. She again ſaid, No, it had not.

Mr. *Davy.* Did the Shift appear to be dirty enough to have been wore three Weeks and ſome Days?

E. Mayle.

E. Mayle. No, it did not; there were three little Spots of Excrement, about the Bigneſs of the upper Part of my Thumb: I don't think it was dirty enough to have been wore three Weeks by any clean Woman that ever ſat ſtill in a Room, becauſe every Woman muſt go to Bed and get up; and by ſitting by the Fire the Duſt will ariſe.

Mr. *Davy.* Do you think it had been wore three Weeks?

E. Mayle. I don't think it had.

Mr. *Davy.* Did you take Notice of the Bottom of it, whether it was draggled?

E. Mayle. I did; I took particular Notice of that; I ſaw no Dirt there; there was a Hole on the right Side of the Shift down one of the Guſſets, but there was no draggled Tail, not at all.

Mr. *Davy.* How long did it appear to have been wore?

E. Mayle. It ſeemed as if it had been wore a Week, or ſuch a Matter; I can't tell how long it had been wore.

Mr. *Davy.* Had you been acquainted much with her?

E. Mayle. I had been acquainted with the Girl from her Birth.

Mr. *Davy.* How long do you think ſhe might have been in making that Shift ſo dirty as it was?

E. Mayle. About a Week.

Mr. *Davy.* Did the Girl herſelf ſay any thing to you on this Occaſion?

E. Mayle. Yes; ſhe told me how ſhe had been uſed, and the Gypſey had cut off her Stays, as I ſaid before. I left her Mother an Order to give her a Glyſter: She ſaid, will you examine her Body, to ſee if ſhe has been hurted? I ſaid, No; I never was before the Face of a Judge in the *Old-Bailey* in my Life, and I did not care to be in dirty Work: Going away, ſhe ſaid to her little Girl, Go and call Mrs. *Woodward* over the Way to me: When ſhe came in, Mrs. *Canning* ſaid to me, Will you ſay what you ſaid before? I ſaid, Yes, Mrs. *Canning*, with all the Pleaſure in Life; if this Shift has not been waſhed, I'll make an Oath before a Judge no Man had Copulation with her. I went away; I had propoſed to bring a Doctor. I returned in about half an Hour; I went to the Bed-ſide to the Girl, and ſaid, *Bet*, I was very ſorry I did not aſk you whether your Feet were not very ſore in walking barefoot: She ſaid, No, they are not; I had my Shoes and Stockings on, they did not take them from me. This I look upon to be from the Mother's Agony of Mind, that made her ſay ſhe was come home naked. I ſaid, What more had you on? She ſaid, My Under-petticoat, and an old Bed-gown, which I found in a Corner of the Room: Then I ſaid, Good-b'ye, Child; and went away.

Mr. *Davy.* Did the Mother ſeem to be pleaſed or diſpleaſed at what you ſaid?

E. Mayle. She fell down on her Knees, and held up her Hands, and ſaid, Thank God, my Daughter is not a Whore!

Mr. *Davy.* Was her Mother angry with you for any Thing you ſaid or did, then or afterwards?

E. Mayle. She was not then; but ſhe was two Days after, when I came there, as I did not go the next Day before the Doctor, as I propoſed. Then there were with her two young Women and an elderly Woman: I ſaid, Mrs. *Canning*, I am come to aſk if *Bet* has had a Stool? She ſaid, No. I ſaid, Then ſhe muſt die, without you have given her Glyſters, and ſhe has Relief that Way; and aſked her, why ſhe did not give it her? She ſaid, ſhe had. I aſked her, if any Thing came off with it? She ſaid, Yes, a little: I ſaid, If nothing more came off, ſhe is a dead Girl, and all the World can't ſave her Life: I went and took hold on the Girl's right Hand with my left, and ſaid, Now ſhe ſeems as cold as Death, and if ſhe has no Paſſage, ſhe muſt die, and all the World can't ſave her.

Mr. *Moreton.* Was the Daughter there when the Mother was angry?

E. Mayle. Yes, Sir. A young Woman in the Room ſaid, How can you frighten the Girl out of her Life, to tell her ſhe muſt die, when ſhe has no Fever? Then I turned to another Woman, and ſaid, Did you ever hear there was ſuch a Thing before? I ſaid, there was one Thing in her Favour, ſhe has not been debauched: I ſaid, Reach the Shift to this Gentlewoman (ſhe was a grave Woman): I ſaid, Let her judge the Caſe, and ſee that your Child has not been debauched: When that was reached out, the old Gentlewoman ſaid, I don't ſee any Thing like it: I ſaid, Look over it well; do you think this has been worn three Weeks and three Days? No, ſays ſhe, I don't think it has, I don't think that is likely. Mrs. *Canning* ſaid, ſhe had no Stool all the while: I ſaid, Here is three Spots upon it; I ſaid, Behold it. Then Mrs. *Canning* ſaid, *Do you come here to ſet my other Friends againſt me?*

Mr. *Davy.* Who was that other Woman?

E. Mayle. I don't know her Name.

Mr. *Davy.* Was it Mrs. *Woodward?*

E. Mayle. No, it was not.

Mr. *Davy.* Was it obſerved that there were no Marks of her being according to the Courſe of other Women?

E. Mayle. That old Gentlewoman mentioned it, and Mrs. *Canning* ſaid, her Daughter had got Cold, and had been out of Order for three or four Months.

Mr. *Davy.* What is the Mother?

E. Mayle. She is a fine likely Woman as any, and a Woman that I reſpect as much as any Woman, and the Girl too.

Croſs-Examined.

Mr. *Williams.* What Sort of a Character has ſhe had?

E. Mayle. I never know'd any Ill of the Girl, or heard any in my Life.

Mr. *Wil.* Have you been intimately acquainted with her?

E. Mayle. I have, and never heard any Reflection upon her Character; and I don't queſtion but the Mother was very anxious about her Daughter not being debauched.

Mr. *Wil.* Might not that Matter of Excrement have been from the Day before ſhe was carried there?

E. Mayle. It might, and the Mother told me ſo then.

Mr. *Wil.* What was your Reaſon of being ſo inquiſitive in this?

E. Mayle. I was ſo, as a Lover of Truth, and a Friend, fearing the Girl had been debauched.

Mr. *Davy.* Now we ſhall prove the Defendant's Information before Juſtice *Fielding*, in order to ſhew a material Variance, both in that and her Evidence on the Trial, particularly in reſpect to the Time of expending the Water.

Mr. *Brogden* ſworn.

Mr. *Brogden.* I am Clerk to Juſtice *Fielding*.

Mr. *Davy.* Look on this Paper.

Mr. *Brogden.* This is the Information of *Elizabeth Canning*, taken before Juſtice *Fielding*, the 7th of *February*, 1753. (*It is read.*)

The Information of Elizabeth Canning, *of* Aldermanbury Poſtern, London, *Spinſter, taken upon Oath this ſeventh Day of* February, *in the Year of our Lord* 1753.

" THIS Informant, upon her Oath, ſaith, That on *Monday* the firſt " Day of *January* laſt paſt, ſhe this Informant went to ſee her Uncle " and Aunt, who live at *Saltpetre-Bank*, near *Roſemary-Lane*, in the " County of *Middleſex*, and continued with them until the Evening; and " ſaith, that upon her Return Home, about half an Hour after Nine, be- " ing oppoſite to *Bethlem* Gate, in *Moorfields*, ſhe this Informant was ſeized " by two Men, (whoſe Names are unknown to this Informant) who both " had brown Bob Wigs on, and drab-coloured Great Coats, one of whom " held her this Informant, whilſt the other feloniouſly and violently took " from her one Shaving Hat, one Stuff Gown, and one Linen Apron, " which ſhe had on, and alſo half a Guinea in Gold, and three Shillings " in Silver; and then he that held her, threatened to do for her this In- " formant: And this Informant ſaith, That immediately after, they the " ſaid two Men violently took hold of her, and dragged her up into the " Gravel Walk that leads down to the ſaid Gate, and about the Middle " thereof, he the ſaid Man that firſt held her, gave her with his Fiſt a " very violent Blow upon the right Temple, which threw her into a Fit, " and deprived her of her Senſes (which Fits ſhe this Informant ſaith ſhe " is accuſtomed and ſubject to upon being frightened, and that they often " continue for ſix or ſeven Hours). And this Informant ſaith, That " when ſhe came to herſelf, ſhe perceived that ſhe was carrying along by " the ſame two Men, in a large Road-way; and ſaith, that in a little " Time after ſhe was ſo recovered, ſhe was able to walk alone; however, " they continued to pull her along, which ſtill ſo intimidated and affrighted " her, that ſhe durſt not call out for Aſſiſtance, or ſpeak to them. And this " Informant ſaith, That in about half an Hour after ſhe had ſo recovered " herſelf, they the ſaid two Men carried her this Informant into a Houſe " (which, as ſhe this Informant heard from ſome of them, was about Four " o'Clock in the Morning, and which Houſe, as ſhe this Informant hath " ſince heard and believes, is ſituate at *Enfield-Waſh*, in the County of " *Middleſex*, and is reputed to be a very bad and diſorderly Bawdy-houſe, " and occupied by one *Wells*, Widow), and there this In- " formant ſaw in the Kitchen an old Gypſey Woman, and two young " Women, whoſe Names were unknown to this Informant, but the " Name of one of them this Informant hath ſince heard and believes is " *Virtue Hall*: And ſaith, That the ſaid old Gypſey Woman took hold of " this Informant's Hand, and promiſed to give her fine Cloaths, if ſhe " would go their Way, (meaning, as this Informant underſtood, to be- " come a Proſtitute) which this Informant refuſing to do, ſhe the ſaid old " Gypſey Woman took a Knife out of a Drawer, and cut the Lace of " the Stays of her this Informant, and took the ſaid Stays away from her, " and one of the ſaid Men took off her Cap, and then the ſaid two Men " went away with it, and ſhe this Informant hath never ſince ſeen any of " her Things. And this Informant ſaith, That ſoon after they were gone " (which ſhe this Informant believes was about Five in the Morning), ſhe " the ſaid old Gypſey Woman forced her this Informant up an old Pair of " Stairs, and puſhed her into a back Room, like an Hay-loft, without any " Furniture whatſoever in the ſame, and there locked her this Informant " up, threatening her this Informant, that if ſhe made the leaſt Noiſe or Diſ- " turbance, ſhe the ſaid old Gypſey Woman would cut her Throat; and " then ſhe went away. And this Informant ſaith, That when it grew light, " upon her looking round to ſee in what a diſmal Place ſhe was, ſhe this " Informant diſcovered a large black Jug, with the Neck much broken, " wherein was ſome Water, and upon the Floor ſeveral Pieces of Bread, " near in Quantity to a Quartern Loaf, and a ſmall Parcel of Hay. And " ſaith, That ſhe continued in this Room, or Place, from the ſaid *Tueſday* " Morning the ſecond Day of *January*, until about half an Hour after " Four of the Clock in the Afternoon of *Monday* the twenty-ninth Day " the ſame Month of *January*, without having or receiving any other " Suſtenance or Proviſion, than the ſaid Bread and Water, (except a ſmall " Mince-pye, which ſhe this Informant had in her Pocket) or any Thing " to lie on, other than the ſaid Hay, and without any Perſon or Perſons " coming to her, although ſhe often heard the Name of Mrs. and Mother " *Wells* called upon, whom ſhe underſtood was the Miſtreſs of the Houſe. " And this Informant ſaith, That on *Friday* the twenty-ſixth Day of *Janu-* " *ary* laſt paſt, ſhe this Informant had conſumed all the aforeſaid Bread " and Water, and continued without having any Thing to eat or drink, " until the *Monday* following, when ſhe this Informant being almoſt ſa- " miſhed with Hunger, and ſtarved with Cold, and almoſt naked dur- " ing the whole Time of her Confinement, about half an Hour after " Four in the Afternoon of the ſaid twenty-ninth Day of *January*, broke " out at a Window of the ſaid Room, or Place, and got to her Friends " in *London*, about a Quarter after Ten the ſame Night, in a moſt weak, " miſerable Condition, being very near ſtarved to Death. And this In- " formant ſaith, that ſhe ever ſince hath been, and now is, in a very weak " and declining State and Condition of Health; and although all poſſible " Care and Aſſiſtance is given to her, yet whatever ſmall Nutriment ſhe " this Informant is able to take, the ſame receives no Paſſage through her, " but what is forced by the Apothecary's Aſſiſtance and Medicines.

The Mark of
E C
Elizabeth Canning."

Sworn before me, this 7th Day of February, 1753.

H. Fielding.

Mr. Deputy *Molineux* ſworn.

Mr. Deputy *Molineux.* I was at Sir *Criſp Gaſcoyne*'s when *Canning* came there, at the Time that *Virtue Hall* was there; Sir *Criſp* was then Lord-Mayor; I and others were deſired to go and hear her Examination; after my Lord had concluded his examining of *Virtue Hall*, he turned to *Betty Canning*, and aſked her, If ſhe had any thing to ſay? ſhe ſaid, No, ſhe had nothing at all more than ſhe had ſaid upon the Trial; my Lord ſaid nothing further to her; the Bed-gown and Pitcher were on the Table; *Betty Canning* was rolling up the Bed-gown, in order to take it away, as I apprehended; my Lord ſaid, Child, you muſt not take that away; you muſt leave that with me; upon which ſhe replied, and ſaid, It is my Mother's; it ſhocked me a good deal, becauſe I had heard it ſaid, that ſhe came Home in a Bed-gown, and that ſhe found it in the Room where ſhe was confined; I mentioned this to ſeveral People that very Afternoon, that were very ſtrong Advocates in the Affair.

Mr. *Willes.* Did ſhe demand the Pitcher at that Time?

Mr. Deputy *Molineux.* I don't remember ſhe did.

Croſs-Examined.

Mr. *Moreton.* I had not aſked you a Queſtion, if I had not found you was at the Examination of *Virtue Hall:* Was you there upon the firſt of her being brought in to be examined?

Mr. Deputy *Molineux.* I was, the firſt of that Day.

Mr. *Moreton.* Had ſhe recanted that Day?

Mr. Deputy *Molineux.* I had heard that ſhe had; I heard my Lord-Mayor ſay he had gone through the Examination.

Mr. *Moreton.* Was you there the Day before ſhe was examined publickly, the Day when ſhe recanted?

Mr. Deputy *Molineux.* No, I was not.

Samuel Reed ſworn.

S. Reed. I was preſent the Time Mr. *Molineux* ſpeaks of. I very particularly remember ſhe was going to fold up this Bed-gown; my Lord-Mayor ſaid, Child, you muſt not have that; ſhe ſaid, It is my Mother's; which ſtruck me very much.

Croſs-Examined.

Mr. *Nares.* Did any body aſk her to explain what ſhe meant by it?

S. Reed. No, Sir.

Mr. *Davy.* We have ſeveral Witneſſes to call to the Characters of thoſe who have been examined; and deſire to know the Pleaſure of the Court, whether we ſhall call them now, or ſtay till they are attached.

Court. Stay till they are attached.

Mr. *Davy.* Then we have done for the preſent.

Mr. MORETON *(now Chief Juſtice of* Cheſter).

May it pleaſe your Lordſhip, and you Gentlemen of the Jury;

I am Counſel in this Cauſe for the unfortunate Priſoner *Elizabeth Canning*; and unfortunate ſhe certainly is, whether, upon the whole, you ſhall think her guilty, or acquit her of the heinous Crime of which ſhe now ſtands indicted. For guilty of ſuch an Offence, at her Years, ſhe cannot have been, without having been very unfortunate in a moſt profligate and abandoned Education; and ſhould you think her innocent, moſt unfortunate muſt ſhe ſurely be thought by all, becauſe ſhe is now brought to anſwer for a moſt foul Offence in herſelf, merely for having done her Duty in proſecuting others for the moſt unheard-of Violation of her own Perſon and Property, and the Laws of her Country.---But the more unfortunate ſuch an Accuſation, under ſuch Circumſtances, renders the Defendant, the more, I am ſenſible, ſhe will be entitled to that Patience, which you have already ſhewn in the Progreſs of this Trial. And, Gentlemen, when I conſider how long that Patience and Attention has been already exerciſed, when I ſee before me that even ſhort Minutes have ſwelled to no leſs than ſix or ſeven Sheets, I am too ſenſible that I have neither Ability nor Experience to do my Client that Juſtice, which the extraordinary Nature of her Caſe requires. But, as I have been unfortunately fixed upon for my preſent Station, I hope, the great Length of the Trial, the great Pains taken by the Gentlemen on Behalf of the Proſecution, the numerous Facts and minute Circumſtances that have been laid before you, will be ſome Excuſe, at leaſt, for the many Defects and Omiſſions that will appear in my Opening for the Defendant. And, before I go into the Particulars of the Caſe, I ſhall premiſe and agree with Mr. *Davy* in his Opening, that if the Perjury was corrupt and wilfully falſe, it is one of the moſt abominable and horrid Pieces of Corruption ever brought into a Court of Juſtice: A Falſehood the moſt cruel and impious! So much ſo, that I will alſo agree with him, that if it ſhould appear by the Courſe of the whole Evidence, that the Defendant was never in the Houſe of *Suſannah Wells*, and that *Mary Squires* was not the Actor of the Miſchief there ſuppoſed to be done, *Canning*'s Magnitude of Offence deſerves even a particular Law, which this Country has not yet thought proper to enact in Caſes of Perjury.

But, Gentlemen, you, as a Jury, will guard your Judgments againſt all Impulſes, which muſt neceſſarily ariſe from Conſiderations of this Nature, from Reflections on the Conſequences of the Crime, into the Truth of which alone you are now to inquire. Facts alone are the proper Objects of your Attention: And glad I am, for the ſake of Juſtice and Truth, that a Fact of this Importance, I ſay, of this Importance (for, in a free Country, the Nature and Circumſtances of the Crime, not the Condition of the Criminal, makes every Inquiry more or leſs important) is to be inveſtigated and determined by a Jury of diſtinguiſhed Property and Integrity--by a Jury ſelected by the Proſecutor, in a Manner, I believe, unparalleled in any Proſecution, when the Crown is not directly concerned:---For, I believe, Gentlemen, that you are the ſelected Choice of the Proſecutor, after no leſs than ſeventeen Challenges:---And therefore, ſurely, the Proſecutor can now have none: The Defendant, I believe, never had any Diffidence of the Impartiality and Ability of any Jury, legally returned from the Citizens of *London*.

And, Gentlemen, in making ſuch Obſervations as may occur to me to be material for the Defence of my Client, I ſhall, in the Outſet, beg leave to remind you, what the Accuſation is againſt this Girl now at the Bar: It is for wilful, malicious, and corrupt Perjury, committed in this Court, and, that with the aggravated Circumſtances of being deſigned to deſtroy the Life of an innocent Fellow-Creature. Let me add, that this Crime, Gentlemen, is ſuppoſed to be committed, when the Defendant was under the Age of Nineteen Years.

This Charge has been fully opened by Mr. *Davy*, and endeavoured to be ſupported three Manner of Ways: The *firſt* (which has been moſt relied upon, and, I think, with the Proſecutor's Counſel, is the moſt material Part of the Caſe) is the *alibi* Defence of *Mary Squires*, and the poſitive Proof they have brought of ſeveral Perſons being in the Place of *Canning*'s Confinement, during the Time ſhe ſays ſhe was there. If both theſe are proved, beyond all Poſſibility of Doubt in your Minds, then you muſt conclude *Canning* could not ſwear true in the Manner ſhe has.

The *ſecond* Method of proving this heavy Charge, is endeavoured to be made out from the Improbability of the Defendant's own Story; and the *third*, by her own Conduct, in the Delays and Precautions taken in not appearing to make an earlier Defence. Mr. *Willes* makes uſe of a very remarkable Expreſſion, well known in the Law-Books, *fugam fecit*, ſhe has flown from Juſtice; and from thence would infer, (I mean legally) it is confeſſing her own Guilt: I am very ſorry this Fact was at all obſerved upon; becauſe, if it had not, I might have been at Liberty to have paſſed over Circumſtances of Perſons and Things, which I muſt now take Notice of, in order to ſhew, that the Delay of this Day's Trial can, in no humane and impartial Breaſt, be any Evidence of *Canning*'s Guilt;—was a Step that every Perſon, in her unhappy Situation, would have taken; was a Conduct that thoſe, who had then the Care of her Defence, would have been void of common Senſe, had they not adviſed it.—For, Gentlemen, in theſe Days, who would truſt the Trial and Teſt of their Character, and their Liberty depending thereon, to the ſame Perſon, both ſupreme Judge and Proſecutor?

However Popiſh Legends may have attempted to perſuade us, that ſuch Impartiality has exiſted,--That a Judge has even condemned, and paſſed Sentence on himſelf;--Yet, in theſe happier Times, when Men are at Liberty to ſee and judge for themſelves, ſuch Traditions will never influence any Man, endued with the leaſt reaſoning Faculties, not to wiſh the Provinces of Judge and Proſecutor, at leaſt, may ever be diſtinct and independent in this Country. I ſpeak this without even the remoteſt Thought of caſting any Reflection on the Integrity and Juſtice of any of thoſe, who preſide in our Courts in theſe Times.--There never was a Time, when the Subject was equally ſecure in this Reſpect: But it does by no means follow from thence, that Failings, inſeparable from human Nature, are not to be guarded againſt by thoſe, who may ſuffer from them. And that a Prejudice to our own Cauſe, is ſuch a Failing, is ſo obvious to every candid Man's own Breaſt,--that no Man, with any Pretence to an upright Heart, would truſt himſelf in ſuch a Situation, as the preſent Proſecutor muſt have been in, had the preſent Examination come on, when he ſo properly preſided in the Magiſtracy of this City

But what was another known Reaſon of this Delay?

It is notorious, the Girl was (and from Motives not to be diſavowed here, or in any other Court) adviſed to remove her Cauſe from this Place, to the ſupreme Court of all criminal Proceedings in *Weſtminſter-Hall.*

Was this a Step that looks like an Evaſion of Juſtice? Do thoſe, who hope to elude the Force of Juſtice, voluntarily approach the moſt awful Tribunal? Happy might it have been for her, and for the Courſe of Juſtice, had her Deſign and Attempt, in this Particular, been agreeable to the Rules of that Court: For, however ſatisfied I am, that all here wiſh, and mean, to do complete Juſtice; yet the Obſtructions, which we have here met with from a licentious Rabble (the Effect of which on ſome Men's Minds no one knows) would probably have been avoided, could the Defendant's Choice of a more ſolemn Trial have been complied with.---But no ſooner was one juſt Cauſe of Delay removed;--no ſooner was the other, as juſt Reaſon, not to be complied with, by the Courſe of legal Proceedings;--than *Canning* immediately ſubmitted to her Defence in the Place ſhe now ſtands.

If therefore I have wiped off all Aſperſions of her Guilt, from a ſuppoſed Intent to avoid her Trial,--What Arguments may I not juſtly raiſe in Favour of her Innocence, from her Appearance here at all?

If ſhe was conſcious of the leaſt Fear of Conviction,--(and what Perſon, really guilty, is free from theſe Fears?)--Why did not ſhe make her Flight from Juſtice? She had not even Gratitude to detain her. No Friends were to ſuffer, either in Perſon or Fortune, by her Flight. She was under no Recognizance, either by Self or Friends.

In Oppoſition to even the remoteſt Apprehenſion of the Puniſhment of the Crime of Perjury (and eſpecially ſuch a Perjury), could the Place of *Canning*'s Abode be the Object of a Moment's Doubt? Whether a Servant in *London*, or elſewhere, muſt be ſurely very indifferent to one in her Station.

It may poſſibly be ſome Comfort, even to be a Servant in *England*, preferably to other Countries. But ſuppoſe her only apprized of the Nature of her Crime, and ſhe muſt know her Reſidence here of a very ſhort Duration. Under ſuch Circumſtances, therefore, can any one doubt, that ſuch a Delinquent would not have made her own Choice of her Place of Exile, eſpecially, when by ſuch Choice ſhe ſhould have avoided the moſt ſevere Part of her Puniſhment, if guilty,---That of Slavery?

I hope therefore the Imputation of her Guilt, at leaſt from this Circumſtance mentioned by Mr. *Willes*, is entirely wiped off.

I muſt now, Gentlemen, beg leave to make two or three Obſervations, in offering to you my Thoughts on the Proſecutor's own Caſe, as it ſtands unanſwered by any Facts on our Side. And in this Part, I ſhall invert the Order laid down by my two learned Friends, Mr. *Davy* and Mr. *Willes*; and begin firſt with the Improbability objected to *Canning*'s own Tale, becauſe (I think), even allowing the Improbability of her Story to be a ſufficient Proof to ground a Conviction of Perjury on, I can by no means think there is a greater Share of Improbability

in the Defendant's Relation, than there is in many Parts of the Account given to contradict the Truth of it.

It would be endleſs, in this Place, to follow the learned Gentlemen's Example, and to obſerve, as minutely as they have done, on the ſeveral Facts related by *Canning*, and their Evidence to diſprove them.

I ſhall therefore confine myſelf, on this Head of Improbability, to the general Facts related by *Canning* in her own Story, and to ſome general Objections, which that Relation has furniſhed the Proſecutor's learned Counſel with.

And what are their Objections to the Improbability of her Story? They conſiſt in the Circumſtances of *the Time of her Abſence, the Nature of the Place of her Confinement, the particular Manner in which ſhe led her Life there, the ſeemingly ſurpriſing Account of the firſt Robbery.*—I cannot forbear obſerving in this Place, to what forced and ſtrange Obſervations on Facts one of the Gentlemen was driven, in order to keep alive his own Cry of Improbability.

Mr. *Davy*, I think, endeavours to raiſe five different Objections of Improbability from his Obſervations.----The firſt is, It is very ſtrange, ſays he, that there ſhould appear no Premeditation previous to the Robbery in *Moorfields*.---Mr. *Davy* has had much more Experience, particularly in this Court, than I have had.---I was therefore the more ſurprized to hear ſuch an Obſervation come from a Gentleman, who muſt have heard ſo many unhappy Wretches tried in this Place, for Crimes that would be doubly ſhocking, did all the Circumſtances appear the Effect of Deſign and Premeditation in the Authors: And ſhall it then be urged as an Argument of every Felon's Innocence, that we are not able to ſhew that his guilty Act was deliberately premeditated? Such Reaſoning would, I apprehend, be as effectually ſerviceable to Villainy as a general Pardon.

The next Improbability is made to ariſe from the very great Danger which theſe Robbers (whom Mr. *Davy* muſt ſtill ſuppoſe to be all Coolneſs and Deliberation) naturally foreſaw in carrying *Canning* ſo far from the Place of her Robbery to her Priſon.

But, for my own Part, only ſuppoſe any Robbers, for once, raſh enough to commit any Robbery at all, between Nine and Ten o'Clock at Night in the Middle of Winter, in ſuch a Place as *Moorfields*, (and I would to God every Day did not afford Inſtances of ſuch unpremeditated Raſhneſs) and where is then the Improbability of the ſubſequent Attempts?

Is it improbable that ſuch Villains ſhould not at once be ſatisfied with the trifling Sum of Money, and the Gown and Apron?---Is it in the leaſt incredible, that thoſe, who were either of Mrs. *Wells*'s or Mrs. *Squires*'s Gang, ſhould be deſirous of adding one more Proſtitute to the Retinue of this notorious Bawd, or ſmuggling Gypſey?

Mr. *Davy* was ſo drove to ſupport the Improbability of *Canning*'s Relation in this Part of his Obſervation, that we are now told, Robbers themſelves muſt be thought ſo wary and circumſpect, that they muſt even have apprehended immediate Diſcovery from the Reſort of thoſe, who go to ſee the unhappy Inhabitants of one Side of this Square. What! between Nine and Ten at Night!

If the learned Gentleman has not already gratified this Curioſity, I hope he will, at leaſt, chuſe a more ſeaſonable Hour, leſt the Keepers there may be led to miſtake the Motive of ſo unexpected and unſeaſonable a Viſit.

We are then to ſee this Improbability from the known Humanity of Street-Robbers.---Theſe, he thinks, were never cruel on Purpoſe.---This is, I own, an Obſervation of great Good-nature. I wiſh there was the leaſt Foundation in Fact for the Support of it.---But becauſe we cannot aſſign a Motive or Reaſon for every Inſtance of Cruelty and Barbarity theſe Ruffians commit, are we to ſhut out all Belief that ſuch Acts of Violence are committed?

Becauſe, therefore, there is no Deſign of Murder proved, we muſt not believe that theſe humane, theſe deliberate, theſe wary Robbers could be tempted to offer any Violence to *Canning*, that was not abſolutely neceſſary to a ſuppoſed premeditated Deſign of Robbery.

There is one more Obſervation, and that, perhaps, might afford an Argument of Improbability, and that is the Priſoner's great Caution in huſbanding her Water; for now I am accompanying Mr. *Davy* in his Obſervations at *Enfield-Waſh*. But how does this appear, that ſhe did huſband her Water at all, in the Manner Mr. *Davy* ſuppoſes?

Canning's Evidence, or Relation, at no one Time, or Place, juſtifies this Obſervation: All ſhe tells, or ſwears, is, that the Bread and Water laſted to ſuch a Time; but no where does ſhe relate, how regular ſhe made her Meals. If there is a Poſſibility, that this Bread and Water was ſufficient to ſuſtain human Nature twenty-eight Days, all that Part of the Caſe, of Mr. *Davy*'s eking it out Ounce by Ounce, falls to the Ground.

Another Obſervation was made, which would appear of ſome Weight, if founded on Facts, either admitted or proved.

Says Mr. *Davy*, If ſhe had a Mind to eſcape, ſhe might, every Hour of the Day, have puſhed out the Plaiſter-Wall. She did attempt, ſhe ſays, to open the Window, and could not. But where is there any Proof, or Admiſſion, that ſhe might have eſcaped every Hour of the Day, if ſhe would? Another Improbability is to ariſe, that the People never came to ſee whether *Canning* was there or not.---But this, once more, reſting ſolely on Mr. *Davy*'s Imagination, wants a Support of Proof. *Canning* herſelf ſays, ſhe once ſaw a Perſon look through the Crack of the Door, to ſee if ſhe was gone.---From whence, therefore, are we to collect, that this Improbability ever did happen?---For might not this Obſervation through the Crack be repeated a hundred Times, and *Canning* not obſerve it?

We are now come to the laſt and great Objection, which is for ever to overturn this Story, on the Foot of Improbability: That is, that *Canning* ſhould return from the *Waſh*, without attempting to take any Shelter till ſhe reached her own Houſe. This, I admit, is a Fact related by herſelf, and ſhe is conſiſtent, in this Part of her Story, on every Relation of it; but I leave you, Gentlemen, to judge, what Inference of Improbability ariſes from hence.---Is it poſſible for you to determine, in your own Minds, what would be the Conduct of any one, or more People, in ſuch a Situation? Different Judgments, and different Reſolutions, would be acted upon by very different Ideas, under ſuch Circumſtances.---And therefore I ſubmit, that no Argument of Improbability can be drawn from this Conduct in *Canning*, that would not equally have furniſhed Mr. *Davy*'s Speech, had ſhe acted a quite different Part, and made her Story known at the firſt Houſe ſhe came by.

Mr. *Davy* having now finiſhed his Chain of Obſervation, and, as he ſuppoſes, entirely deſtroyed all Pretence to Truth in *Canning*'s Narration; yet thinks it neceſſary to aſk one Queſtion,---Was ever a Story attended with ſuch improbable and incoherent Circumſtances? Many very improbable Things, many very incoherent ones, have happened; and therefore I might ſafely anſwer to this doughty Queſtion, Yes; I think as improbable, as incoherent Circumſtances have been true. But the Guilt or Innocence of the Defendant will not receive the leaſt Light or Aſſiſtance from either Queſtion or Anſwer.

And, therefore, allow ſuch refined Obſervations their utmoſt Latitude, (and as they have been thus relied on by the Proſecutor's Counſel, I have been obliged to take ſome Notice of them) and let us then ſee, where juſt Obſervations on Facts will turn the Weight of Improbability.

This is a Fact not diſputed, *Canning* was certainly miſſing.---That ſhe gave a particular Account of her Abſence on her Return home, *January* 29, 1753, is not diſputed.---She was particular in Circumſtances of *Place*, *Perſons*, and *Things*: The remarkable Pitcher now before you in particular.

Now on this State of *Facts* all uncontradicted,---permit me only to aſk a few Queſtions, as the propereſt Anſwer that can be given to the Obſervations on the Head of Improbability.

If *Canning* was abſolutely ignorant of the Place ſhe was reſolved to charge as her Priſon, could ſhe have ventured to mention any one Circumſtance ſhe did?

In ſuch a Sort of Room, as the Gentlemen themſelves allow ſhe did deſcribe,---even a Chimney would have been a hazardous Particular.---But, that ſhe ſhould deſcend to ſuch a Pitcher, as now produced, was riſquing the Whole on a Circumſtance, that would fail her a Million to one.

The very Perſon of *Squires*, ſtamped, as Mr. *Davy* ſays, by God, with a Particularity never to be forgotten---Would *Canning* have ventured to fix on ſuch a Perſon? Though *Canning* was not equal in her Deſcription of *Squires*'s Deformity with Mr. *Davy*, the Account of the Perſon who robbed her is too remarkable to proceed from mere Invention.

Now it is certainly moſt probable, that if any Perſon at all had been deſcribed to *Canning*,---it muſt have been *Wells*:---For, according to the Proſecutor's Account, *Squires* had come there but a few Days before *Canning*'s Return Home; and yet *Canning*'s Deſcription neither did fit, nor would ſhe charge *Wells* on Sight. The Perſon of *Wells*, even by the Proſecutor, was ſuppoſed as unknown by *Canning*, as that of *Squires*. The Name, indeed, of *Wells* or *Wills*, (now too ſuppoſed by the Proſecutor to have been named by *Scarrat* to *Canning*) was mentioned by her at her firſt Return,---and from this Circumſtance every Body had predetermined Mother *Wells* for the Robber.---Mr. *Wilies* aſſures you, Nobody dreamed of a Gypſey.---Every Body had fixed on *Wells*, as ſhe was known to be the Miſtreſs of the Houſe, and as the Houſe was infamouſly known to be capable of harbouring thoſe that were capable of any Villainy.---Every Body therefore fixed their Attention on *Wells*.---And yet, Gentlemen, the Proſecutor's own Witneſs, Mr. *Aldridge*, tells you, that *Squires* was directly pitched on by *Canning*.---She could not have been more ready, if ſhe had received her Deſcription from Mr. *Davy*.

But, Gentlemen, Arguments and Inferences on Evidence of this Kind would be endleſs.---No Deduction from them can, or ought to conclude your Judgment on a Charge of this Kind: Yet the Gentlemen for the Proſecution have throughout grounded all their Arguments on this Head, that ſome Story was neceſſary to be forged.---Suppoſe this granted, in order to argue with them in their own Way, let me aſk them,---Could a weak, illiterate Woman (however ſupported) have either invented, or, when invented, be uniform in the Proof of it? Would any one, endued with the moſt common Share of Underſtanding herſelf, or aſſiſted by thoſe who were, have taken a Tale ſo very difficult to have gained Belief?

Surely, a Deſcription of *Perſons*, *Places*, and *Things*, really not exiſting, would as probably have gained Belief, and yet have been much more eaſily managed, in caſe of more particular Inquiries.

But, however ſtrange many of the Circumſtances of this Tale may ſeem, I apprehend it is not ſo deſtitute of all preſumptive Proofs, as has been contended.

I have before ſaid, no one doubts that *Canning* was miſſing. That the Condition of her Body, on her Return, was moſt miſerable, has been proved by ſome of the Proſecutor's Witneſſes;---will be confirmed by ſuch of ours, whoſe Characters and Stations place them above all Suſpicion of being privy to, or capable of ſupporting a Fraud of any Kind.

The ſame will prove, that ſeveral Symptoms attending this unhappy Girl's Illneſs, were unerring Tokens of ſome moſt extraordinary Treatment ſhe had received.

The Anſwer attempted to theſe uncontradicted Facts, is, All this was practiſed for the ſake of Gain---To become a falſe Object of Charity, or, more probably, ſays Mr. *Davy*, to cover the Reproach of Whoredom. To this Anſwer I will make no other Reply, than aſk this one Queſtion,---What Fact of Diſtreſs, however uncontroverted, may not be ſuppoſed to have proceeded from a Deſign to deceive and impoſe?---And, in this Inſtance, we have had nothing but mere Suppoſitions to induce your Belief, that all *Canning*'s Sufferings were fraudulent.

I will treſpaſs with only one Queſtion more, on the Head of Improbability. *Canning* was miſſing---Where was ſhe? After more than a Twelve-month's Inquiry---That Inquiry backed with as active a Proſecution as ever was carried on in this Kingdom---That Proſecution made the univerſal Object of Argument and Curioſity---And yet not the leaſt Surmiſe of any other Place of Confinement than that alledged by *Canning* herſelf. To this we have had no other Account than Mr. *Davy*'s bare Opinion---She was ſecreted ſomewhere---to conceal a Pregnancy---or to get free of Diſorders incident to the Gay and Young.

If this was the Fact, I ſhall venture to pronounce ſhe might have made more of her Means of Secrecy, than by any Diſtreſs ſhe could counterfeit,

terfeit, even in theſe charitable Days.—But to give ſuch a Suppoſition, as Mr. *Davy*'s, the leaſt Colour of Truth, we muſt ſuppoſe that *Canning*, poor, illiterate, and friendleſs, has ſucceeded in an Attempt, that Money, Art, and Friends have ſcarce ever effected.

I will, therefore, leave this Part of the Proſecutor's Caſe, upon which, I am ſenſible, I have taken up more of your Time, and the Court's, than may have been neceſſary; not only as I think the ſuppoſed Motives of all *Canning*'s Story, at leaſt, as improbable as the Facts related by her; but alſo, as I hope this will be the laſt Proſecution, where I ſhall hear a Conviction of wilful and corrupt Perjury contended for on the mere Improbability of any Facts, which have been credited by Twelve Men on their Oaths, and that too in a Caſe where the merciful Ear is ever moſt open. Since, Gentlemen, it is not to be denied, here at leaſt, where I can vouch the Annals of this Place for my Aſſertion,—That Things, ſeemingly impoſſible for human Power to have performed, have been proved true——Things, the moſt unlikely to be atteſted as true, if falſe, have been credited, and yet have been utterly falſe.

There are two known Inſtances of this Kind: The one, that moſt improbable Ride from a Place near this City to *York* in one Day, on the ſame Horſe: I had almoſt ſaid, as improbable a Performance as Mr. *Davy's* Flight round the Atmoſphere! Yet this was a certain Fact done, was atteſted and believed in this Court, and by that Proof the Priſoner was acquitted of a Robbery, which he confeſſed himſelf actually guilty of, as ſoon as acquitted.——Under the other Head, is the well-known Story of a Steward's Son belonging to a Noble Family—If I remember, it was the *Gainſborough* Family; but that is not material. There the Steward was miſſing, and a large Sum of Money ſuppoſed to have been taken from him; his own Son accuſed himſelf, his Mother, and his Siſter, of the Murder and Robbery, and that they had thrown the Body into ſuch a Pit.—The Pit was ſearched, and no Body found; and yet, as the Son perſiſted in his own Accuſation, they were indicted, tried, and hanged.——Yet, ſome Time after, the Father returned, gave a particular Account of his Abſence, and the Cauſe of it.--Now, in both theſe Inſtances, who, on the firſt Relation, could either aſſent to the Truth of the one, or would doubt the Truth of the other?---And yet the one was uncontrovertibly proved to be true, and the other demonſtrably falſe. I mention theſe Facts, to ſhew the great Danger of acquitting or condemning againſt poſitive Proof on Oath, on refined Arguments of Improbability, which we ſee are thus capable of deceiving.

And, indeed, I cannot but expreſs ſome Degree of Wonder in this Place, that a Point of this Nature ſhould have been thus laboured by the Proſecutor,---as he has contended for, and has endeavoured to produce Proof of Facts, which, if credited, would make all Reſort to Suppoſition uſeleſs.---I infer, therefore, that even touching on Suppoſitions and Arguments of Improbability implies a Diffidence in their Proof of Facts.

But having done with this Part of the Caſe, which reſts on the Head of Improbability, it now remains to examine how the Charge is otherwiſe ſupported; and how it is to be anſwered on our Part. And, after the great Attention you have given, I need not remind you, that the Streſs of the Proof has been levelled to ſhew *Mary Squires* was elſewhere; on which Mr. *Davy* has logically concluded, *(ergo) Canning* has wilfully ſworn falſe. But this is not a neceſſary Conſequence. How does it neceſſarily follow, that though *Squires* was elſewhere, *Canning* has maliciouſly perjured herſelf? May there not be a Similitude in Deformity, that may deceive, as well as there may be in the more admired Part of the Sex?

But having, in general, denied the Truth of Mr. *Davy*'s Inference, I ſhall wave this Part of my Defence ſo far as to agree with Mr. *Davy*, that *Squires* is ſo ſtampt, that it is ſcarce poſſible to miſtake her. *Canning* has ſworn ſhe is not miſtaken; Twelve Men upon their Oaths have believed her; and her Defence now is, that ſhe is not miſtaken. It will be as needleſs as prolix, to go minutely through every Branch of the Proſecutor's Evidence, that is meant to prove the contrary. The Witneſſes are many: However, all their Force is direct and obvious to a ſingle Point, *viz.* to prove *Squires* at *Abbotſbury* and other Places, from the 29th of *December* 1752, to the 1ſt of *February* 1753: When we ſhall endeavour to prove ſhe was at *Enfield*.

It is not quite immaterial to remark, that *Eſther Hopkins* and *Alice Farnham*, the two firſt Witneſſes, are not quite poſitive, but believe only they are the Perſons.

You will obſerve from hence, that *Abbotſbury* is to be the grand Scene of Contradiction: There all the Witneſſes, whether united by a long Courſe of Smuggling, or only occaſionally there, are expreſs and poſitive: Other Circumſtances, ſurely not altogether common in the Courſe of a Gypſey's Life, are reſerved only for their Reſidence at *Abbotſbury*. In all other Places *Squires* is attempted to be ſhewn properly as a Vagrant,---Fortune-telling,---ſtaying a Night only in a Place, and lodged in Barns.

But when once brought to *Abbotſbury*, without any Cauſe opened or proved, they are at once to halt, not as Gypſies, but become, in an inſtant, remarkable Gueſts; live in the new Part of the Houſe, inſtead of lying in a Barn; inſtead of being Gypſies, that every one avoids, except ſuch as want to deal in Fortune-telling and ſmuggled Goods, they are now Companions of thoſe of the beſt Rank in the Place, and at two Balls in one Week. This ſo ugly and deformed Woman, whom they have brought a Man that ſubſiſted on Charity at *Enfield*, to ſwear that he choſe rather to ſit in the Cold, than by the Fire where ſhe was in Company; I ſay, this extraordinary Piece of Deformity you are to believe at *Abbotſbury* preſent at all Meetings uſual at this Seaſon, and careſſed as a principal Gueſt.

One Remark will ſuffice for all this Particularity of Deſcription at *Abbotſbury*. This Time was neceſſary to be conſumed ſomewhere, or the *alibi* Evidence, prior in Point of Time, would not defeat the Gypſey's Arrival at *Enfield*, in Contradiction to Evidence, which they are aware we have to produce. You will now obſerve, that it has been thought neceſſary to have ſome Standard to reſort to, as a Reaſon for all this particular Series of Evidence and Recollection, relative to all theſe three Gypſies. ---It happens, that moſt of the Evidence have choſen the late Change of Stile as their common Object of Memory.---Scarce one, who did not remember this or that particular Fact, by the Æra of Old or New *Chriſtmas*.---I wiſh this may be the only Scene of Falſhood and Confuſion flowing from this Law. I was myſelf againſt it, as I thought it likely to be productive of Miſtakes in Evidence, and don't yet ſee any Uſe it ever can be of to the Public.

It is, however, I confeſs, natural to confirm our Remembrance of particular Perſons or Things by remarkable Æras in point of Time. But I much doubt, whether this is not the Occaſion of the whole Miſtake in this Caſe; not, perhaps, deſigned by all, though by others calculated merely to add a Credit to Facts, that a mere poſitive Averment would fall to eſtabliſh.

And in the Evidence of the ſecond Witneſs, *Alice Farnham*, at *Winyard's Gap*, (which was given with great Modeſty, and an Air of Truth) there is a Particular, which induces me to believe, that the Year muſt be miſtaken by this Witneſs. In order to convince you that ſhe was not miſtaken in the Perſons of the Gypſies,---ſhe recollects they told her they would come and ſee her again at Old *Chriſtmas*.

It was then the 31ſt of *December*---Theſe Gypſies, as you have heard from all their own Accounts, on their Return hither to Winter-Quarters; *Abbotſbury*, a remarkable Point in View; and yet all this muſt be defeated, if they had then the leaſt Intent of being at *Winyard's Gap* again at Old *Chriſtmas*; but this is very reconcileable, ſuppoſing it the Year before, that theſe Wanderers were in thoſe Parts.---And this is no unnatural Suppoſition; for the Change of Stile was then enacted into a Law, though it had not taken place; and therefore the firſt Old *Chriſtmas* was no uncommon Day of Return for theſe Gypſies, as Diſſenters from the New Stile, to fix on. But ſurely, Gentlemen, if this extenſive Scene of *alibi* Proof ought to find Credit with you, it is evident *George* and *Lucy Squires* were the moſt proper Evidence to ſupport the Truth of it.

To this I deſired to appeal, as being the beſt Evidence, when I obſerved thoſe two in Court, after all other Witneſſes were, by Order, obliged to withdraw.---The Proſecutor's Counſel ſaw the Force of this Appeal, and agreed to call theſe two Witneſſes in Succeſſion.---*George* was called.---If *Lucy* had been ventured, and they two had agreed in Points of Facts, of Perſons, and Times, as they muſt have done, if true in the Accounts they gave---I ſay, if this had been done, I then agreed, and I ſtill ſay, that I muſt have ſubmitted, that the Defendant was at leaſt miſtaken in her Evidence againſt *Mary Squires*.

But, Gentlemen, you have heard *George* alone. From his Croſs-Examination, the Danger of a manifeſt Contradiction became too apparent. *George* hardly ſupported himſelf.---If *Lucy* was called, and faultered, the whole *alibi* was gone.---Such a Trial was therefore not to be ventured. I re-demanded this Teſt of the Truth of the *alibi*; but the Proſecutor abſolutely refuſed it.----A Reaſon indeed was aſſigned; but, like many others, the Effect of a quick Invention, unſupported by Proof. Both theſe Witneſſes were, at once, made almoſt Ideots. Nothing of this was mentioned in the Opening, or as an Excuſe for not calling them, when at firſt demanded.

But as *Lucy* was not called, (which I really think would have determined this whole Affair) let me remark a little on the Conduct of *George*. And, Gentlemen, where did there appear any Defect of Underſtanding, during his Examination on behalf of the Proſecution? He was clear, quick, and minute, both as to *Times*, *Names*, and *Places*, that were within the Route to be proved. Of other Places, certainly as remarkable, certainly as natural Objects of Memory, not a Tittle was to be remembered; for to have remembered any Thing, would have given a Clue.

And, therefore, not a Town out of the *alibi*, except *Shafiſbury*, through a Tour from *Auguſt* to *December*, from *Surry* quite along the Coaſt of *Suſſex* and *Dorſet*, is to be mentioned. Not a Tranſaction of buying or ſelling a ſingle Scrap of his Goods, in any one Place out of the *alibi*; and yet it is impoſſible but their Trade muſt have been their View and Support, in one Part of their Journey as well as another. But I ſubmit, that ſome Parts of the Story, in which the Proſecutor has allowed this Witneſs to be capable of giving his Teſtimony, afford ſtrong Suſpicions of Falſehood. I will enumerate ſome of them, that ſtrike me in this Light: Firſt, that decrepid old Woman's Walk from *Litton* to *Abbotſbury*, and back again to Dinner, and then to *Abbotſbury* the ſame Evening, ſeems highly improbable. You are told by other Witneſſes, that ſuch a Walk would neceſſarily take up more Time, than other Circumſtances of *George*'s Story can poſſibly allow for it.---Add to this, the Improbability of her being at *Abbotsbury*, and that too at *Clarke*'s Houſe, and yet not ſeen there by one of all her numerous Acquaintance. You obſerve ſcarce a Perſon there, but has known her intimately for many Years. Here, you have heard from many of the Witneſſes, there was an Halt of eight or nine Days.---*George* then tells you, that the firſt Day they went only to *Porterſham*, a very ſmall Diſtance; and from this Place ſuch forced Marches, as amount to the higheſt Degree of Improbability. I aſked him a Reaſon for this immediate and unuſual Expedition.---This was one of the Queſtions, which you find he did not expect to be aſked. At laſt, it was a Siſter's Illneſs occaſioned this Hurry---We received a Letter from her by the Poſt on that Account. He could not, however, tell where this Letter was received, and, perhaps, that might be forgot: But, Gentlemen, he could ſcarce receive this Letter at *Porterſham*, becauſe that was a mere occaſional Reſting-place; and if a Letter, that really required and occaſioned ſuch Expedition, was received at *Abbotsbury*, I deſire to have it accounted for, how they came to attempt no further than *Porterſham* the firſt Day. It is obvious therefore to me, that the particular Stages this Witneſs gives an Account of, were not in purſuance of this Letter; but in order to be at *Baſingſtoke* on the 18th of *January*, for a Purpoſe that is very material for the Truth of their whole Story, and which I ſhall take particular Notice of, when I attend them at that Place.

But firſt let me aſk, If ſuch a Letter ever ſent,---if a Siſter ever ſick;---Why not that Siſter here, to confirm the Truth of this plain and ſimple Fact? Is ſhe too of ſo weak an Underſtanding, as not to be truſted with this Queſtion? Did you write a Letter to your Brother *George* in *January* 1753, and to what Place? Was you then ill, and did you inform him ſo by ſuch Letter? An Anſwer in the Affirmative to either of theſe Queſtions, from a Witneſs whoſe Character ſtands, and muſt ſtand, unimpeached

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by any Thing which now appears, would have had great Weight, with me at leaſt, in confirming this Part of *George*'s Evidence.

There is another moſt remarkable Defect in *George*'s Account of this Journey.--From *Coombe* to *Baſing ſtoke* is forty Miles:--He wanted, at firſt, to make this March in two Days; but he was put right in his Road here by the learned Gentleman's Rota on his Brief, or elſe they would have been too early at *Baſing ſtoke* for this material Letter:---But, in this three Days March of forty Miles,---not a ſingle Place known;---*no* Witneſs called that ever ſaw them;---and yet they eat, drank, and lodged, as in other Parts of their Journey.---And yet, to put the Truth of this Narration beyond the Reach of a Doubt, this Witneſs has repeated his whole Journey, accompanied by an Attorney, not only to refreſh his own Memory, but to give his Teſtimony a Prop and Support, which he was no doubt prudently adviſed it might ſtand in need of.

It is, ſurely, ſomewhat ſtrange, that the nearer he arrived to his own Home, the leſs he ſhould be capable of remembering Things and Places himſelf,---the leſs he ſhould be able to produce Perſons to remember him, his Mother, or his Siſter. But, Gentlemen, this is a glaring Objection to his Teſtimony, both between *Coombe* and *Baſing ſtoke*, and from *Baſing ſtoke* to *Brentford*. But at *Baſing ſtoke* a Circumſtance is pretended to have happened, and which, if it really did happen, makes it beyond a Doubt, that they were really at *Baſing ſtoke* on the 18th of *January*.

This is the Letter, ſuppoſed to be wrote, by the Direction of *Lucy*, by the Landlady at *Baſing ſtoke*, to her Lover Mr. *Clarke*, whom, you have been told, ſhe danced with at *Abbotſbury*. You have alſo been told, that this Pledge of *Lucy*'s Love was unfortunately delivered to a wrong Mr. *Clarke*, by ſome Miſtake of the *Dorcheſter* Poſt-Houſe.--Now, Gentlemen, you will obſerve, all that makes this Letter, in any Degree, a material Piece of Evidence for the Proſecutor, is the Time it was wrote: For that theſe Vagabonds may have been in all the Places through which the Evidence has traced them,---that they might dance at *Abbotſbury*,---and that *Lucy*, whoſe Beauty Mr. *Davy* himſelf ſeems to have been ſo enamoured with, might there alſo captivate the Heart of Mr. *Clarke*,---is very probable, but intirely immaterial. It was therefore incumbent on the Gentlemen for the Proſecution to have fixed the Time at which this Letter was wrote, without the leaſt Blot of any Suſpicion; and not only the Time, but that the Gypſies actually came on this ſuppoſed 18th of *January* to *Baſingſtoke*, directly from *Abbotsbury*; for, otherwiſe, their being at *Enfield-Waſh* on the 1ſt, 2d, or 3d of *January*, and at *Baſing ſtoke* on the 18th, are not in the leaſt inconſiſtent: And therefore, Gentlemen, I before took Notice, that a moſt material Part of this Journey was very imperfectly accounted for by *George Squires*, and not any Witneſs to aſſiſt him quite from *Coombe* to *Baſing ſticke*. How material therefore would it have been, in this Part of their Caſe, to have had this wrong Mr. *Clarke*, to whom this Love-Epiſtle was ſent by Miſtake?---We ſhould then, at leaſt, have been ſure, that it was not of an earlier Date than 1753: And, when I come to obſerve on the Letter itſelf, as produced to the Court, I think ſome Suſpicions, on this Head, will not appear to be groundleſs. Mr. *Davy* with great Confidence aſſerted, that this Piece of Evidence alone was ſufficient to detect the whole Impoſture. I have allowed how ſtrong it would be, accompanied with ſome Requiſites, that, I ſubmit, do not now accompany it.--An eſſential one is, that the Letter ſhould, beyond a Doubt, appear to you to be wrote on the 18th of *January* 1753.---Mr. *Davy* and Mr. *Willes* have therefore, on all Occaſions, mentioned this Date of the Letter, as a Fact not diſputable, or, indeed, to be diſputed.---But, Gentlemen, you, on Oath, muſt, from the Appearance of the Letter itſelf, at leaſt think this uncertain; for, however often the Date has been repeated 1753, it, in fact, has no other Figures than 175; the Corner, where the fourth Figure ſhould ſtand, is torn or rubbed off.---That Corner alone, Gentlemen, out of four, though all equally ſecured by the Fold and Make of the Letter, has ſuffered by Time. When an Obliteration, or other Accident, happens in ſo material a Part of ſo very material a Piece of Evidence, it naturally excites ſome Suſpicion. And here again, how material would it have been to have had the wrong Mr. *Clarke*, who could not, I am ſure, have peruſed ſo unexpected a Letter without ſome Degree of Attention? And from him we might poſſibly have known how the Date appeared, when delivered to him.

'Tis alſo unlucky for this material Point of Evidence, that the Poſt-Mark is by no means plain enough to give any ſatisfactory Account of the Time, when this Letter actually paſſed through the Poſt. This, I own, is a Defect not in the Proſecutor's Power to have cured; but therefore it was the more incumbent on him to have authenticated the Time and Date of the Letter, by ſuch Means as were in his Power; and therefore, I think, the Abſence of Mr. *Clarke* greatly diſcredits the Authority of this Piece of Evidence; for, as I have before ſaid, on the Truth and Exactneſs of Time depends the whole Force of this *alibi* Evidence.---I doubt I have appeared very prolix on this Part of the Caſe: But as the Conduct of the Proſecution ſeemed to make this ſo very material, I hope I have not ſeemed to treſpaſs too much on that Indulgence, which has been ſo remarkable through this whole Cauſe.---I ſhall therefore cloſe my Obſervations on the other numerous Witneſſes to this *alibi* Part of the Caſe, that however they may agree in general Facts, that *Squires* was at this and that Place, as ſworn, ſuch Account may either be falſe or immaterial in this Proſecution; may be, as other *alibi* Defences too often are, abſolutely falſe, or falſe in Point of Time; and the one, as well as the other, equally invalidates the whole of this, as relative to, or material in, a Proof of *Canning*'s Guilt.

It is therefore one of the Corner-Stones to the Credit of this Sort of Proofs, that the ſeveral Witneſſes ſhould be uniform in all their Circumſtances, and particularly in ſuch, which they themſelves might not think a neceſſary or eſſential Part of the Caſe which they are brought to prove. But, Gentlemen, you may remember, that in ſuch Circumſtances there were many contradictory Accounts: One in particular was moſt material, either in eſtabliſhing or overthrowing *George Squires*'s Account of his Mother's famous Walk to *Abbotsbury* and back again. To give this a ſeeming Probability, all the ſubſequent Witneſſes were to bring them into *Abbotsbury* very late in the Evening; and yet *John Ford*, one of the Gang's moſt intimate and old Acquaintance, ſwore poſitively, that he kiſſed *Lucy* before Three o'Clock in the Afternoon at *Abbotsbury*. Mr. *Davy* was aware, that ſo ſignal a Token of Remembrance would weigh ſtrongly againſt ſome of the former Evidence; and therefore this Witneſs is directly called *drunk*. There is another of this Sort very material: *Hawkins* at *Litton*, though in and about his Houſe the whole Morning, remembers not a Tittle of this Morning's Walk by the old Woman to *Abbotsbury*.

Having gone through this Range of the Proſecutor's Evidence, and troubled you with ſuch Obſervations as occurred to me on thoſe Parts which they ſeemed to lay their greateſt Streſs on; I am now in Courſe brought nearer Home, and am to ſee how far another Claſs of Witneſſes have produced any ſubſtantial Charge againſt the Defendant. And I hope, Gentlemen, I ſhall have Occaſion to be much leſs prolix on this Part; becauſe the Evidence, in its own Nature, is much weaker; and whatever Weight it may carry, allowing every Tittle of it to be true, there are ſcarce any three Perſons to be found, who will agree in drawing the ſame Inferences from the Facts related by the Sett of Witneſſes I am now come to; that is, Gentlemen, thoſe Witneſſes, who have given you an Account of the ſeveral Occurrences before Alderman *Chitty*, and at the Time *Canning* was down at *Enfield*, and at other Times, when ſhe has, either in ordinary Diſcourſe, or in Obedience to the Civil Magiſtrate, made her Confinement and Delivery the Subject of any Deſcription. I will not go through the ſeveral Parts of theſe Tranſactions, which the Gentlemen for the Proſecution have endeavoured to paint ſo contradictory to each other, as muſt neceſſarily ſtamp the Whole for a Fiction and Forgery. You, Gentlemen, have had theſe different Accounts, both the written and related, laid before you. Your Underſtanding and Judgment is too ſound for me to imagine myſelf capable of reconciling you to the Truth of any Contradictions by any Obſervations. It therefore becomes me only to ſtate this Branch of the Evidence. If it contains any Contradictions in Facts material, I cannot leſſen the Force of them: But if you ſee what is artfully termed by the Proſecutor contradictory Accounts, in the Light I do in this Branch of the Evidence, I really and ſeriouſly imagine, that we have been waſting your Time, both on the one Side and the other. For what does it all amount to more than this, that a general Fact, compounded of a Variety of Things done and ſaid, when related on particular Occaſions, and at different Times, has not always been minutely and exactly related the ſame Way? And therefore, from this Sort of Defect alone, which I believe no various Relations of a long Story were ever free from, can any Weight ſeem proper to be laid on this Part of the Proſecutor's Caſe? And yet, ſo far has this been puſhed, that you have had a Contradiction endeavoured to be made appear to you, even from the figurative Expreſſion of the unhappy Mother, in deſcribing her Daughter's Wretchedneſs on her Return. The Midwife telling you, Mrs. *Canning* ſaid to her, Here is my poor Daughter returned as naked as ſhe was born---What! ſays Mr. *Davy*, did ſhe ſay, as naked as ſhe was born? The Energy, Gentlemen, of the Queſtion, was to remind you that all *Canning*'s Accounts mentioned a Handkerchief on her Head, and a Bed-Gown on her Shoulders. One can really be ſcarce ſerious in obſerving on Attempts of this Kind; and yet, Gentlemen, much of your Time has been taken up with Arguments on ſuch ſeeming Contradictions. Pardon me in digreſſing in this Place to one more Remark, that Arguments drawn from ſuch ſeeming Contradictions have been the only Materials which the printed Traſh of Quacks, Inſpectors, and Juſtices, have ſupplied on either Side of this Queſtion; and yet, Gentlemen, from this modern Practice of acquitting or condemning in Pamphlets, without Judge or Jury, it is eaſily foreſeen, that not a Trial of any Importance will ſoon be laid before a Jury in that unprejudiced Manner, which the cautious Jealouſy of the excellent Laws of this Country requires.

But to return, and to give one Proof, how far theſe Contradictions really did carry along with them any Conviction of *Canning*'s Impoſture; let us ſee whether thoſe, who now make Inferences of *Canning*'s Guilt from ſuch Circumſtances, have acted the Part, that Men, ſuppoſed thus convinced, would or could have done.

For, Gentlemen, you will obſerve, that Mr. *Naſh*, *Hague*, and *Aldridge*, would now have you believe, that from the 1ſt of *February*, the Time they attended *Canning* at *Enfield*, they were all ſatisfied that *Canning* was at leaſt miſtaken. I will not aſk, whether the Contradictions before Alderman *Chitty*, or elſewhere, were the Ground of their Conviction in this Particular. Satisfied they were, that *Canning* was miſtaken; and yet, Gentlemen, they were all at the Trial of *Squires*. Theſe Men, hitherto of unimpeached Characters, ſaw one Life in great Jeopardy for Felony; another Perſon trying as Acceſſary to that Felony; and yet offered no Evidence in Contradiction to that Proof, which they then believed to be falſe, and ſaw was likely to be ſo fatal.

The Reaſons for not doing this Act of neceſſary Juſtice you have heard. One of theſe convinced Gentlemen was, if I remember, to attend a City Feaſt. The other was ſo terrified with the Perjury, that he could make no Attempts to prevent the fatal Effects of it. But there is ſomething ſtill more particular in the Conduct of Mr. *Naſh*: I produced a Letter to him, dated the 10th of *February*, which he acknowledged to be his; and you will obſerve, this is almoſt a Fortnight after he tells you, that he was convinced that *Squires* and *Wells* were not juſtly accuſed.

And yet, Gentlemen, what is the Purport of this Letter? It is wrote to one Mr. *Lyon*, a known and zealous Friend of the Defendant, and it is to inform Mr. *Lyon*, that conſiderable Contributions might be raiſed about *Enfield-Waſh* for the poor unhappy Girl, and that he wiſhes them good Luck. Good Luck! Gentlemen, In what? Will you believe Mr. *Naſh* wiſhed them good Luck in a Contribution, by the Means of which he muſt know that Innocence was deſigned to be arraigned? that an Accuſation, he then believed falſe, would be ſupported by Perjury? Or, are we now to believe, that Mr. *Naſh*, thus convinced, was weak enough to think *Canning* that poor unhappy Girl, as to be a worthy Object of his Recommendation to Charity? Let the former Conduct of theſe three Gentlemen explain and account for themſelves, if it can: But yet ſee how far they have been poſitive in Facts, where we have nothing to

do either with their Obſervations or Opinions, and which, from henceforth, I think no Man can place any Reliance on. They have all poſitively ſwore, That *Canning* continued fixed to her firſt Charge on *Squires*; though the Warrant was taken out againſt Mother *Wells*; though all her Friends, and the City Officer, expected, nay, pointed out *Wells* as the Criminal; though *Wells* was continually running her Face cloſe up to *Canning*'s, and interrogating her, Is it me? Is it me, Madam? though the more artful Gypſey, who is neither deaf nor blind as yet, during this Tranſaction kept her Face much concealed, till poſitively charged by *Canning*. Then, indeed, directly the Maſk of her Deformity is produced, and made a Defence, which, to a Perſon conſcious of no Guilt, would have appeared a much more natural Protection, by being never concealed at all.

While we are ſtill on this Scene at *Enfield-Waſh*, if you are to ſuppoſe *Canning*'s Story all a Fiction, nothing but a Deſign to carry on a Cheat; why ſhould *Canning* determine on the Gypſey? The Name of the Gypſey had been echoed through all Parts of the Houſe. You cannot ſuppoſe *Canning* ignorant of the Life theſe People lead; never fixed long in a Place.—Mother *Wells* then at her uſual Place of Abode,—of an infamous Character,—Facts both agreed to be known to *Canning:* And yet *Canning*, as the Foundation of her Cheat, determines on a Fact, which, if ſhe knew to be falſe, ſhe muſt be morally ſure would depend on her Evidence alone, and that too (from her own Account) liable to be contradicted by the Teſtimony of *Virtue Hall*; for, in all her Accounts, ſhe is uniform, that *Virtue Hall* was there when ſhe was brought in: And if all this was a known Forgery to *Canning*, could ſhe have left ſuch a Witneſs's Character unimpeached by her Accuſation? For could ſhe then imagine, that inſtead of *Hall*'s appearing to confute her, ſhe would appear to confirm the Truth of her whole Teſtimony?

If Inferences drawn from Facts are in this Inquiry to have their Weight in Oppoſition to Facts themſelves, I only deſire this Part of the Tranſaction may be remembered, when you take the Conſideration of this Caſe, under the Head of *probable* or *improbable*.

Gentlemen, I have hitherto confined myſelf to Obſervations and Anſwers to ſuch Facts as the Proſecutor himſelf has made a Part of his Caſe. And as the Facts we have to lay before you will not require the Illuſtration of refined Arguments and Obſervations, I hope not to treſpaſs much more on your Patience. I am ſorry my Duty has obliged me to have done it ſo long already. But before I give you the general State of our own Evidence, which is all I ſhall attempt to do in this Part of our Defence for the Priſoner, let me only remark to you the Omiſſion of a Piece of Evidence, ſo material in the Confirmation of *Canning*'s Guilt, that I am ſure the Proſecutor's Counſel could not have omitted it, had they really thought the Story as falſe, as they have, by other Sort of Evidence, endeavoured to make it; that is, Gentlemen, their not having called *Virtue Hall* here to ſupport the Truth of her Recantation. That they could have had her is certain; that ſhe might give Teſtimony, extremely material, on one Side or the other, cannot be denied; that her Word, or her Oath (I know not which has been relied on) has been deemed void of all Credit, cannot, I am ſure, be aſſerted; becauſe I am confident, that it muſt have been uſed as one Argument, at leaſt, for the Application for that Mercy which has been ſhewn to *Mary Squires*. I ſay, Gentlemen, theſe are ſome of my Reaſons, why I think *Virtue Hall* has gained Credit, ſince the Time ſhe was ſworn here in Confirmation of *Canning*'s Story; and therefore, Gentlemen, why is ſhe not now brought here by the Proſecutor to give a Sanction to the Truth of that Recantation on Oath? What, Gentlemen, can the Abſence of this Witneſs be imputed to, but that they were afraid (I do not mean the Counſel were afraid, but the prudent Management of their Cauſe was juſtly afraid) of another ſolemn and public Examination of this Witneſs. I think this Obſervation a juſt one, or I would not have made it. The Gentlemen have rather choſe that I ſhould make it, than riſk another Relapſe from *Virtue Hall*. But, perhaps, whatever may be your Verdict, her Recantation will ſtill ſerve for Caſes and News-Papers.

Mr. *Recorder*. If ſhe had been here, ſhe has already diſcredited herſelf, and cannot be a Witneſs.

Mr. *Moreton continues*. With Submiſſion, Sir, I muſt inſiſt on the Propriety of my former Obſervation. *Virtue Hall*, by the known Practice and Rules of Evidence, is a legal and competent Witneſs. Courts of Juſtice can take no Notice of private Recantations, or of Diſcoveries ſuppoſed to be made to Magiſtrates in private, ſo far as to repel the Teſtimony of a Witneſs: I therefore rely on the Propriety of my Obſervation.

And now, Gentlemen, I have gone through the *Caſe*, the *Evidence*, and the *Conduct* of the Proſecutor. I ſhall have Occaſion to be but very ſhort in ſtating our Anſwer to each of them; becauſe, as I before ſaid, I ſhall truſt the Merits of the Defence to abſolute Facts, not to refined Obſervations on them. Many of the Facts, proper on our Part, have been proved by the Proſecutor's own Evidence; ſuch as the Abſence of *Canning*, her Return, her Account of herſelf, her real Condition, her Charge of *Squires* at *Enfield-Waſh*, and many more Circumſtances which I have already obſerved on to you. I wiſh a Repetition of the ſame Facts could be wholly excluded from our Evidence, merely for the ſake of Time; but I foreſee that is impracticable. But, Gentlemen, theſe Facts being already proved, the Remainder of our Proof is pointed to the abſolute Overthrow of the Truth of the Proſecutor's *alibi* of *Mary Squires*, at the Time of *Canning*'s Robbery and Confinement. In order to do this, we ſhall call you many Witneſſes, who have lived in and about *Enfield-Waſh*, from fifteen to thirty Years, People of known and eſtabliſhed Credit.

The Proſecutor has had a Liſt of theſe Witneſſes now many Days, and in that Reſpect the neceſſary Adjournments of this Trial have given him an Advantage and Opportunity of impeaching the Credit of all our Witneſſes, if their Characters cannot ſtand the Teſt of Inquiry: I ſay, by a Number of Witneſſes, unconnected in any Reſpect with the Party, in whoſe Behalf they now appear, we ſhall ſhew you, that this never-to-be forgotten Image of *Mary Squires* was ſeen at *Enfield* on ſeveral of the Days, which the Witneſſes for the Proſecutor fix her to be in the different Parts of her Journey in the Weſt. We ſhall not, indeed, have ſo exact a Diary of the various Motions of theſe Vagrants, (I might ſay Felons, for ſo they are by Law) or of their various Entertainments, their Companions and Amuſements. Whether the Want of ſuch particular Exactneſs in the Relation of Facts in themſelves, at the Time performed, entirely indifferent, will diminiſh the Credit of our Account or not, I ſhall leave to your own Obſervation. They all, as I have before ſaid, ſtand free and clear of all Imputation as to Credit; and they have, almoſt all of them, ſome natural as well as particular Account to aſſign for their Remembrance of the Time of the Abode of theſe remarkable Strollers at the *Waſh*.

Some will tell you of their dealing with them in one Way, ſome in another. It would be inexcuſable to be particular on this Head. There are thoſe who took Money of them; and from a vulgar Belief of ſome ſuperior Power in theſe People called Gypſies, thought it neceſſary to purify the Money ſo taken, leſt it might be conjured from them by this left-handed Kind of Divinity. There are others who will tell you, that they have parted with their Money to this very Woman in her Trade of Fortune-telling,—have been Face to Face with this remarkable Impreſſion of Deformity. And therefore ſo far the *alibi* proved by the Proſecutors has an expreſs Contradiction in Proof. There are other Ingredients in our Evidence, which afford a Light to thoſe Parts of *Canning*'s own Narration, which gives you both her Journey to, and Return from the *Waſh*. I only mention all theſe, in general, becauſe I ſhall rely on them, when we go into our Proof. Whatever other Obſervations either the Proſecutor's Caſe and Proof, or our own affords, (and many they muſt be which I have omitted) I am ſatisfied the Care and Diligence of the Gentlemen, who are on the ſame Side with me, will amply ſupply.—Tired therefore, as I am, in having attempted to go through ſo very long a Caſe,---tired, as I am ſure you, Gentlemen, muſt be, by that moſt laudable and impartial Attention, which you have ſhewn through this whole Inquiry,---I ſhall only beg that Attention to a very few general Obſervations. The Weight and Credit of Evidence is your Province. The Weight and Credit of Arguments and Obſervations, in Oppoſition to Facts expreſly ſworn, you will know how to eſtimate.———If, on the Whole, only a juſt and rational Doubt ſhould remain on your Judgments, the Policy, the Lenity, the Juſtice of our Laws, incline to Mercy. In Circumſtances which muſt have been, nay, yet are doubtful, *Squires* has found Mercy.

And though I am ſatisfied there never was a Time, when the moſt rigid Hand of Juſtice was more properly required to the Suppreſſion of Perjury; I am as fully convinced there never was a Time, when active and reſolute Proſecutions for other reproachful Villainies ſhould be more cautiouſly deterred by ſuch Proceedings as the preſent againſt the now Defendant.

Mr. NARES.

May it pleaſe your Lordſhip, and you Gentlemen of the Jury;

Notwithſtanding this Cauſe has taken ſo long Time already, and no Man upon Earth is more ſenſible of the great Care that ſhould be taken not to miſpend the Time of the Court unneceſſarily than myſelf; yet, as it is now become my Duty to make ſome few Obſervations, I ſhall make no Apology for intruding on your Patience ſomewhat longer, though, perhaps, in the Conſequence, it may be to little Purpoſe.

I am not only of Counſel, but, I will ſay, greatly concerned for the Priſoner at the Bar; who, to uſe the Epithet of my learned Leader, may be truly called extremely unfortunate, and that in many Inſtances; unfortunate in being accuſed of any Crime, if ever ſo innocent; unfortunate in having once appeared in this Court as a Witneſs, and being ſo unhappy as to be believed; and unfortunate likewiſe in this Reſpect, as ſhe is now brought to her Trial for a Perjury in ſuch a Cauſe, and under ſuch Circumſtances, as I will venture to ſay, the Annals of Time cannot produce a ſimilar Inſtance. It is not my Inclination or my Meaning to reflect upon any Man: I mean not to reflect upon the Worſhipful Magiſtrate, through whoſe Lenity, though, perhaps, a miſtaken or injudicious one, ſhe now ſtands accuſed; though I cannot help obſerving, that this Proſecution hath been carried on and ſupported with more Warmth and Spirit than any I ever had the Honour to attend; and if this Warmth and Spirit ſpring merely from a Zeal of bringing a ſuppoſed Criminal to exemplary Puniſhment, far be it from me to blame or condemn it. God forbid ſuch a Warmth ſhould ever cool, or ſuch a Spirit grow degenerate.

Thus much I think it material to ſay for the Priſoner at the Bar, on the Nature and Manner of her Proſecution; that it is totally unprecedented, that, as a Proſecutor who had convicted a Criminal, ſhe ſhould now come to be tried to overturn that Conviction. You know, as well as I, the unfortunate Priſoner was a Witneſs againſt *Mary Squires* and *Suſannah Wells*; and you know that they were both convicted; and you will recollect one Circumſtance well worth your Conſideration, and which I ſhall endeavour to inforce more ſtrongly hereafter, that it was not on her Teſtimony only that theſe Perſons were convicted, but her Evidence was ſupported by the Teſtimony of another Perſon; which Perſon's Teſtimony you are now totally deprived of, becauſe it hath been artfully inſinuated to the World, as many other Circumſtances have been, that ſhe hath now recanted all ſhe ſwore at the Trial, and therefore the poor Priſoner at the Bar dare not venture to call her, for fear ſhe ſhould by any Means be induced to contradict her former Evidence; which if ſhe did, the Priſoner might be condemned, inſtead of acquitted, by the Mouths of her own Witneſſes. How that Recantation was brought about, I ſhall hereafter tell you from the Inſtructions of my Brief: But I cannot help making this Obſervation at preſent, that the Gentlemen on Behalf of the Proſecution have not ventured to inſinuate, nor attempted to prove, what Means were or could be uſed by, or what Influence that Woman was or could be under to the poor Priſoner and her poor Relations, to induce her to ſwear as ſhe did, if all ſhe ſwore was ſo groſs a Falſity.

And, Gentlemen, however, thro' Tenderneſs or Lenity, a Magiſtrate may think, (for the ſake of any particular Perſons being convinced in their own private Judgments that ſuch Perſons have been wrongfully convicted) that ſuch a Proſecution is laudable; yet give me leave to ſay,

becauſe I can ſpeak it from great Authority, that ſuch Inquiries into the Guilt or Innocence of a Priſoner, after they have been legally convicted, are vaſtly inconvenient and improper; and although Proſecutions of this Nature may ſhew Kindneſs to Particulars, yet they may be attended with Cruelty to Mankind in general, as they tend to interrupt, at leaſt, if not overturn that common Courſe of Juſtice, that the Wiſdom of this Kingdom, in all Ages, has eſtabliſhed; and may, and muſt ſerve to intimidate and prevent Numbers of People from commencing Proſecutions to endeavour to bring the Guilty to Puniſhment, leſt, by ſome ſtrange Alteration of Affairs, they themſelves may, in their Turn, be proſecuted.

And, Gentlemen, when I ſay Proſecutions and Inquiries of this Nature muſt be attended with great Inconveniency to the Community in general, I ſpeak it from Authority, in a Caſe in which I was Counſel for the Priſoner.

There was a Man, whoſe Name was *Williams*, that was indicted at *Staffford*, for a Robbery committed at *Wolverhampton* Town's End the 24th of *December*. It appeared in Evidence, the Moment the Priſoner was charged with the Robbery, he told the Proſecutor he was that very Day at *Iſlington*: The Proſecutor, however, ſwore to the Man, though it was by Moon-light: After which I called for the Priſoner five Witneſſes, four of them from *Iſlington*, and another from *Redbourn*, near *St Alban's*. In my Life I never heard ſo circumſtantial an Account, and ſuch a vaſt Multitude of concurring Circumſtances, in point of Time, and Knowledge of the Man, to prove him at *Iſlington* at the Time the Fact was committed; inſomuch that the learned Judge, who tried the Priſoner, aſked Mr. Serjeant *Haywood*, who was of Counſel with the Proſecutor, What he could ſay to it? for that he never heard ſo ſtrong a Defence in his Life. In Reply, they called two poor Perſons, who ſwore they ſaw the Priſoner at *Wolverhampton* the Day the Robbery was committed. The Priſoner was convicted. Soon after, as ſoon as the Priſoner returned to Gaol, he declared his Brother committed the Robbery; and there being a great Diſpoſition in the Country in general to ſave the Priſoner, ſuppoſing him to be innocent, they directed the Brother to be taken up, and, on being charged with this Robbery, he immediately confeſſed it, and ſeveral other Robberies, for which he was immediately committed to *Warwick* Gaol, and for one of which he was afterwards hanged. This Account was brought to the Judge at *Shrewſbury*, and he was ſo far prevailed on as to order the Under-Sheriff of *Staffordſhire* to write to his Agent to enquire into the Characters of the *Iſlington* Witneſſes.——The Agent accordingly inquired of the Clergyman of the Pariſh, and received for an Anſwer, that they were all Perſons of good Character.——This Account was ſent directly to me at *Glouceſter*, with a Requeſt from many Gentlemen to wait on the Judge with it. This Requeſt I complied with, and the Judge read the Account, but told me he had, notwithſtanding, ſome Reaſons to apprehend him guilty; and however he might be inclined to extend his Mercy to this Priſoner in particular, yet he ſhould not do it, as he thought it of the moſt dangerous Conſequence to the Juſtice of the Nation in general, to try the Guilt or Innocence of a Priſoner, after his Country, on a fair and impartial Trial, had found him guilty. After this the Man was hanged; and after he was executed, twenty Witneſſes might have been produced to have proved him at *Wolverhampton*, when he was ſworn to be at *Iſlington*, and no Perſon in the Country doubted of his Guilt. This I mention to ſhew how dangerous theſe ſubſequent Trials muſt neceſſarily be. Why are they dangerous? Becauſe, ſuppoſing People wicked enough, either out of Love to the Party accuſed, or Malice to the Proſecutor, to meditate Revenge on him two or three Years after, (for there is no Time limited to call his Proſecutor to an Account, and to indict him for Perjury) he may be brought to a Trial, when, perhaps, all his Witneſſes are dead, and it will be totally impoſſible for him to ſupport his Teſtimony. When I have ſaid this, I am ſure theſe Obſervations will and ought, at leaſt, to weigh with you thus far, that if any Doubt ſhould ariſe of the Guilt of the Priſoner, you will not give the leaſt Encouragement to this Sort of Proſecution; for, ſuppoſing People wicked enough either to be tempted by Rewards, or Promiſes of Rewards, there is not a Man living ſafe or ſecure from ſome Proſecutions of this Nature.

I cannot help once more mentioning the great Difficulties the Priſoner lies under, in being deprived of the Teſtimony of the only Perſon, who could ſpeak to the ſame Facts the Priſoner did, which would prove her innocent. Every body knows that *Virtue Hall* gave the ſame Account that the Priſoner did of the Robbery; and what convinces me, beyond all Poſſibility of Doubt, that what *Virtue Hall* ſaid could not be dictated or taught her, is, ſhe did not only go Step by Step with the Priſoner's Relation, as far as that went,----but after ſhe had left the Story, *Virtue Hall* took it up again, and told you what became of the Stays, and the Converſation that paſſed after ſhe was put into the Room, and what ſhe feared from too nice an Enquiry into it afterwards. This Witneſs has not been called.

In order to obviate any Objections or Obſervations that were expected to be made from not producing her, it hath been thrown out, that if ſhe was produced, ſhe could not be a Witneſs, at leaſt, on Behalf of the Proſecution, becauſe the Moment ſhe came to charge the Priſoner, ſhe muſt confeſs herſelf perjured: But I beg leave to inſiſt, that ſuch an Objection would only go to the Credit, not to her Competency; and it was ſo determined in this Court, in an Indictment againſt one *Murphy* for a Forgery of a Seaman's Will *(Vide P. 183 of this Volume)*. There was a pretended Will ſet up and proved in the *Commons*; the very Man who forged the Will, and had ſwore in the *Commons*, to obtain the Probate, and to authenticate the Will, was called on Behalf of the Proſecutor, to prove that he forged it by the Directions of the Priſoner. I made the ſame Objection to his Teſtimony, as is now hinted at with reſpect to *Virtue Hall*'s; but the Court over-ruled it, and the Man was admitted an Evidence. He came and told the Court, all he had ſaid upon Oath in the *Commons* was a Contrivance between *Murphy* and himſelf, and that every Word of it was falſe; and on his Evidence, ſupported by ſome corroborating Circumſtances, the Priſoner was convicted. If there wanted other Arguments or Caſes to prove this Sort of Evidence admiſſible in this Court, I need only mention the common Caſe of Subornation of Perjury; there the Perſon who hath been ſuborned, and hath ſworn falſe, is generally, if not always, called to convict the Suborner, and to ſhew and prove by what Means he was prevailed on.

Virtue Hall then certainly would have been a proper Witneſs, if they would have called her. I have already mentioned ſome great Difficulties the Priſoner is put under from her not being produced: I ſhall mention only one more; the Priſoner may, by this Means, be deprived of an Opportunity of ſhewing the Court the Methods that were uſed to bring about this Recantation; and, as ſhe may yet be called, which will make this Account Evidence, and as I apprehend it will be for the Benefit of my Client, I cannot conceal it. And, Gentlemen, I am inſtructed to ſay, and have many Witneſſes in my Brief to prove thoſe Inſtructions, that *Virtue Hall*'s Recantation was brought about in a very extraordinary Manner: She was called upon in publick to declare, whether what ſhe had ſworn on the Trial was true or falſe: And tho' I doubt not but the Magiſtrate meant well by it, yet, when called upon thus publickly to make Recantation, what did ſhe ſay? She declared openly, *all ſhe had ſworn was Truth.* She was aſked the ſame Queſtion again, and ſhe made the ſame Anſwer; upon which Somebody or other ſuggeſted, it would be proper to take her in private. For God's ſake! why in private? I am ſure, by the Knowledge I have of the Worſhipful Magiſtrate, he could never intend to ſeduce her by Rewards or Promiſes: But this may be the Caſe; the poor Girl might weakly imagine, that, if ſhe altered her Evidence, ſhe might have ſome Rewards, though the ſtrict Juſtice of the Magiſtrate never could or would have given her the leaſt Foundation for ſuch a Belief. But, as the Poor and the Ignorant are more liable to be led away with falſe Fears or Hopes, built on the weak Baſis of their own Imaginations, the taking her into a private Room was by no means proper. After ſhe had been examined in private, ſhe did return and made the Recantation. But, if ſhe did make that Recantation, why does ſhe not come here, and ſwear and avow it? I dreaded ſeeing her appear; becauſe, if all ſhe ſaid was falſe, it muſt have been owing to ſome undue Influence, and in conſequence of ſome deep-laid Plan, Scheme, or Contrivance of the Priſoner at the Bar, or ſome other Perſon. Nothing of this Nature hath even been ſuggeſted; then what Room can there be for any Preſumption of that Nature? What could induce *Virtue Hall*, who had no Friendſhip, nor even Acquaintance with the Priſoner, to turn Evidence on her Behalf, againſt her greateſt Friend in the World, in whoſe Houſe ſhe had lived, and, perhaps, been ſupported? Reward ſhe could not have from the poor indigent Priſoner, or any of her Relations; and therefore the Behaviour of *Virtue Hall*, if ſhe did ſwear falſe, is totally unaccountable.

But now, Gentlemen, having ſaid this, in order to take off or counteract the Prejudices that have artfully been raiſed againſt the Priſoner; here ſhe now ſtands at the Bar, and ſhe muſt be tried, however improperly ſhe may have been brought upon her Trial. I cannot help mentioning, happy ſhe is, that ſhe has got ſuch a Jury to try her; for, according to the beſt Obſervations I can make, I never ſaw a Jury attend with greater Impartiality.

I ſhould now conſider what are the Principles the Counſel for the Proſecutor have laid down, as the Foundation for proving the Priſoner guilty. They ſay the Story is extremely improbable,---full of Abſurdities, ſo ridiculous, that no Perſon in his Senſes could contrive or believe it: But, Gentlemen, let me tell you, under the Direction of the Court, Trials for Perjury are not to be determined by Matters of Improbability. If a Perſon is indicted for Perjury, and one Witneſs is only produced to ſwear directly the contrary, the Perſon cannot be convicted; becauſe there is Oath againſt Oath, and the Juſtice of this Country is never weighing the Credit of Witneſſes in Golden Scales; but, if there is Oath againſt Oath, the preſumptive Innocence of each is equal. Then conſider, the Priſoner hath ſworn the Fact; this is to be conſidered an Oath by one Witneſs of a Fact, which is only attempted to be contradicted by Circumſtances, or by Matter of Improbability.

Mr. *Davy* has ſaid, that no Perſon living, nay, Human Nature itſelf is not capable of ſuch Cruelty, as that of putting another Perſon to Pain, merely through Wantonneſs. And I have ſeen an Expreſſion of a very great Writer to that Purpoſe, tho' in other Terms, "There is no Man "upon Earth ſo wicked, as to play the Platonic with Damnation." Let us conſider how far that Principle is applicable to the Priſoner at the Bar. There is a Maxim never controverted, *Nemo repente fuit turpiſſimus.* I may ſafely ſay, no Perſon leaped from exceeding good to exceeding bad in a Moment; it takes up a great deal of Time to get rid of that natural Modeſty, which every Perſon is endued with; a Man muſt go by Steps to the Pitch of Wickedneſs. In what State was this poor Girl before this Tranſaction? How do the Witneſſes on Behalf of the Proſecutor deſcribe her? "A Girl of as good a Character as any in the World; I "have known her from her Birth; and I have never heard any Ill of "her," was the Language of Mrs. *Mayle*. How could this Girl from this very Inſtant, a Girl of a good Character, turn that wicked and abandoned Wretch, that ſhe muſt be, to give all this falſe Evidence againſt a Perſon ſhe had never ſeen in her Life? Is it conceivable ſhe could have had any Scheme to injure *Squires*, who was an utter Stranger? It certainly is not. Indeed, could that be conceived, ſhe muſt be as wicked as Mr. *Davy*'s Rhetoric can paint her; but whilſt ſhe ſtands thus accuſed of Wickedneſs, ſhe muſt be acquitted of one dangerous Part of her Character which hath been laid to her Charge, which is Art or Contrivance; for no one can think her capable of either, who can ſuppoſe this a formed Scheme; becauſe, ſuppoſing it to be ſo, it is the only one that could not fail of being detected.

But the Gentlemen have ſaid, and would have you believe, the Priſoner's Friends have taken great Care and Pains, as far as poſſibly they could, to fix this to be the Place, and to aſcertain the Deſcriptions of it. 'Tis inſinuated, a Man went, came back again from meeting her on the Road, ſaying, It is all right; *There is Hay*. But when that comes to be obſerved upon, you will find no more Foundation for that Relation, than for ſome other Evidence that has been given of the Contrivance in aſcertaining the Place. But could there be any Contrivance in aſcertaining the

Perſon? It would be a Reflection on your Underſtandings to intimate that you could think ſo. *Wells* was the Perſon pointed out, and the Perſon all the World thought it muſt be; her own Character muſt have convicted her; ſhe could never have ſet up a Defence like this; the Priſoner muſt have been ſure to have fixed her at that Place, at leaſt during the Time of her Confinement. No Perſon would have interpoſed to have ſaved her from the Gallows. But how did the Priſoner act when ſhe came there? That very Perſon, who had been thus pointed out to her, and whom ſhe with Safety and Impunity might have accuſed, if ſhe had had any Scheme or Deſign of injuring any one, ſhe totally acquits of the Fact of robbing her. It was aſked, Did ſhe rob you? Her Anſwer was, No. In an Inſtant ſhe ſaid ſo. One of the Company went ſo far as to ſay, *There* was Mother *Wells*. What could be expected from that, but that ſhe would have inſtantly ſaid, That is the Woman? But what does ſhe ſay? That is not the Woman that robbed me; there is the Woman that robbed me (pointing to *Squires*). A Perſon, that no one there did, or could direct her to; becauſe it was contrary to every body's Expectation. Then Mr. *Davy* would have you imagine this was a concerted Scheme between her and her Mother to raiſe Contributions. Let us try this Suggeſtion upon any one Principle of Nature or Reaſon. Upon my Word, I can ſcarce think of ſuch a Notion, and keep my Countenance. I remember the Saying of a very great Man, which is the beſt Anſwer that can be made to it:

"The Man that hangs, or beats out's Brains,
"The Devil's in him if he feigns."

Would ſhe go within a Hair's-Breadth, nay to the very Brink of Death, to raiſe Friends by way of Contribution? Can you a Moment doubt, upon hearing even Mrs. *Mayle*'s Account of her, that her Life was in the utmoſt Danger? Indeed there were no Hopes of her Recovery. If you have any Doubt of that Fact, the Priſoner hath other Witneſſes, who could prove it to a Demonſtration. What! is this Girl to kill herſelf, to have a Subſcription after her Death for the Benefit of her Family? It is inconceivable to the laſt Degree. Then conſider how conſiſtently the Mother acted with any Scheme or Deſign of that Nature. If ſhe intended her Daughter ſhould be almoſt ſtarved, and ſhould be concealed till this was brought about, why did ſhe adverti ſe her Daughter? which was the only Means to diſcover her immediately, and marr the Plot, if ſhe knew when ſhe was to return. How could ſhe be (as it was beyond what could be feigned) ſo particularly affected at the Sight of her, on her Return? Theſe Circumſtances muſt be totally laid out of the Queſtion, before you can believe it a Scheme; or, if ſhe did it deſignedly, it muſt be done without any View, either to benefit herſelf, or any of her Family. But then the Gentlemen have recourſe again to Improbabilities: They aſk, How could ſhe poſſibly go from Mother *Wells*'s to *London*, without telling her Complaint? Mr. *Moreton* has mentioned many Reaſons, why ſhe did ſo. Mr. *Davy* would have you believe, the only one that could be ſuggeſted, was for fear of meeting any of the People belonging to the Houſe; and to anſwer this, he hath ſaid, why did not ſhe call at Gentlemen's Houſes, as ſhe could never conceive ſhe ſhould meet with Mother *Wells* and her Conſpirators there? Think of this Objection one Minute, and you will not want an Anſwer to it. How was this poor Wretch, in that Condition,---wretched and almoſt frightful in Appearance;—without Strength (almoſt) to tell her Story,—to gain Credit, if ſhe had complained? She might as well have attempted to have told her Story to the Winds. She muſt neceſſarily argue thus with herſelf, if ſhe had her Senſes: Weak as I am, I muſt endeavour to get Home before I tell my Complaints; becauſe I muſt go to the Perſons that know me, before I can be credited.

The Moment ſhe came Home, ſhe made known her Story; and that was the proper Time to make it known. But the Manner, in which ſhe related it, I ſhall obſerve on hereafter, as it very well deſerves your Attention.

Having endeavoured to anſwer ſome of the Objections made to the Girl's Story, let us now attend a little to the Witneſſes on Behalf of the Proſecution, and conſider how far theſe have been conſiſtent with themſelves, and how far they are the beſt Witneſſes that could have been produced, in order to clear up this intricate Affair; becauſe, if it ſhould be obvious (as I dare ſay it is to every body) that the Proſecutor has it in his Power to clear up this Matter, and yet hath left Witneſſes unexamined, who were the only ones capable of doing it in point of Law as well as Reaſon, every Thing muſt be preſumed, that can be preſumed againſt the Proſecution.

It will take up too much of your Time to go into critical Obſervations on every Witneſs; therefore I ſhall only here and there point out ſome particular Circumſtances, which, perhaps, may have eſcaped Mr. *Moreton*'s Notice, with reſpect to ſuch Inconſiſtencies. The Gentlemen of the other Side, conſcious to themſelves that there have been ſome groſs Contradictions, have endeavoured to perſuade you, that ſuppoſing ſome Circumſtances in the Account their Witneſſes have given are inconſiſtent, and others entirely falſe; yet you are not to regard any Thing that does not go to the very ſubſtantial Point, which is, whether *Squires* was then at *Enfield-Waſh*? and that little Circumſtances are always to be overlooked: But give me leave to tell you, that is not the Way of trying the Weight of Evidence. And I am ſure, when you come to conſider what the Nature of the Evidence is, you will perceive it abſolutely neceſſary to go out of the common Road in the Examination of the Witneſſes, in order to detect the Villainy: You will eaſily think it is abſolutely impoſſible a Sett of Witneſſes can contradict one another in the very Point they are called for, when they have been Half a Year conferring together on that Point only; they know how to ſwear as to that Particular; they are upon their Guard, as to that; they know how to anſwer you. Then how are theſe Witneſſes to be treated? They are to be taken, as far as poſſible, off their Guard, and to be aſked thoſe Things they thought never would be inquired into. It is by this Means that you are to find out the Inconſiſtency; becauſe Truth is always the ſame, and always conſiſtent; it will be equally ſo with reſpect to the Circumſtances attending a Fact, as the very Fact itſelf.

Gentlemen, I ſhall begin with *George Squires*, the Son:—What did that Man ſay? You obſerve, Mr. *Davy* repreſented him as a weak, ignorant Man, and almoſt ſtigmatized him for a Fool, the Moment he appeared; and for what Reaſon? 'Tis not difficult to aſſign the Reaſon;—Becauſe he was apprehenſive that he would make ſome Blunder: But was there the leaſt Sign of either a weak, an ignorant, or a fooliſh Man, during the whole Courſe of his Examination from *Abbotſbury* to *London*? There certainly was not. This Examination he expected, he was apprized of it, and prepared.—Then conſider how he appeared, when taken out of the Road from *Abbotſbury* to *London*: Mr. *Moreton* aſked him, Where did he ſet out from? He ſtaggered a good deal, and deſired to be aſked no more Queſtions; at laſt, he went from *Kent*, from his Siſter *Mary*.---Pray, what Houſe was ſhe at?—I cannot tell.— Where did you lie? Where did you trade? or, Where did you buy your Goods, or where did you diſpoſe of them? In above an hundred and fifty Miles travelling, he ſcarce tells you he went into or by any one Town, or notorious Place: What is the Reaſon he can give no better Account? Why, becauſe he never expected to have been aſked about it. In ſhort, ſuch a ſtrange and improbable Account I never heard in all my Life.—Then conſider the other Evidence that has been given. Far be it from me to pretend to ſay they have not given you an exceeding ſtrong Account of this Woman's being at *South-Parrot*, and coming from thence up to *London*: But there is this Obſervation to be made, even with reſpect to theſe Witneſſes; ſeveral of them have ſaid, before the Time of *Squires*'s Trial, they expected to be called upon as Witneſſes, and declared what they could prove; yet not one in twenty either did appear on the former Trial, or were ever aſked to appear. But this Obſervation may be made as to the Number of Witneſſes that have been examined, that, wherever a Story is talked of by one or two People, and they have declared that they had ſeen *Mary Squires* the Gypſey, and that they were acquainted with her, another Perſon, to whom it is related, recollects he hath ſeen a Gypſey; and being told that muſt be the ſame, would not any body be almoſt perſuaded, in Half a Year's Time, that they muſt mean the ſame Perſon? When the Centre is moved, there is a Circle ſucceeds, and ſpreads from Man to Man; but ſuppoſing the firſt to be deceived, all the reſt might depend upon his Credit; whereas, had they been aſked, upon recent Reflection, abſtracted from other People's Repreſentations, they never would have ſpoke with that Degree of Certainty.

But, ſuppoſing theſe Obſervations to be juſtly made, Mr. *Davy* ſays, there is one Sett of Witneſſes that muſt prove the Priſoner guilty, beyond all Degree of Doubt. We have, ſays he, ſome Witneſſes, which were the Girl's Friends; they went down to aſſiſt her as far as poſſible, not imagining ſhe would tell a falſe Story; but when her own Friends turn againſt her, it is the ſtrongeſt Evidence in the World, to think ſhe was deceived. The principal Witneſs called for this Purpoſe was Mr. *Naſh*; and he tells you, the very Inſtant he came down to *Enfield*, he found the Girl was in the wrong: He ſaid to her, Child, you are miſtaken, you can never have been there. After what he hath here ſworn, could you conceive that Mr. *Naſh*, a Man of Senſe, a Man of Prudence, a Man of Juſtice, could ever, after he was convinced the Priſoner was in the wrong, continue to give any Aſſiſtance to the Girl in the Proſecution? I am ſure it is caſting a greater Reflection upon Mr. *Naſh*, than I would chuſe to do on any one, to ſuppoſe he could act ſuch a Part: But how do we find him acting? Doth he behave conſiſtently with ſuch Conviction of her being deceived? Ten Days after, he writes to a Perſon of Fortune and Conſequence, (who will be produced) to encourage a Subſcription in Favour of the Girl. This Objection, I think, is not to be anſwered. Then another Friend of the Priſoner's, Mr. *Aldridge*, is called, and he ſaid exactly the ſame Thing: He was every bit as much convinced; he deteſted every Thing the Girl had told him; and, in ſhort, he was the greateſt Convert that ever could poſſibly be imagined. I aſked him, Have you had any Converſation with Mr. and Mrs. *Howard* ſince that Time? What does he ſay? I own I have, and I diſtributed a Paper in Favour of the Priſoner. And, unleſs my Inſtructions are falſe, he then declared he believed the Story, and earneſtly deſired they would encourage the Subſcription.

I ſhould almoſt have ſuſpected my Brief, which gives me an Account of the Behaviour of theſe three Gentlemen, who have now been called againſt the Priſoner at the Bar, had not they themſelves given ſuch an Inſtance of their own Behaviour in this very Court, as is not to be accounted for. They were all convinced of the Miſtake of *Elizabeth Canning*; they have now on their Oaths ſworn it; they were all convinced that her Story was a Falſhood, from the Beginning to the End; and that the poor Woman, the Gypſey, who then ſtood in Danger of her Life, was as innocent of what ſhe then ſtood accuſed of, as the Child unborn; they were preſent in Court when this innocent Woman was ſo unjuſtly accuſed: What would you have expected they would have done? What common Humanity and common Honeſty would immediately have ſuggeſted,—would have interpoſed, and prevented the Blow which was juſt then falling upon the Head of the Innocent. Did they act in ſuch a Manner? No; they acted in a Manner which common Humanity would make every one preſume they were incapable of acting in, had not they themſelves ſworn it. In ſhort, one was engaged to Dinner, another was Butler to ſome great Perſon, and every one had ſome trifling Excuſe to deſert and forſake the poor Wretch, when falling into that Deſtruction which ſhe did not deſerve, and which they only were capable of preventing. What Concluſion can be drawn from ſuch a Behaviour? I will not ſay, it neceſſarily follows, that they are in this particular Inſtance prevailed on to ſay, what they otherwiſe would not; but thus far I will ſay, that they have been, according to their own Account, influenced by trifling and inconſiderable Motives to deſert thoſe firſt Principles of Honeſty and Juſtice, which, notwithſtanding all the Temptations on Earth, they ought obſtinately to have adhered to.

Let us now conſider the other Head of Evidence I propoſed to obſerve on. Has here been any Evidence omitted, that might ſerve to clear up the Story? Indiſputably there has. Why was not *Mary Squires*, the Daughter, called? Why was not Mrs. *Wells* called, in order to ſhew you that all this was a Falſity? With reſpect to *Mary Squires*, have you heard a Hint againſt her Character? She could have ſpoke materially to the Fact of her Mother's being at another Place. She was at *Brentford*; ſhe wrote to her Brother, giving an Account of her Illneſs; ſhe would have told you the Time when ſhe wrote this Letter, and in what Manner they went from *Brentford* to *Enfield*; but ſhe has not been called. Why was not *Lucy Squires*

Squires called? She was more concerned in it; ſhe, in ſhort, was the very Perſon that could have made this appear either a Falſhood to a Demonſtration, or thrown ſuch a Damp upon the whole Proſecution, that they could never have gone on with it. She attended her Mother thro' the whole Route, and could have confirmed every ſingle Circumſtance her Brother had related, ſuppoſing all true. Why was ſhe not called? I need not mention the Reaſon, it is ſo extremely obvious: The Gentlemen on the other Side have Art and Judgment enough not to call a Perſon to do Miſchief; they ſaw how *George Squires* was baffled and confounded; in ſhort, gave no Sort of Account whatſoever, when taken the leaſt out of the ſettled Route. What are they afraid of, but that ſhe might contradict her Brother? which there ſeems great Reaſon to imagine muſt have been the Conſequence of producing her. Then why was not *Wells* produced? There may be one good Reaſon aſſigned for that; but the ſame Reaſon they aſſign for not producing of her, muſt weigh greatly with every body as a Corroboration of the Innocence of the Priſoner, and the Truth of her Account.

It may be ſaid, that ſhe was a Woman convicted: But ſhe is now pardoned, and ſhe is a Witneſs in Point of Law. But then they will ſay, ſhe is a Woman of bad Character, and no Credit can be given to her Evidence: When they ſay that, they admit her a Woman capable of doing the Act complained of, or receiving Perſons who could do it. They were apprehenſive this would cut both Ways: For had ſhe been called, and the Priſoner could have contradicted her in any Circumſtance of the Story, I am ſure you would not only have been induced to have diſbelieved what ſhe had ſaid, but to have believed her guilty; and if you did believe that, it would be very hard to direct the Line between the Innocence or Guilt of her and the Gypſey; and you would have been able to have diſtinguiſhed why one attempts a Defence, the other not; becauſe one is always fixed to a Spot, and could never have ſet up this Defence; the other is a Vagabond, and it ever will be difficult to fix her Habitation or Reſidence for one Day together.

Gentlemen, theſe are all the Obſervations that occur to me on the Proſecutor's own Evidence, except one particular Circumſtance with reſpect to the Hay ſaid to be in the Chamber. You have heard it ſaid, there was a great Quantity of Hay; and they would have you believe this Hay was all a feigned Story, founded on the Repreſentation of thoſe who went down before, in order to prevent the Priſoner's giving a falſe Account. But what does *Adamſon* ſay when he came back? Says he, ſhe ſays there is Hay in the Room, and the Deſcription is right. Will you, upon your Oaths, ſay, *Adamſon* had told her there was Hay in the Room, and that ſhe had never mentioned Hay to any one before? No. The Meaning of that Part of the Evidence is plain; the Girl had told other People there was Hay in the Room, tho' ſhe had not told it to *Adamſon* before; and we ſhall prove ſhe declared ſo, in the very firſt Deſcription ſhe gave of the Room. But Mr. *Adamſon* himſelf will be called in Behalf of the Priſoner, and he will ſwear he never dictated to her, or gave her the leaſt Intimation to ſay there was, or was not, Hay in the Room. And as there was Hay in the Room, beyond all Doubt, I ſhall only aſk this Queſtion, How came this Deſcription of the Room (which is a very extraordinary one) to anſwer, if the Priſoner never had been there, and all her Story was an utter Falſity? But, Gentlemen, there is one Argument ariſing from the Priſoner's Evidence, that, to me, ſeems totally unanſwerable: I myſelf have heard it mentioned; and it hath been artfully, though now it appears falſely, inſinuated to thouſands, in order to prejudice them againſt the Priſoner, and to leave no Doubt but ſhe muſt be convicted, that the Proſecutor would actually ſhew where ſhe was at that Time. I know the Gentleman who related it. And I call on the Proſecutor now to account but for any four Hours out of the twenty-eight Days, and I ſhall be convinced all is a Falſity; and that ſhe is not only greatly deceived, but wilfully perjured. Has it been attempted to be proved? I beg leave to ſay it has not. What Weight then ought this Circumſtance to have with you? It ought to have more or leſs, according to the Time or Opportunity that there hath been to prove where ſhe was. Had the Fact happened but a Week ago, I muſt confeſs, it might with Truth be ſaid, there was neither Time nor Opportunity to make the Inquiry. But let us conſider the Circumſtances of this Caſe; the Fact committed a Year and an Half ago,—talked of before it came to Trial,—from the Time of Trial to this Time; I will venture to ſay there never was a Fact that hath undergone greater or more particular Inquiry. There have been Accounts publiſhed, which have gone all over the Kingdom; and, I believe, I may with Truth ſay, all over *Europe*. I do not believe there is an Individual in this great City that has not heard of this Affair, nor hath a Company met for one ſingle Evening, where this was not a Subject-matter of Converſation. Then was there not Time or Opportunity to inquire into it? There certainly was; and unleſs they can ſhew what has been ſuggeſted, I mean where ſhe was, it is one of the ſtrongeſt Arguments in the World in Favour of the Priſoner. Thus then it ſtands on the Evidence on Behalf of the Proſecution.

With reſpect to our Evidence, I ſhall again take Notice, that, as to the Facts themſelves, one Witneſs hath poſitively ſworn to them; I mean, the Priſoner. You cannot now expect other Witneſſes to ſwear to confirm her's, as to them; there never was but one, and that the Priſoner is now deprived of; therefore all we can do, will be to ſupport her by Circumſtances and Probability. And, in the firſt Place, we ſhall ſhew you the utmoſt Probability for her going there, for two Reaſons: Becauſe ſhe is traced in the Road from thence (and not a Tittle of Evidence to ſay ſhe was further) towards *London*, and not by one Perſon only, or by Perſons who ſeemed to take no Notice of her; but we have in our Briefs no leſs than three, who ſaw her go by dreſſed in that very particular Manner in which ſhe came Home, tracing her from that very Place towards *London*. One of the Men, at one of the Turnpikes, where ſhe inquired her Way, went farther than merely deſcribing her Dreſs; he had an Opportunity, by aſking her Queſtions, of ſeeing her Face; and he will tell you, by the Obſervations he made then, and by ſeeing her ſoon after, he verily believes her to be the ſame Perſon.

When ſhe came Home, ſhe gave the Account you have heard: But the Manner in which ſhe gave it, is very well worth your Conſideration; it was not given in a wanton Manner, not with that Eagerneſs, or in that Hurry an Impoſtor would have told it, in order to run through the Chain of her Story, and tell it as ſoon as ſhe could, fearing ſhe ſhould forget it. How does ſhe tell it? More as if ſhe was deſirous of concealing, than of artfully publiſhing it. You find her at her firſt Arrival ſo weak, that ſhe could not run into a long Detail; and when ſhe grew more able to relate it, it came out only by Anſwers to Queſtions aſked from Time to Time; in which ſhe anſwered no farther than the Queſtion abſolutely required, or obliged her. Is that like a formed Scheme or Story? It ſeems to me totally otherwiſe. But what will you ſay, when this ſame *Mary Squires*, who, as Mr. *Davy* hath urged, cannot be miſtaken for another, who has that remarkable Stamp upon her Countenance, as he hath expreſſed it, is proved by twenty-five or thirty Witneſſes (many of whom are Perſons of Figure and Fortune) to be at *Enfield-Waſh* on the 16th or 17th of *December?* Was ſhe only ſeen to go by as a Traveller? No, that is not the Caſe; many converſed with her; ſhe talked of loſing a little Horſe, and was lamenting her Loſs; ſhe enquired after this Horſe of ſeveral; of ſome who were Strangers to her, and of others that had known her for a long Time. With reſpect to the firſt, they aſked her, how they ſhould know her Horſe? ſhe not only deſcribed him, but told them that he had a Lock on with her Name: They then aſked, what her Name was? ſhe told them, *Mary Squires*. We ſhall produce ſome Farmers, in whoſe Barns ſhe hath lain for three or four Days together, to identify her Perſon; and no one can ſuppoſe but that theſe Witneſſes are as little liable to Miſtakes, as any produced on Behalf of the Proſecution. And this Obſervation you will carry with you during the whole Courſe of our Examination, that we ſhall not produce one Witneſs, who doth not live within ten Miles of *London*, nor one that the Proſecutor hath not long known of; they will be regarded or not, in Proportion as their Characters do, or do not, ſtand impeached; and when I have ſaid this, I defy the Proſecutor to impeach the Character of any one Witneſs. With reſpect to the Witneſſes on Behalf of the Proſecution, it is abſolutely impoſſible to know their Characters, or, at leaſt, to prove them; becauſe one is picked up at one Place, and another at another; and the Priſoner could never know, before ſhe heard their Teſtimony, who was to be examined againſt her. Suppoſing you believe, from the Girl's Account, from the Witneſſes we ſhall produce, that *Mary Squires* was at *Enfield*, there is an End of all Attempts of the Defence that was ſet up; and I dare ſay you will believe it, when we prove to you (which we ſhall certainly do) from Gentlemen that went down with the Priſoner to *Enfield-Waſh*, who had no Reaſon to think Mother *Wells*'s was the Place, any otherwiſe than they were led to imagine it the Place, from the Account ſhe had given of it; and, however Mr. *Lyon* and Mr. *Adamſon* may differ in point of Opinion, yet they muſt and will tell you, that the Place anſwered, as far as it could be expected, to the Deſcription that was given by the Priſoner. We are not to catch at nice and minute Circumſtances, with reſpect to the Deſcription of the Room: If you were to make that a Rule of judging of the Truth of the Story, conſider how the People that were in the Houſe vary in their Deſcriptions: There were alſo ſome Pan-tiles, *Judith Natus* ſays, in the Room: Did any body elſe mention them but herſelf? One Man ſays, there was a Tub in the Room: Did any body elſe mention it but him? You obſerve, it is impoſſible to be conceived, that this poor Girl, who perhaps might be, and indeed there is the greateſt Reaſon in the World to be certain, was in a Fright, ſhould be ſo very minute and exact with reſpect to every Particular in the Room. But then it is ſaid, ſuppoſing the Priſoner not contradicted in her Account in this Reſpect; yet it is plain her Mother and ſhe contradict each other; for the Mother was obſerved to cry out, when her Daughter returned, that ſhe was naked. Mrs. *Mayle* has given you an Account of it, and great Streſs hath been laid on this Obſervation: But if we conſider this Expreſſion coolly, is there any Weight in the World to be laid upon the Words of a Parent, who at that Time was inflamed with Indignation that her Child had been uſed ill? Is it ſtrange or remarkable, that this Mother ſhould aggravate Things? Beſides, the Word *naked* was in this Particular a comparative, not a poſitive Term; and ſhe might certainly be called *naked*, according to the Priſoner's own Account, comparatively ſpeaking, to what ſhe was when her Mother ſaw her laſt.

But ſuppoſing this a feigned Story, how happened it, that any one Deſcription or Circumſtance, mentioned by the Priſoner, ſhould coincide? And there are ſome Circumſtances, all muſt agree, which amazingly correſpond. How came the Chimney in the Corner of the Room? How came this Pitcher to be in the Houſe? It makes no Difference, whether it was in the Room or not. How came it to be there at all, and ſo exactly to anſwer what ſhe deſcribed the firſt Moment ſhe came Home? We ſhall ſhew you, by Perſons that went down, other Circumſtances, altogether as ſurpriſing, that confirmed her Account. The Gentlemen, as if aware of one, aſked, Could any Perſon get out of the Window? You obſerve, *White* told you, becauſe he was forced ſo to do, well knowing that *Adamſon* would ſay ſo, that he perceived ſome Lime, or Lath and Plaiſter, broke from the Wall, as if Somebody had got out; ſhould that be the Caſe, it is the ſtrongeſt Circumſtance in the World. One more I muſt mention; an Account was given from the firſt Inſtant, that her Ear was bloody. A Man, who lived over the Way, came and found either a Piece of Iron, or a Bit of Lead, under that Window, all bloody, and the Handkerchief produced here is ſtained with Blood; and, if that Circumſtance ſhould be proved, it is a very ſtrong one, and ſuch as requires the utmoſt Conſideration. There is but one Obſervation or two I ſhall mention, and that is with reſpect to what has been called the Hinge, or Sort of Criterion, or Touch-ſtone, upon which you are to try this Narration; and that is the Letter. Mr. *Moreton* has made ſome ſtrong Obſervations on it; and extremely ſtrange it is, that this Letter ſhould not appear dated in ſuch a Manner, as to determine the Truth when it was wrote, or ſent by the Poſt. Was this Date (for you will ſee the Letter) put in any Place where, either by the opening the Letter, or by the Wax coming near it, it might be poſſibly injured, there would be an End of any Obſervations that could be made on the Occaſion; becauſe you muſt know, who receive Letters upon Buſineſs, that it is impoſſible

poſſible to unfold a Letter ſometimes without tearing a very material Part of it. But how is this? The Date is in the very Corner of the Letter, that Corner which was ſheltered by the Folding of it, and muſt have been the laſt that could have received any Injury; it was not near the Wax or Seal, or liable to any Injury on that Account; and although the Outſide was all duſty, this Part being folded in was as clean as poſſible; how, therefore, this Part of the Letter in particular came to be torn off, is a Matter beyond my Comprehenſion, and, I am certain, you will give this Obſervation the Weight it deſerves.

Then thus it ſtands upon the Evidence on both Sides: And, Gentlemen, I ſhall now only mention to you again, That upon Trials for Perjury, we are not to convict a Perſon merely upon Conjecture, Improbability, or Argument. I told you before, and under the Direction of the Court I ſhall repeat, that every Perſon's Oath, though Perjury is aſſigned in it, is to be conſidered as one Witneſs: If a Man forſwears himſelf in an Anſwer in Chancery, one Witneſs only contradicting it is of no Signification, as both are to have equal Credit: She then is the only Perſon that ſpeaks to the Fact of this Tranſaction, and that is not controverted but by Circumſtances and Arguments: And if any Witneſs could have been produced, or any Evidence given, that could have cleared up, and explained this intricate Affair (for ſo I will call it, even upon their Evidence given), and the Proſecutor hath omitted ſo to do, which to me ſeems plain to a Demonſtration, you will then preſume in Favour of Innocence, as far as it is poſſible, and eſpecially againſt thoſe Perſons by whom the Whole might have been explained; and if you have the leaſt Doubt remaining, whether the Perſon is innocent or not, Charity and Chriſtianity will induce you to take the favourable Side; the Conſequence of which will be, that the Defendant will be acquitted.

Mr. WILLIAMS.

We ſhall lay our Evidence before you, and begin firſt with Mr. *Lyon*, the Maſter of this Girl.

Edward Lyon ſworn.

E. Lyon. *Elizabeth Canning* had been my Servant about ten Weeks: On the 1ſt of *January* 1753, my Wife gave her Liberty to go to ſee her Uncle, who lived at *Saltpetre-Bank*.

Mr. *Williams.* Had you known her any Time before?

E. Lyon. I have known her ſixteen Years before ſhe was my Servant.

Mr. *Wil.* Pray, how has ſhe behaved herſelf?

E. Lyon. Very well: I believe her to be a very honeſt Perſon. She not coming Home that Night, we enquired about, and ſent to her Mother ſeveral Times, but heard nothing of her.

Mr. *Wil.* Whom did you ſend?

E. Lyon. I do not recollect any particular Perſon.

Mr. *Wil.* Had ſhe ever been guilty of ſuch Neglect before in not coming Home?

E. Lyon. No, not at all. The firſt Time I ſaw her afterwards was on the 31ſt Day of the ſaid Month before Mr. Alderman *Chitty*; ſhe was there, in order to take up a Perſon that ſhe ſaid had uſed her ill at *Enfield-Waſh*. I being a little thick of Hearing, cannot give much Account of what paſſed before the Alderman; but there was a Warrant granted, and ſeveral of our Neighbours went down to *Enfield-Waſh* the next Morning on Horſeback; I went in a Coach with Mr. *Naſh*, Mr. *Hague*, and Mr. *Aldridge*; the Priſoner and her Mother went in a Chaiſe.

Mr. *Wil.* Did ſhe give you any Deſcription of the Room ſhe had been confined in?—*E. Lyon.* Not to me, for I was not with her.

Mr. *Wil.* Give an Account of what paſſed between you and a Perſon that met you on the Road.

E. Lyon. Mr. *Wintlebury* came riding on Horſeback, and ſaid, they had taken a Number of People in Mrs. *Wells's* Houſe. When we came there, I ſaw about ten Perſons, one Man, and the reſt Women, ſitting round the Fire, in what they call the Parlour. After I had been there ſome Time, *Elizabeth Canning* came, and was brought in and ſet upon the Dreſſer: I went to her, and ſaid, *Bet*, will you take any Thing to refreſh you? She ſaid, No. I ſaid, Do not be daunted, for you have Friends about you, and, on the other Hand, be careful, and challenge Nobody in this Houſe without you are poſitive of them. Sir, ſaid ſhe, I will not. Then, ſaid I, you ſhall ſee them. Accordingly ſhe was taken from the Dreſſer, and led by two into the Room. She ſaw Mrs. *Wells* firſt, and ſaid, ſhe had nothing to ſay to her; and upon ſeeing Mrs. *Squires*, ſhe ſaid, That is the Woman that cut my Stays off.

Mr. *Wil.* Did you ſee *Squires* then?——*E. Lyon.* I did, very plain.

Mr. *Wil.* Was ſhe ſitting or ſtanding?

E. Lyon. She was ſitting firſt, but ſhe got up out of her Chair.

Mr. *Wil.* When *Elizabeth Canning* fixed upon her, was ſhe ſitting or ſtanding?——*E. Lyon. Squires* was juſt got out as ſhe charged her, and came towards her.

Mr. *Wil.* Attend to the Queſtion: Was ſhe ſitting or ſtanding up?

E. Lyon. The Room was full of People: I cannot juſtly ſay, whether it was the Time ſhe was getting out, or got out: Several People got nearer than I did.

Mr. *Wil.* Have you any Reaſon to think *Elizabeth Canning* ſaw her Face, before ſhe fixed upon her Perſon?

E. Lyon. I believe ſhe ſaw her Face.

Mr. *Wil.* Why do you think ſo?---*E. Lyon.* I think ſhe would hardly charge her without the Sight of her Face; I have no other Reaſon.

Mr. *Wil.* When *Mary Squires* was charged with being the Perſon, what was done?

E. Lyon. She came up to her, and ſaid, I hope you will not ſwear my Life away, for I never ſaw you. Then *Betty Canning* was carried into the Kitchen.

Mr. *Wil.* Did you hear *Mary Squires* ſay where ſhe was at the Time?

E. Lyon. I did not hear any Thing of that.

Mr. *Wil.* Did you hear *Elizabeth Canning*, or any body elſe, ſay what Day the Robbery was committed?

E. Lyon. No, I did not hear any body ſay any Thing of it.

Mr. *Wil.* Did you ſee *George Squires* there?

E. Lyon. Yes, I did; he was in the Room before *Canning* came in; he pulled off his Hat to me, as ſoon as I came into the Room: I ſaid to him, How came you in this Houſe? He ſaid, I am a Traveller, and came here to lodge. I ſaid, Could you not find a Houſe of better Character? That, however, you muſt give a farther Account of yourſelf. Then he ſat down.

Mr. *Wil.* When *Canning* came in, was ſhe aſked, whether ſhe had any Thing to accuſe *George* with?

E. Lyon. She ſaw *Lucy* before ſhe did him: She ſaid, That young Woman was in the Room when my Stays were cut off: Then ſhe ſaw *Virtue Hall*, and ſaid the ſame of her; but they did nothing to her. After that *George Squires* was brought forward to her: Said ſhe, that Man looks very much like the Man that robbed me in *Moorfields*, but I will not ſwear to him. He had pulled his Great-Coat off in the Houſe, I think, before ſhe came: He had it on before Juſtice *Taſhmaker*; then ſhe ſaid, ſhe verily believed he was the Man, and that was the Coat he had on, which he put her Gown under, when ſhe was robbed in *Moorfields*; but ſhe would not ſwear to him.

Mr. *Wil.* Did you at any Time receive a Letter from *Gawen Naſh*?

E. Lyon. I did.

Mr. *Wil.* Did he at coming Home expreſs any Kind of Doubt about this Affair?

E. Lyon. No: We all came Home together in the Coach; he ſeemed very well ſatisfied; I could ſee but very little otherwiſe.

Mr. *Wil.* Did he ſay any Thing at all, whether he was ſatisfied or not?

E. Lyon. I cannot ſay but he did ſay ſomething, but I cannot recollect what: I can recollect Mr. *Hague* ſaid, he did not ſee any Grate in the Chimney, nor Pictures in the Front of it. I ſaid, I never heard that mentioned, but theſe Things are Moveables, and may be moved: We had a little Talk; after that we had a Beef-ſteak at the *Three Crowns* at *Newington*, and were good Friends.

Mr. *Wil.* Did Mr. *Hague* ſay any Thing elſe?

E. Lyon. No, he ſaid nothing elſe; there was no Matter of Doubt between that Time and the Trial of *Mary Squires*. Mr. *Naſh* was once at my Houſe afterwards, and as he was going out of the Door, he made Uſe of a very odd Expreſſion; he ſaid, Mr. *Lyon*, I hope God Almighty will deſtroy that Model that he made that Face by, and never make another by it; a very odd Expreſſion, I remember it very well, meaning the Gypſey.

Croſs-Examined.

Mr. *Davy.* Was you at the *Four-Kings* laſt *Wedneſday*?

E. Lyon. No, Sir.

M. *Davy.* I would be glad to know where you live.

E. Lyon. I live at *Aldermanbury*.

Mr. *Davy.* What is your Buſineſs?—*E. Lyon.* I am a Carpenter.

Mr. *Davy.* How long had *Elizabeth Canning* lived with you?

E. Lyon. She had lived with me about ten Weeks.

Mr. *Davy.* Had you any Knowledge of her before?

E. Lyon. I knew her in Mr. *Wintlebury's* Service, I believe, near upon two Years. I had before that employed her Father.

Mr. *Davy.* When was the laſt Time you ſaw her before the 29th of *January*?---*E. Lyon.* I ſaw her in the Morning before ſhe went out, on the 1ſt of *January*.

Mr. *Davy.* Can you tell, whether the Door from the Kitchen to the Hay-loft was open or ſhut, when *Elizabeth Canning* ſat upon the Dreſſer?

E. Lyon. I cannot ſay that, for the Room was full of People.

Mr. *Davy.* Was the Motive of your going down (beſides the taking the People up) to make as many Obſervations as you could?

E. Lyon. No Doubt of that, Sir.

Mr. *Davy.* Then why did you not obſerve towards what Part of the Kitchen her Face was directed, when ſhe ſat upon the Dreſſer?

E. Lyon. I muſt have ſhoved People down if I had, for the Room was full of People.

Mr. *Davy.* Was you with her in the Parlour?

E. Lyon. I was juſt at, or hardly in the Parlour-Door.

Mr. *Davy.* How many People were there between you and *Mary Squires*?

E. Lyon. It is impoſſible I ſhould tell; there might be five or ſix between me and the People in a Circle round the Fire; the Parlour was almoſt full of People.

Mr. *Davy.* When they were all in the Room, and *Canning* alſo there, and you at a Diſtance, whether you could ſee *Mary Squires* ſitting by the Fire?—*E. Lyon.* No otherwiſe than this, in a Clift between the People's Shoulders.

Mr. *Davy.* Did you ſee her ſitting?—*E. Lyon.* I did; this was all in a very little Time before *Canning* charged her with robbing her.

Mr. *Davy.* How far is the Chimney from the Door?

E. Lyon. It may be ten or eleven Feet.

Mr. *Davy.* Did you ſee her after *Canning* was in the Room?

E. Lyon. I did.

Mr. *Davy.* Had you ſeen her before?---*E. Lyon.* I had; ſhe was ſitting ſmoaking a ſhort Pipe by the Fire, before *Canning* came down.

Mr. *Davy.* Was her Face or Back towards you?

E. Lyon. She was Side-ways, partly to me.

Mr. *Davy.* Did you ſee her ſitting on a Chair, after *Canning* was in the Room?

E. Lyon. No, I did not, till after ſhe got up; but ſaw her ſitting by the Fire, between the People, juſt at *Canning's* coming into the Room.

Mr. *Davy.* How long was *Canning* in the Room before ſhe charged her?

E. Lyon. She charged her in a very little Time.

Mr. *Davy.* What did the Gypſey do upon that?

E. Lyon. She took her Hat off, and opened the Clout which was upon her Head; her Face was almoſt hid with them before.

Mr. *Davy.* Could you ſee the Side of her Head when you was at the Door?

E. Lyon. Not then, but before and after I did.

Mr. *Davy.* How far was *Elizabeth Canning* from you?

E. Lyon. She was within about three or four Feet of me.

Mr. *Davy.* Was ſhe in a direct Line between you and *Squires*?

E. Lyon. No; she was partly in the Centre in the Half-moon, and *Squires* was upon an Angle.

Mr. *Davy.* Was *Canning* at your right or left Hand?

E. Lyon. She was more to my left Hand.

Mr. *Davy.* Have you any other Reason for believing *Canning* saw the Face of *Mary Squires*, than from your good Opinion of her?

E. Lyon. No otherwise.

Mr. *Davy.* What was the first Thing *Squires* did or said, after she rose from her Seat, to convince *Canning* that she was not the Person who robbed her?

E. Lyon. No otherwise than by telling her, as I have told you.

Mr. *Davy.* Did she desire *Canning* to take Notice of her Face?

E. Lyon. I did not hear; I am thick of Hearing at some Times, and I was then; I am more in Winter than at other Times.

Mr. *Davy.* Did you hear *Canning* say at what Time she had been robbed?——*E. Lyon.* No, I did not.

Mr. *Davy.* Did *Mary Squires* continue speaking after the Words you before mentioned?

E. Lyon. Very little; the Girl was moved away presently afterwards, so that they were in that Position but a very little Time.

Mr. *Davy.* Did Mr. *Hague*, Mr. *Nash*, and Mr. *Aldridge*, and you, return Home together after this?——*Lyon.* We did.

Mr. *Davy.* What was your Discourse coming Home?

E. Lyon. We had very little Talk in the Coach about it.

Mr. *Davy.* Did you return good Friends?

E. Lyon. We did, and were very jocular, as we were when we went down.

Mr. *Davy.* Did you hear or understand any Doubt they had touching this Affair?——*E. Lyon.* No, I did not.

Mr. *Davy.* Was either of them dissatisfied at the Account she had given, and at her Behaviour when in the House?

E. Lyon. No, none at all; we were as agreeable as we were when we went down.

Mr. *Davy.* Recollect yourself, and seriously answer, whether you had any Conversation with these Gentlemen about *Canning*'s Mother dreaming a Dream?---*E. Lyon.* I never did, nor never mentioned any such Thing.

Mr. *Davy.* Did you ever say any thing about her Mother's going to the Conjurer?

E. Lyon. Going to a Conjurer has been mentioned, but not by me.

Mr. *Davy.* Did the Mother tell you, five Days before her Daughter's coming Home, that a Conjurer had told her she was in the Hands of an old Woman, and would come Home the next Week?

E. Lyon. She had told other People, as I heard, but not me; I never heard it from her Mouth; I never conversed with her about it.

Mr. *Davy.* When did you hear it?——*E. Lyon.* I don't know.

Mr. *Davy.* When did she return?—*E. Lyon.* On the 29th of *January*.

Mr. *Davy.* Have you ever talked with her, since her Return Home, of any thing that passed during the Time of her Absence?

E. Lyon. I can say nothing in particular.

Mr. *Davy.* If you have had any Conversation with her about it, it must be particular.

E. Lyon. I know nothing but---How do you do, *Betty?* But as to relating how she was used, or any thing like it, I cannot tell any thing in particular.

Mr. *Davy.* Then what do you remember upon the whole?

E. Lyon. I have often seen her and talked with her since, but cannot remember any particular Part, or Words, that have been related.

Mr. *Davy.* Whether you expressed to her any Surprize concerning the Account she gave to you of her ill Usage?

E. Lyon. She has never given me an Account in a particular Manner; it was always to other Persons.

Mr. *Davy.* Had you any Talk with her, since her Return, relating to a Cunning Man?

E. Lyon, No, none at all, nor don't know she has heard it; one Thing, I think, I recollect; at Mr. *Marshall*'s House I was with her, and asked her thus: *Bet*, if you know any thing of this Affair, that you believe you are mistaken in, or such like, I desire you will let me know it; don't deceive us upon any Account. Sir, said she, I have said nothing but what is really true.

Mr. *Davy.* Have you had any Dispute or Falling-out with Mr. *Hague*, Mr. *Aldridge*, or Mr. *Nash*, on Account of this Affair?

E. Lyon. No, not on any Account. Some few Words, that I related, were concerning the Grate and Pictures over the Chimney: Mr. *Hague* was saying there would be some Marks left where they had hung.

Mr. *Davy.* Were you formerly very intimate with them?

E. Lyon. I was with Mr. *Nash* and Mr. *Aldridge*, but not with Mr. *Hague*. I have done Business as a Carpenter for about sixteen Years for the Goldsmiths Company.

Mr. *Davy.* Are you acquainted with them now?

Mr. *Lyon.* We have no Conversation now.

Mr. *Davy.* What is the Reason of the Discontinuance of your Acquaintance with Mr. *Nash?*

E. Lyon. My Reason is this, that he did not appear: That he should seem to have something to say, and not say it. I thought it was an odd Thing not to appear, and then to appear afterwards.

Mr. *Davy.* Did that break your Acquaintance?—*E. Lyon.* It has so.

Mr. *Davy.* Did you ever hear him say, before the Trial of *Squires* and *Wells*, that he did not believe a Word of the Defendant's Story?

E. Lyon. No; not at all, upon no Account.

Mr. *Davy.* Did you ever hear Mr. *Aldridge* say so?

E. Lyon. No: Mr. *Aldridge* I have seen casually pass and repass---Your humble Servant, and so on; but I was not in his Company. When I saw Mr. *Nash* on the Morning of the Trial of the Gypsey, it was, Your Servant, and so on; but no Conversation. I never was with Mr. *Aldridge* since the Time of coming from *Enfield-Wash*.

Mr. *Davy.* Had you used to be frequently with him before?

E. Lyon. No, but casually.

Mr. *Davy.* Have you been as intimately acquainted with Mr. *Nash* since, as before?

E. Lyon. I have been at his House. I did not keep from his House on that Account. There was no Difference, as I know of. I never shunned his House on that Account.

Mr. *Davy.* Did you belong to a Club at his House?

E. Lyon. We had a Club of all the Workmen belonging to the Goldsmiths Company at his House; that is Plumbers, Bricklayers, and others.

Mr. *Davy.* How often did you usually meet?

E. Lyon. Sometimes once a Fortnight, sometimes three Weeks.

Mr. *Davy.* Did you go pretty constantly?——*E. Lyon.* I did.

Mr. *Davy.* Have you frequented that Club, and drank there, as you used to do before?

E. Lyon. I declared off upon that very Account, because he did not appear on *Squires*'s Trial; and after that, Mr. *Nash* making use of my Name in sundry Places, I resented it.

Mr. *Davy.* Then I desire to know of you, whether from the Time of your Return from *Enfield-Wash* with Mr. *Nash* and Mr. *Aldridge*, to the Trial of the Gypsey, your Intimacy was the same with them as it had been before?

E. Lyon. I had not seen Mr. *Aldridge.* I had no Dislike against him till afterwards, that Things went in such a Line that were disagreeable. Mr. *Nash* had been at my House, as I observed before. I did not keep from Mr. *Nash* on that Account, till after the Trial of the Gypsey.

Mr. *Davy.* Are you sure of that?

E. Lyon. I aver it. I know nothing to the contrary. I had no Dislike to him, till after that Trial.

Mr. *Davy.* During that Period of Time between your Return from *Enfield-Wash*, and the Trial of *Mary Squires*, did you ever hear *Nash* say any thing of his Disbelief of *Canning*'s Story, or that he thought it improbable?——*E. Lyon.* Indeed, I did not.

Mr. *Davy.* Whether Mr. *Nash*, Mr. *Aldridge*, and Mr. *Hague*, when they went with you to *Enfield*, had not the same Evidence of the Truth of the Story, and all its Circumstances, as you had?

E. Lyon. I know the Coach stopped two or three Times; as for Mr. *Aldridge*, he was very little there; Mr. *Nash* was in the House, and saw as much as I did.

Mr. *Davy.* Why did not you subpœna those three Persons to give Evidence on the Trial of *Squires?*

E. Lyon. I was not concerned in the Thing, there were other Persons concerned.

Mr. *Davy.* Who were fixed upon as Prosecutors?

E. Lyon. I don't know.

Mr. *Davy.* Was you examined before the Grand Jury?

E. Lyon. No, I was not.

Mr. *Davy.* Did not you, on the 15th of *February*, set your Name to a Paper to encourage Contributions to carry on the Prosecution?

E. Lyon. There was my Name in Print to an Advertisement, when there were several Gentlemen together.

Mr. *Davy.* Did they make use of your Name without your Consent?

E. Lyon. No, they did not: They mentioned this; they thought, as I was the Master, it would be more agreeable to put it in; I said, Gentlemen, if that is the Case, put it in.

Mr. *Davy.* Did not that contain a Reward for the apprehending two Men concerned in carrying her down to *Enfield-Wash?* and did you advance any Money towards paying that?

E. Lyon. I was Half a Guinea; the rest were the same. As to paying in particular, that was not mentioned.

Mr. *Davy.* The Advertisement concludes with these Words: *Whoever will take or apprehend one, or either of them*, &c.

Francis Roberts, *Aldermanbury.*
Edward Lyon, *Aldermanbury, the Girl's Master.*

Mr. *Davy.* Did you consent to the Publication of this Paper?

E. Lyon. I did.

Mr. *Davy.* Whether there was not a Subscription going on, in order to encourage her for her Virtue? Was you one of those?

E. Lyon. I did not go about to get her any Money; there were Persons that did.

Mr. *Davy.* Did you contribute to the Expence of the Prosecution of the Gypsey and *Wells* at the *Old-Bailey?*

E. Lyon. I did not act; I had no Concern in the Delivery of the Money; the Subscription was not made then; I subscribed nothing to that; what I did was since that.

Mr. *Davy.* How much did you contribute towards the carrying on the Prosecution of *Squires?*

E. Lyon. No more than that Half Guinea then.

Mr. *Davy.* Did you give Evidence on that Trial of what passed at *Wells*'s House?---*E. Lyon.* I did.

Mr. *Davy.* Do you think Mr. *Nash*, Mr. *Aldridge*, and Mr. *Hague*, could hear what passed as well as you?

E. Lyon. They could hear better than I.

Mr. *Davy.* Did you see them in the Room where she says she was confined?

E. Lyon. I cannot tell whether they were in the Room; I saw them in the House.

Mr. *Davy.* Why were the Three not called to give Evidence against *Squires* and *Wells*, as well as yourself?

E. Lyon. I as much believed that Mr. *Nash*, when I saw him in Court, came upon that Affair, as ever I believed any thing in my Life.

Mr. *Davy.* Did you at that Time believe he would give Evidence for or against the Gypsey?

E. Lyon. I believed he would against the Gypsey, as I did.

Mr. *Davy.* Was there no Club-day betwixt your going down to *Enfield-Wash* and the Trial?

E. Lyon. I cannot tell whether there was or not; if there was, I might not be at it. I remember going Home after the Trial was over: Mr. *Aldridge* sent his Servant after me, who said, his Master gave his Service to me, and desired to know how the Affair went: I said, They are both cast. I went directly to Mr. *Nash*'s, and drank a Glass of Cyder, but do not know that I saw him.

Mr. *Davy.* Was you then angry with Mr. *Nash?*——*E. Lyon.* No.

Mr. *Davy*. When you was at Juſtice *Taſſomaker*'s, was *George Squires* there and how was he dreſſed?

E. Lyon. He was; he then had his Great-Coat on.

Mr. *Davy*. Was it put on in order for the Defendant to ſee whether that was the Man or not?—*E. Lyon*. I don't know that.

Mr. *Davy*. Did not you ſay, upon the Trial of *Squires* and *Wells*, that ſhe ſaid he looked more like the Man after he had that Coat on?

E. Lyon. She did ſay to that Purpoſe.

Mr. *Davy*. How came the Juſtice not to commit him?

E. Lyon. Why, we mentioned that it was a Pity they were not all committed.

Mr. *Davy*. Did you hear *George* deſire he might be committed?

E. Lyon. No, I never did: So different from that, that when the Mittimus was writing, he looked over a Woman (and ſeemed to quiver a little) to ſee whether there was a Mittimus making for him, as I took it; but I did not hear him expreſs a Word about it.

Mr. *Davy*. It ſeems, you believed the Girl's Story from the firſt Hearing?——*E. Lyon*. I did.

Mr. *Davy*. Did you take any Method, from that Time to this, to ſatisfy yourſelf about it?

E. Lyon. I got farther Evidence of the Story as far as I could, in queſtioning the Girl at Mr. *Marſhall*'s, as I mentioned before; I had no Doubt at all.

Mr. *Davy*. You bid her be careful; do you believe ſhe was careful?

E. Lyon. I believe ſhe was.

Mr. *Davy*. Then why did you deſire her to recollect herſelf, to ſee if ſhe was miſtaken?—*E. Lyon*. Becauſe there was ſuch a great Clamour about it, and I was willing to aſk her again.

Mr. *Williams*. Whether you did not give the Gentleman a true Anſwer before, when you told him you had been inſtrumental in bringing them to be diſcovered in the Advertiſement of Twenty Pounds?

E. Lyon. Yes, I had been, and would have turned out ſomething.

Mr. *Williams*. My Lord, we are now to read the Letter that Mr. *Naſh* owns to be his Hand-writing.—(*To E. Lyon.*) Is this the Letter that you received?

E. Lyon. This is it. (*He takes it in his Hand.*) It appears to have been wrote on the 10th of *February*.

Mr. *Williams*. Did not you think he was a well-wiſher to the Diſcovery of this Affair?—*E. Lyon*. Indeed I did, and all the Time afterwards, to the Time of the Trial.

Mr. *Williams*. How old is the Girl now?

E. Lyon. I believe about nineteen Years of Age.

(*The Letter read.*)

Mr. Lyon, Feb. 10, 53.

I am informed by Mr. Aldridge, *who has been at* Enfield, *that if a Perſon be appointed there to receive Contribution, ſome Money would be raiſed in that Place for the unhappy poor Girl. I wiſh you Succeſs, and am your's,*

Gawen Naſh.

Directed on the Back, *To Mr.* Lyon, Aldermanbury.

Thomas Colley ſworn.

T. Col. I am Uncle to the Priſoner, and live at *Saltpetre-Bank*; I am a Glaſs-blower; on the 1ſt of *January* was Twelve-month, ſhe came to my Houſe, and ſtayed from Twelve o'Clock to about Nine in the Evening. She lived Servant then with Mr. *Lyon*. After we had ſupped, I and my Wife went along with her homewards, to the End of *Houndſditch*; we parted with her there.

Mr. *Moreton*. How was ſhe dreſſed?

T. Col. She had a Sort of a ſtrip'd Gown on, I cannot tell the Name of it.

Mr. *Moreton*. Was ſhe well and hearty at that Time?

T. Col. She was.

Mr. *Moreton*. Where did ſhe ſay ſhe was going?

T. Col. She told me ſhe was going to her Maſter's, and was in her way there when we left her.

Mr. *Moreton*. Had you any Reaſon in the World to doubt but ſhe was going there?—*T. Col*. No, I had not.

Mr. *Moreton*. How near, and what a-kin is ſhe to you?

T. Col. My Wife is her Father's Siſter.

Mr. *Moreton*. Had you, upon your Oath, any Reaſon to believe that ſhe was a-breeding?—*T. Col*. No, I had not.

Croſs-Examined.

Mr. *Willes*. What Time did ſhe come?

T. Col. About Twelve o'Clock at Noon.

Mr. *Willes*. Did any body come with her that Day?

T. Col. No, Nobody.

Mr. *Willes*. Was ſhe in perfect Health?

T. Col. I never ſaw her better, as I know of.

Mr. *Willes*. What had you to Dinner?

T. Col. Some of a cold Shoulder of Mutton and Potatoes, which was dreſſed the *Sunday* before.

Mr. *Willes*. Did ſhe eat a hearty Dinner?

T. Col. She eat as hearty as ſhe could; ſhe ſeemed to eat as hearty as I did.

Mr. *Willes*. This being New-year's Day, what did you give her to drink?

T. Col. She drank ſome Ten-ſhilling Beer, which I had in the Houſe. I was at Work in the Afternoon.

Mr. *Willes*. Does your Wife drink Tea in the Afternoon?

T. Col. She generally does, whether ſhe has Company or not.

Mr. *Willes*. Have you ſeen your Niece drink Tea?—*T. Col*. I have.

Mr. *Willes*. Do you think your Wife and ſhe had Tea that Afternoon?

T. Col. I do really believe they had.

Mr. *Willes*. Does your Wife generally have Bread and Butter, or Toaſt with her Tea, or not?

T. Col. She generally chuſes Toaſt and Butter.

Mr. *Willes*. What Time did you return Home from Work?

T. Col. At about Seven in the Evening.

Mr. *Willes*. What had you for Supper?

T. Col. We had ſome of a Sirloin of Beef roaſted.

Mr. *Willes*. Did your Niece eat of that?

T. Col. She eat a ſmall Quantity of that, but could not eat much.

Mr. *Willes*. What did ſhe drink after that?

T. Col. She drank a ſmall Quantity of Ten-ſhilling Beer.

Mr. *Willes*. How far did you go with her?

T. Col. I went with her to the End of *Houndſditch*, almoſt to the *Blue Ball*.

Mr. *Willes*. Who went with you?

T. Col. None but my Spouſe and her.

Mr. *Willes*. Did you ſtop at all by the Way?—*T. Col*. We did not.

Mr. *Willes*. What Sort of a Hat had your Couſin on at this Time?

T. Col. She had a Sort of a Chip, a white Hat.

Mr. *Willes*. Had you any other Entertainment, than what you have mentioned, either at Noon or Night?——*T. Col*. No, we had no other.

Mr. *Willes*. Had you any Mince-pyes in your Houſe?

T. Col. No, I had not.

Mr. *Willes*. Do you know of her buying a Penny Pye?

T. Col. I cannot tell where ſhe came by that.

Mr. *Willes*. You are ſure you gave her none at your Houſe?

T. Col. I had none, and gave her none.

Mr. *Willes*. You don't know what Money ſhe had about her?

T. Col. My Wife told me, ſhe aſked her to go with her into *Roſemary-Lane* to buy a Cloak, when I was at Work; but I cannot tell how much Money ſhe had in her Pocket at that Time.

Mr. *Moreton*. Was the Toaſt buttered on both Sides, do you think? Here have been a great many Queſtions aſked in order to force a Stool.

T. Col. I cannot tell.

Mr. *Moreton*. When did you hear ſhe was miſſing?

T. Col. I heard that the ſame Evening; her Mother's Apprentice came to my Houſe that ſame Night, and called and awaked me and my Wife out of our Sleep, as nigh as I can gueſs, between Eleven and Twelve o'Clock.

Mr. *Moreton*. How far is *Houndſditch* from *Aldgate*?

T. Col. It may be about ten Yards; I told the Apprentice I parted with her at the End of *Houndſditch*.

Mr. *Moreton*. What did the Apprentice ſay?

T. Col. He ſaid, the Girl's Maſter had been at his Miſtreſs's Houſe, and wanted to know where ſhe was, and upon that Account he came to know,

Alice Colley ſworn.

A. Col. I am Wife to the laſt Evidence, and Aunt to *Elizabeth Canning*; ſhe came on New-year's Day was Twelve-month, about Twelve o'Clock, to our Houſe, having a Holiday, and ſtayed till about Nine at Night; then my Huſband and I went along with her as far as the Corner of *Houndſditch* towards her Maſter's Houſe; there we parted with her.

Mr. *Nares*. Was ſhe in good Health?

A. Col. She was, in all Appearance, as well as I am now, to outward Appearance. I ſtood and leaned acroſs a Poſt, and ſaw her go directly on her Way down *Houndſditch*; then we went Home to Bed, and about Twelve at Night the Apprentice came, and aſked, if *Betty* was here? My Huſband ſaid, No, I and my Wife went with her as far as *Houndſditch*, and there parted with her. Then the Apprentice went away, and came about Six in the Morning, and my Siſter along with him; ſhe knocked at the Door, and cry'd, *Let me in*, which I did; and the Apprentice went to the Glaſs-houſe to my Huſband; ſhe told me, *Betty*'s Maſter had been with her once or twice, and they did not know where ſhe was; we were all much ſurpriſed.

Croſs-Examined.

Mr. *Gaſcoyne*. Did ſhe look to be very hearty?—*A. Col*. She did.

Mr. *Gaſ*. What had you for Dinner that Day?

A. Col. We had the Remains of a cold Shoulder of Mutton and Potatoes.

Mr. *Gaſ*. Did ſhe drink Tea?—*A. Col*. Yes, ſhe did.

Mr. *Gaſ*. What had you with your Tea?

A. Col. We had Toaſt and Butter; ſhe eat but a very little, not very heartily; but I cannot ſay I minded her much.

Mr. *Gaſ*. Did you go to an Ale-houſe?

A. Col. No, we did not. I took her once or twice to the Glaſs-houſe to ſee my Huſband work ſome Time in the Afternoon.

Mr. *Gaſ*. Was that before Tea, or after?—*A. Col*. I cannot tell.

Mr. *Gaſ*. Was any body elſe with you that Afternoon?

A. Col. No, Nobody but ſhe and I.

Mr. *Gaſ*. Did you go with her to *Roſemary-Lane*?

A. Col. No, I did not.

Mr. *Gaſ*. Did you ever ſeparate?

A. Col. No; only when Supper was ready, I deſired her to go and aſk her Uncle to come to Supper. She went, and they came together.

Mr. *Gaſ*. Did you ſend her any where elſe after that?

A. Col. No, I did not, only to him to an Ale-houſe, the *Black Boy*, not above ſeven or eight Doors from me; and he came with her directly in a few Minutes.

Mr. *Gaſ*. Did ſhe tell you what Money ſhe had to buy her a Cloak?

A. Col. No, nor did I ſee what Money ſhe had.

Mr. *Gaſ*. Did you hear your Huſband examined?

A. Col. No, I did not.

Mr. *Gaſ*. What Time did you part from her?

A. Col. We parted with her at *Houndſditch* about Half an Hour after Nine.

Mr. *Gaſ*. Did you paſs by a Paſtry-cook's in going?

A. Col. We did.

Mr. *Caſ*. Did you buy a Pye to treat your Niece?

A. Col. No, I did not.

Mr. *Gaſ*. Is the *Blue Ball* in *Houndſditch* in the Way to her Maſter's Houſe?

A. Col. It is.

Recorder. When did you ſee her firſt again?

A. Col. On King *Charles*'s Martyrdom, and never till then.

Recorder. Did ſhe complain ſhe had been confined?

A. Colley,

A. Colley. She did; and was in Bed, and very ill; and there was a Gentlewoman talking to her, named *Polly Lyon*; we did not care to ask her many Questions, she being very ill and in a low Condition; she could hardly speak, she was so very faint.

Recorder. Can you tell what it was occasioned by?

A. Col. By being used very ill, and half-starved.

Elizabeth Canning sworn.

E. Canning. I am Mother to the Girl; she was nineteen the 17th of last *September*: In *December* 1752 she lived with Mr *Lyon* in *Aldermanbury*.

Mr. *Williams.* Did you know of her going to her Uncle's, Mr. *Colley*'s?

E. Can. I did; she called at my House, (it was on a *Monday*, New-Year's-Day) and told me, she was going to her Uncle.

Mr. *Wil.* Was there, or was there not, any Account brought to your House that Night, that she was not come back?

E. Can. Mr. *Lyon*, her Master came to my House just after Nine o'Clock, and said, he wondered she stayed so long: I was frightened out of my Wits: I sent my three Children into the Fields to see after her, and I sent my Apprentice to Mr. *Colley*'s, her Uncle; they said, they had parted with her after Nine o'Clock at *Houndsditch*. I sent again in the Morning, and I went myself before it was light. Mrs. *Colley* was a-bed then: I said, Let me in, let me in; Mrs. *Colley* got up, and said, O lack, has not she come in yet? I said, No. She said, she left her there. Her Husband was called from the Glass-house; and I was ready to run distracted.

Mr. *Wil.* From that Time, to the 30th or 31st of *January*, did you hear any thing of your Daughter, or know where she was?

E. Can. She came Home the Day before King *Charles*'s Martyrdom, at a Quarter after Ten o'Clock. I had advertised her in the Papers the first Time on my own Head; and then afterwards one Mrs. *Maynard*, a Turner's Wife, came to me, and said, Have you advertised her any more? I said, I did not think to do it; indeed it was out of my Power, it was very hard with me.

Mr. *Wil.* Did you hear any thing in Consequence of this Advertisement?

E. Can. One gave me a Shilling, and another gave me a Shilling; so I advertised her two or three Times, and had no Account of her.

Mr. *Wil.* Upon your Oath, did you know any thing of her during the Time she was gone?---*E. Can.* No, I did not.

Mr. *Wil.* On this Night, what Time did your Daughter come Home?

E. Can. A Quarter after Ten.

Mr. *Wil.* Where was you when she came Home?

E. Can. I was partly getting into Bed, and my Apprentice was going to fasten the Door. He called and said, Here is Somebody at the Door. I said, Who is it? He said, *Betty*. I said, What *Betty?* He said, Our *Betty*. My little Girl ran screaming up to the Chimney: I said, Feel her, feel her: I thought she was an Apparition. She came in in this Posture *(describing it, which was almost double, and walking side-ways, holding her Hands before her)*. When she came up so, I took her to be an Apparition.

Mr. *Wil.* What was her Dress?

E. Can. She had a loose Bed-gown, and a Rag about her Head, and her Ear was bloody, and the Rag was bloody.

Mr. *Wil.* Did you, before she brought that Bed-gown Home, ever see it before?

E. Can. No, never in my Life. I never wore such a Thing, so poor as it is with me.

Mr. *Wil.* Did any of your Neighbours come in, after your Daughter came Home?

E. Can. After my Daughter came Home, the first that came in was Mrs. *Woodward*; my Apprentice *James* ran and fetched her, and *Polly Lyon* next Door to me; and the third Person was Mrs. *Myers*; then Mr. *Roberts*'s Maid, and Mr. *Wintlebury*.

Mr. *Williams.* Now, when these People were come in, was your Daughter interrogated by them where she had been?

E. Can. They asked her, where she had been? Her Master *Wintlebury* took her by the Hand, and said, Where have you been? She said, Sir, I don't know, but only by seeing my Mistress's Coach, the *Hertfordshire* Coach: She was not able to say the Place where she had been at.

Mr. *Wil.* Was she able to give an Account of the Persons?

E. Can. No; she said, there was an old Woman, and two young ones, and she should know them again if she saw them, she thought.

Mr. *Wil.* Did she give an Account to you, what Sort of an old Woman it was?---*E. Can.* No, she did not.

Mr. *Wil.* Did she give an Account what befel her, after her Uncle *Colley* had left her in *Moorfields?*

E. Can. She said, she had been robbed, and by what Sort of Men, but she could not tell who they were; but that it was the same two Men that robbed her, that dragged her away.

Mr. *Wil.* Who asked her?

E. Can. We all asked her. She gave an Account, that they pulled her along, and after they gave her a Blow, she could tell no more, and that she was confined where there was Hay in the Room; she said, she lived upon Bread and Water; that from the *Friday* to the *Monday* she had none to subsist on; and she gave an Account of the Mince-pye she bought for her Brother.

Mr. *Wil.* Did she give a Description of a Pitcher?

E. Can. She said there was a broken Pitcher of Water, that very Night.

Mr. *Wil.* What was done to her that Night? Did you put her to Bed?

E. Can. I did, and it was Five o'Clock in the Morning before I could get any Warmth in her Feet.

Mr. *Wil.* Look at this Pitcher *(which she did)*. Is this your Pitcher?

E. Can. It never was mine.

Mr. *Wil.* Did you carry that Pitcher down with you?

E. Can. I did not. I pull'd off my own Stockings, and put them upon her; and in the Morning you might have wrung the Things about her, she was in such a Sweat. *Polly Lyon* brought some Wine, and Mrs. *Woodward* and she mull'd it, and when she had some poured out she could not swallow it; she was in an extreme deplorable Condition in regard to her Health.

Mr. *Williams.* The next Day was any Body sent for of Skill in a physical way?

E. Can. Mr. *Bakler*, the Apothecary's Man, came in that Night; he wiped her Ear, and put a Plaster to it; he gave her some Drops, and then went away. His Master came in the next Morning; he ordered something for her, to give her, in Bottles; he asked her as to the State of her Health.

Mr. *Wil.* What is his Name?---*E. Can.* His Name is *Bakler*.

Mr. *Wil.* Did the Apothecary give her any Thing in order to cause a Stool?

E. Can. She had no Stool till she had three Glysters; she continued extremely ill.

Mr. *Wil.* Had you the Advice of any other?

E. Can. We had the Advice of Dr. *Eaton*. I had not Conveniency for her, having but one Room, and the Room which the Boy lay in; so she was carried from my House to a House over the Way.

Mr. *Wil.* How came there to be a Suspicion, that it was at Mother *Wells*'s that she was confined?

E. Can. She nominated the Name of Mother *Wills* or *Wells* that Night, she did not know which; that she heard them call it very plain; I believe Mr. *Wintlebury*, Mr. *Scarrat*, Mrs. *Woodward*, and *Polly Lyon*, all were there at that Time.

Mr. *Wil.* Had any body that was there given her the least Hint of *Wills* or *Wells*, or any Name like it?

E. Can. No Soul ever spoke to her, till her own Mouth mentioned it.

Mr. *Wil.* How was it first known or believed, that this Mother *Wills* or *Wells* lived at *Enfield-Wash?*

E. Can. I don't know, Sir; because she had described it to be upon the *Hertfordshire* Road: Upon this there was Application made to Mr. Alderman *Chitty*.

Mr. *Wil.* Who fixed it down to be the House of Mother *Wells* at *Enfield-Wash?*

E. Can. I don't know; there were a great many People, and I was so concerned, I did not hear all their Talk.

Mr. *Wil.* Was there any Proposal to go down to *Enfield-Wash?*

E. Can. There was; we went down on the *Thursday* after she came Home; she came Home on a *Monday* Night: There was Mrs. *Myers*, Mrs. *Garrat*, my Girl and me, and a young Child in my Arms: We went in a Chaise.

Mr. *Wil.* Do you recollect any body that met you on the Road before you got down?---*E. Can.* Yes; Mr. *Adamson*.

Mr. *Wil.* Did he give you or your Daughter any, or what Description of the House of Mother *Wells?*

E. Can. Upon my Oath, he did not.

Mr. *Wil.* Did he ask *Betty* any Questions?

E. Can. His Horse would not stand still: He said, Drive, Coachman, I wonder you stay so long. The Coachman said, the Road was so bad, and such a Load he had, he could not go faster. He asked her, what sort of a Place she was in, and if she could *remember* it? and she said, she could. Then he rode on, and we came after. When we came down there, I was only in the Parlour and Kitchen.

Mr. *Wil.* Upon your Oath, did you ever go up in that Room, which goes up where your Daughter was confined?

E. Can. I went up one or two Steps, and said, Oh! oh! this is the Place of my Child's Confinement; and a Gentleman shoved me, and said, Get you down, get you down.

Mr. *Wil.* Recollect, when you came back, did Mr. *Adamson* bid her tell what was in the Room, if she could?

E. Can. I don't remember he did.

Cross-Examined.

Mr. *Davy.* I think you say, one Mrs. *Maynard*, a Turner's Wife, applied to you to advertise her?

E. Can. She did the second Time; but the first Time I did it myself.

Mr. *Davy. (He shews her a Paper)* I should be glad to know whose Hand-writing this is.

E. Can. I don't know whose Hand-writing it is.

Mr. *Davy.* When you advertised her, did you carry the Paper to the Press?

E. Can. No; a young Woman did for me; her Name is *Mary Northan*.

Mr. *Davy.* Who wrote the Paper that *Mary Northan* carried to the Press?

E. Can. I believe *Alice Colley*, her Aunt, wrote the first Advertisement; but I am not sure.

Davy. Did you see it before it was carried?

E. Can. I did, and read it.

Mr. *Davy.* Is this it?---*E. Can.* I cannot tell.

Mr. *Davy.* Are you acquainted with Mrs. *Colley*'s Hand-writing?

E. Can. No, Sir, I am not.

Mr. *Davy.* The first was on the 4th of *January*, and the second was two Days afterwards, was it not?

E. Can. I believe it was.

Mr. *Davy.* Who wrote the second?

E. Can. Indeed I cannot tell, if you would give me all the World.

Mr. *Davy.* Did you write it?

E. Can. No, Sir, I did not; Mrs. *Maynard*, the Turner's Wife, advised me to it.

Mr. *Davy.* Did she write for you?---*E. Can.* No, she did not.

Mr. *Davy.* Who carried it to the *Advertiser?*

E. Can. Mary Northan carried all the Papers.

Mr. *Davy.* Who delivered them to her?

E. Can. I believe I did; I know I did the first.

Mr. *Davy.* Did you, or did you not, deliver the second Paper to be carried to the Press?

E. Can. I did, I think; I am positive they were delivered in my Room, and in my Presence.

Mr. *Davy.* Who were in the Room at that Time?

E. Can. Her Aunt *Colley* was at the first Time.

Mr. *Davy.* Who else?

E. Can. I don't know there was any body, but the young Girl that carried it, and my Children, that Time.

Mr. *Davy*. Who were in the Room when the ſecond Paper was delivered?

E. Can. I believe none but the young Woman and my Children then.

Mr. *Davy*. Who had you the firſt Paper of?

E. Can. My Siſter *Alice Colley* wrote it in my Room.

Mr. *Davy*. Do you know her Hand-writing?

E. Can. I have ſeen her write twice before; but don't know her Hand-writing. She wrote *Scowerer* inſtead of *Sawyer*.

Mr. *Davy*. I ſee upon it *Scowerer* is ſtruck out, and *Sawyer* wrote: Who had you the ſecond Paper of?

E. Can. I believe it was done at the *White Lion*, at the End of *Fore-Street*, facing the Gully-hole, by either the Maſter or Somebody there; *Polly Northan* can tell, for ſhe ſtayed the writing of it.

Mr. *Davy*. Now, had you at that Time heard any thing of your Daughter's being in *Biſhopſgate-Street*?

E. Can. Yes; I heard it of a Gentlewoman at an Oil-ſhop, the Sign of the *Two Jars* through *Biſhopſgate*, towards *Cornhill*. She informed me, ſhe heard a young Voice ſcream out in a Coach; but whether it was a Man's or a Woman's Voice, ſhe could not tell.

Mr. *Davy*. How long was it before the 6th of *January*, the Time of ſending the ſecond Paper, that you had this Account from that Gentlewoman?

E. Can. I don't know, but it was a Night or two Nights before.

Mr. *Davy*. Then her Screaming in *Biſhopſgate-Street* was wrote in the Paper by your Order?

E. Can. It was. I thought I would leave no Stone unturned to find her, and ſo I told *Polly Northan* of that.

Mr. *Davy*. Where had you the third Draught of an Advertiſement?

E. Can. That was wrote in my Kitchen by one *Spencer*; he did it by the Directions of the Gentlewoman at the Oil-ſhop for me, as I was adviſed by my Friends to do it.

Mr. *Davy*. Who adviſed you to put a Reward in?

E. Can. It was her Uncle bid me do that, and ſaid, he'd pay that, if he ſtripp'd his Skin.

Mr. *Davy*. Had you any Knowledge, at that Time, how much Money your Daughter had in her Pocket on the 1ſt of *January*?

E. Can. Yes, I had; for I lent her a little Box to put the Half Guinea in; for I was to have gone out with her on that Afternoon to buy a Cloak and a Pair of Mittens.

Mr. *Davy*. When was that Agreement made to buy a Cloak together?

E. Can. She made that Agreement with me, before ſhe went from me to go to her Uncle's; ſhe intended to return to me that Afternoon, but they would not let her return till ſhe had a hot Supper, becauſe they had nothing but cold Victuals for Dinner.

Mr. *Davy*. How much Money had ſhe in her Pocket at that Time?

E. Can. She had Half a Guinea, three Shillings, and a Farthing. I ſaw the Half Guinea put into the Box, and ſhe put the three Shillings looſe into her Pocket; and the Night ſhe returned, ſhe gave the Farthing to her Brother.

Mr. *Davy*. Was Thirteen and Six-pence Farthing all the Money ſhe had?---*E. Can*. It was.

Mr. *Davy*. When you advertiſed her the laſt Time, did you know then what Money ſhe had in her Pocket?

E. Can. Her Brother ſaid, ſhe had changed a Six-pence, and gave every one of them a Penny; and Mrs. *Lyon* told me, ſhe had given her Half a Guinea in Gold, and three Shillings in Silver.

Mr. *Davy*. Did your Child tell you ſhe had changed Six-pence?

E. Can. Yes; and that ſhe did not give him his Penny, becauſe he huffed her; but I find with his Penny ſhe bought a Penny Mince-pye.

Mr. *Davy*. Was it a Half-penny or a Penny each ſhe gave them?

E. Can. I don't know whether it was a Half-penny or a Penny a-piece.

Mr. *Davy*. Did ſhe turn out her Pocket to you?

E. Can. No, ſhe did not. She ſhewed me the Money; Half a Guinea, three Shillings, and a Farthing, is all I ſaw.

Mr. *Davy*. Did ſhe tell you it was all ſhe had?

E. Can. No, ſhe did not.

Mr. *Davy*. How many Children had you then?

E. Can. I had five in the Whole with her, with the Child in my Arms.

Mr. *Davy*. Who was to have had the Mince-pye?

E. Can. My little Boy.

Mr. *Davy*. How came you to adverti ſe that ſhe had twelve Shillings and Nine-pence Half-penny?

E. Can. I took it ſo, that ſhe had but twelve Shillings and Nine-pence Half-penny.

Mr. *Davy*. Here is by way of Poſtſcript, *Had in her Pocket twelve Shillings, Nine-pence Halfpenny*.

E. Can. I ordered it to be advertiſed; ſhe had Six-pence more, for what I know.

Mr. *Davy*. I obſerve theſe Words, *twelve Shillings, Nine-pence Half-penny*, are ſcratched out on this Paper; how came that?

E. Can. I fixed upon that Sum, thinking ſhe might have changed ſome Money to give Half-pence to the Children.

Mr. *Davy*. Who wrote the third Advertiſement?

E. Can. I can't tell who.

Mr. *Davy*. How came Part of the Writing on the Paper to be ſcratched out? And I obſerve that Part is not printed in the Daily Paper.

E. Can. I can't give the Reaſon, if you would give me the World.

Mr. *Davy*. When it was delivered to *Polly Northan*, was it ſcratched out?---*E. Can*. I don't know.

Mr. *Davy*. I find in this Paper, *This is the laſt Time of Advertiſing*; That alſo is ſcratched out, and both theſe are in different Ink and different Hands.

E. Can. I don't know that I ordered her to be advertiſed, *This is the laſt Time of Advertiſing*. I could not have advertiſed her, had I not had Aſſiſtance, and my Neighbours put me upon it. I don't know that I ordered any Thing to be ſcratched out.

Mr. *Davy*. Did you order *Polly Northan* to carry the Papers directly to the Printing-Office, or elſewhere?

E. Can. To the Printing-Office.

Mr. *Davy*. After you miſſed your Daughter ſo long a Time, you took all the Means in your Power to know what was become of her?

E. Can. Sure I did. I went to all the Agents and Places where I could think of, fearing ſome Caſualty.

Mr. *Davy*. Did you go to *Wood-Street Compter*?

E. Can. The People told me, if there were any Quarrels, they would take all away, Good and Bad together, was the Reaſon I went there.

Mr. *Davy*. Did you go to a Conjurer?

E. Can. I did. They call him the Aſtrologer.

Mr. *Davy*. Where does he live?---*E. Can*. He lives in the *Old-Bailey*.

Mr. *Davy*. What is his Name?

E. Can. I don't know his Name: He had a black Wig over his Face.

Mr. *Davy*. When did you go to him?

E. Can. I don't know when I went.

Mr. *Davy*. How long after your Daughter was miſſing?

E. Can. I don't know. It was before ſhe returned.

Mr. *Davy*. What was done there?

E. Can. I told him I had loſt my Child; and after he had got my Money, he bid me go Home and advertiſe her; he ſaid, Make yourſelf eaſy, ſhe'll come Home again

Mr. *Davy*. Did he tell you when ſhe would return?

E. Can. No, he did not. He only aſked me two or three Queſtions, and wrote, ſcribble, ſcribble, ſcribble along.

Mr. *Davy*. Did he tell you ſhe was in the Hands of an old Woman?

E. Can. No, he did not.

Mr. *Davy*. Recollect yourſelf.

E. Can. I don't know whether he did or no: He might, for what I know.

Mr. *Davy*. Or what Misfortunes had happened to her?---*E. Can*. No.

Mr. *Davy*. Whether he did not tell you ſhe was in the Hands of an old black Woman?

E. Can. The Word *black* I don't remember. I know he frighted me. When he ſhut the Door, and lighted the Candles up, he looked ſo frightful, I was glad to get out at the Door again.

Mr. *Davy*. What was his firſt Queſtion?

E. Can. I think, he firſt aſked me, what I came for? I ſaid, For my Child.

Mr. *Davy*. What were the other Queſtions?

E. Can. I can't recollect them: It was about her going away. I believe he aſked her Age.

Mr. *Davy*. Did he aſk what State of Health ſhe was in?

E. Can. No, Sir.

Mr. *Davy*. Nor when was the laſt Time you ſaw your Daughter?

E. Can. No.

Mr. *Davy*. Did he aſk any Thing about *Biſhopſgate-Street*?

E. Can. I believe I told him that; he bid me advertiſe her again, makes me think I did.

Mr. *Davy*. Did you tell him of a Dream you had?

E. Can. No, I did not.

Mr. *Davy*. Had not you had a Dream or a Viſion about it?

E. Can. I don't know of any ſuch Thing.

Mr. *Davy*. Or an Apparition?

E. Can. No; but I had wandering Thoughts.

Mr. *Davy*. What did you mean juſt now, by ſaying you had wandering Thoughts?

E. Can. I ſay, I never had Reſt Night or Day, for my Thoughts were wandering.

Mr. *Davy*. How came you to imagine ſhe was confined by an old Woman?

E. Can. It never came into my Thoughts that ſhe was; I more thought ſhe was murdered in *Houndſditch*, and throwd into ſome Ditch there.

Mr. *Davy*. At this Time, upon your Oath, had you ever heard of the Name of Mother *Wells*, when you went to this Cunning Man?

E. Can. I never heard of that Name till ſhe came Home.

Mr. *Davy*. Did you mention the Name of Mother *Wells* to him?

E. Can. No; I did not. He ſaid, an old Woman, I believe.

Mr. *Davy*. Did you mention Twelve Shillings, Nine-pence Half-penny to the Conjurer?

E. Can. I believe I did not. I was not there long, for I was all of a Fright when I was there.

Mr. *Davy*. Was there any other Perſon there?

E. Can. I ſaw no other beſides himſelf; he let me in, and I went by myſelf.

Mr. *Davy*. Who adviſed you to go to him?

E. Can. A great many of my Neighbours; one gave me Six-pence, and another Three-pence, till I got a Shilling, and then I went directly.

Mr. *Davy*. What are their Names who gave you the Money?

E. Can. I can't recollect any of them. I believe, a Gentlewoman that lived Cook or Chambermaid, who lodges at a Houſe over the Way, her Name is Mrs. *Johanna*, being out of Place; I was wringing my Hands and tearing about, and ſhe adviſed me to go to the Cunning Man. There were a Crowd of People about the Door, like a Fair about me.

Mr. *Davy*. You adverti ſed her as loſt or ſtrayed: Why did not you advertiſe your Suſpicions of her being murdered?----*E. Can*. I never did.

Mr. *Davy*. Do you remember your ſaying, that you had prayed to God, and had an Anſwer to your Prayers, ſo as to aſſure you that your Daughter would return?

E. Can. I never had no Anſwer. I prayed by myſelf, and gave up Bills in the Church, both at *Aldermanbury* and *Cripplegate*, and at the Meetings and Mr. *Weſley*'s. I did not leave a Meeting or a Place, where I could put up a Bill in.

Mr. *Davy*. Of what Religion are you?

E. Can. I am of the Church of *England*, and was baptized at *Cripplegate*.

Mr. *Davy*. Did you not, about a Quarter of an Hour before your Daughter returned, mention to the Apprentice, you had prayed for your Daughter's Return, and that ſhe would return preſently?

E. Can. I ſaid to *James*, The laſt Thing you do, pray for her: He ſaid, he never went to Prayer but what he did. This was juſt before ſhe came in. I bid him every Night pray for her, and I repeated it.

Mr. *Davy.* Did you mention, that you believed your Daughter would be at Home that Night?

E. Canning. No, I did not.

Mr. *Davy.* Where has this Apprentice been ever ſince?

E. Can. He has never laid a Quarter of an Hour out of my Houſe ſince.

Mr. *Davy.* Has there been any Care taken to prevent People ſeeing him, and his being aſked Queſtions?

E Can. Here was a young Man came and ſaid, He'd give Half-a-Crown to ſee him; I was told this was ſome Scheme or Skit, and thought it would not be convenient, and ſo it was concluded he ſhould not be ſeen. There were about a Dozen Sawyers there.

Mr *Davy.* Did they not impoſe another Perſon upon him, inſtead of the Apprentice?

E. Can. Yes, they brought over another Sawyer, inſtead of him, to the young Man.

Mr. *Davy.* And ſo bilked him out of Half-a-Crown?

E. Can. They did.

Mr. *Davy.* How ſoon after your Daughter's coming in was it, that the Apprentice was ſent for theſe People?

E. Can. He help'd her into a Chair, and went out directly; and immediately came in Mrs. *Woodward*, Mrs. *Myers*, and *Polly Lyon*; and in two Minutes the Houſe was full.

Mr. *Davy.* What Things of the Room at *Wells*'s did your Daughter mention that Night?

E. Can. She mentioned the Chimney and the Grate in the Room, and ſaid, ſhe took the Gown out of the Grate.

Mr. *Davy.* Did ſhe mention any thing of the Jack-line, or Pulley, or broken Caſement?---*E. Can.* No.

Mr. *Davy.* Or Saddles, or Cheſt of Drawers?

E. Can. No; ſhe mentioned Hay, and a Pitcher.

Mr. *Davy.* Did ſhe mention how much Hay?---*E. Can.* No.

Mr. *Davy.* Did ſhe ſay ſhe lay upon Hay?

E. Can. She ſaid, ſhe did now and then, or always, I don't know which.

Mr. *Davy.* Where did ſhe ſay the Hay was?

E. Can. She ſaid, it lay of a Lump in a Corner.

Mr. *Davy.* Did ſhe mention it was ſpread out like a Bed?

E. Can. No.

Mr. *Davy.* Had your Daughter had a Stool, did ſhe ſay?

E. Can. It is a conſtant Method with her to go a Fortnight without a Stool. I have another little Girl at Home now, that commonly goes ſometimes ten and ſometimes eleven Days without a Stool.

Mr. *Davy.* Did you ever mention this to any Doctor before the 1ſt of *January?*

E. Can. When ſhe was little, I mentioned it to Dr. *Catridge*, who lived in *Aldermanbury.*

Mr. *Davy.* Did they uſe to give her Glyſters?

E. Can. No; they uſed to give her Phyſic; that was when ſhe was ill.

Mr. *Davy* Was any Method uſed to occaſion a Stool before the 1ſt of *January?*---*E. Can.* No.

Mr. *Davy.* Had ſhe her Health perfectly well?

E. Can. She had; only ſhe was troubled with Pain in her Head.

Mr. *Davy.* Had ſhe a good Stomach to her Victuals?

E. Can. She had a very little Stomach always; that they know where ſhe lived.

Mr. *Davy.* Was ſhe very thirſty?

E. Can. She drank very little, without it was a Diſh of Tea; but not plentiful of that.

Mr. *Davy.* When your Daughter came Home, and told you this Story, did you think it was a very ſtrange one, or did you believe all ſhe ſaid?

E. Can. No, I did not think it ſtrange at all. I have known her, at Home, to live upon Half a Roll a-Day, when Things have gone hard with me.

Mr. *Davy.* Did ſhe tell you in what Manner ſhe eſcaped?

E. Can. Yes; out of a Window, by pulling down a Board.

Mr. *Davy.* Did ſhe mention any thing of a Pent-houſe?

E. Can. No, ſhe did not.

Mr. *Davy.* How did ſhe look when ſhe came Home?

E. Can. Her Face was ſwelled, bloated, and black, and ſodden, as if it had lain in Water, and her Arms black. She ſwallowed nothing hardly.

Mr. *Davy.* Did ſhe eat any thing that Night?

E. Can. No, nothing but a little Wine and Water; that ſhe could ſcarce get down.

Mr. *Davy.* Were her Teeth looſe?---*E. Can.* No.

Mr. *Davy.* Nor no Soreneſs in her Mouth?---*E. Can.* No.

Mr *Davy.* Do you know Mr. *Scarrat?*

E. Can. I have known him within this Twelve-month.

Mr. *Davy.* Did *Scarrat* come the firſt Night ſhe came Home?

E. Can. He did.

Mr. *Davy.* How lately, before your Daughter returned, had you ſeen him?

E. Can. I never had any Acquaintance with him before that. I don't know but I might ſee him go by a good many Times; but I never ſpoke to him in my Life before; but I hear ſince, he is a Neighbour.

Mr. *Davy.* Did he tell you he had formerly been at Mother *Wells*'s?

E. Can. No, never.

Mr. *Davy.* Did you never hear him ſay he had jumped out of the Window himſelf?---*E. Can.* No, I never did.

Mr. *Davy.* How many Rooms have you got in your Houſe?

E. Can. I rented the Houſe in my Huſband's Time; and before he died, Mr. *Roberts* took the two Garrets, the Chamber, and a little Room I had below, which he has put to his Compting-houſe, for which he paid ſeven Pounds *per* Year, and after that I deſired he'd pay that to my Landlord. So I have but two Rooms.

Mr. *Davy.* Was any thing mentioned of *Enfield-Waſh* the Night of your Daughter's Return?

E. Can. I don't know when it was firſt mentioned. I believe it was when they came all together the next Morning.

Mr. *Davy.* Was your Apprentice a Witneſs upon the former Trial?

E. Can. No, he was not.

Mr. *Davy.* Was he ſubpœna'd?

E. Can. I don't know what a Subpœna is.

Mr. *Davy.* How came you not to mention the Grate, the Pitcher, nor the Bed-gown, on the Trial?---*E. Can.* Becauſe it was not aſked me.

Mr. *Davy.* Was Mr. *Adamſon* preſent when your Daughter mentioned the Hay?

E. Can. He did not ſee her the firſt Night, nor till we went down to *Enfield.*

Mr. *Davy.* Was *Scarrat* there when Hay was mentioned?

E. Can. I don't know, the Houſe was full of People.

Mr. *Davy.* Do you know one Mr. *Dod*, a Surgeon?--*E. Can.* I do not.

Mr. *Davy.* Did you ever hear your Daughter ſay, ſhe was afraid to lie on Hay, fearing there ſhould be a dead Man under it?

E. Can. I never heard her mention that, to my Knowledge.

Mr. *Davy.* Did you never ſay ſo to any body?

E. Can. No, not to my Knowledge.

Mr. *Davy.* Can your Daughter write?

E. Can. She can a little; it is a ſad Hand.

Mr. *Davy.* Can ſhe write a Letter well enough for you to find out the Meaning of it?

E. Can. She can hardly write at all.

Mr. *Davy.* Can ſhe write her Name?

E. Can. I believe ſhe can; I have ſeen her write it.

Mr. *Davy.* How long was ſhe at a Writing-School?

E. Can. About a Quarter of a Year.

Mr. *Davy.* When did you ſee any of her Hand-writing?

E. Can. I do not know that I have ſeen her Hand-writing theſe ſix Years.

Mr. *Davy.* Look at this Paper (*it was a Notice of Trial with her Name to it, the Name wrote by her*): Is this Name her Hand-writing?

E. Can. I believe it is her ſcribbling like.

Mr. *Davy.* Do you think, when your Daughter could write, ſhe would only make her Mark?---*E. Can.* I do not know for that.

Mr. *Davy.* I aſk this, my Lord, becauſe in her Information before Juſtice *Fielding*, there ſhe only makes her Mark, and by this Paper I ſee ſhe writes an exceeding good Hand.---(*To E. Can.*) How was your Daughter's Head covered, when ſhe came Home?

E. Can. With this Rag upon her Head, (*holding the half Handkerchief in her Hand*) and an old ragged Handkerchief ſhe had in her Pocket tied over that (*producing it*).

Mr. *Davy.* Whether you did not ſwear upon the Trial of *Mary Squires*, that your Daughter had a Cap on when ſhe came Home?

E. Can. No, not to my Knowledge; ſhe had no Cap on, to my Knowledge.

Mr. *Davy* to *Thomas Gurney.* You hear the Evidence this Woman has given; look at your Minutes, and give an Account of what ſhe ſaid in her Evidence on that Trial, as to the State and Condition in which her Daughter came Home, and particularly how ſhe was dreſſed.

Gurney. She ſaid, ſhe had nothing on but a ragged Bed-gown and a Cap.

Mr. *Davy.* Read the Account ſhe gave to that.

Gur. She ſaid, after ſhe was miſſing from New-year's Day, ſhe adverti ſed her three Times. She came back on the Day before King *Charles*'s Martyrdom, about a Quarter of an Hour after Ten o'Clock; ſhe had nothing but a ragged Bed-gown and Cap on.

Mr. *Davy.* Were theſe her own Words?

Gur. I have here mentioned the Perſon *ſhe*, where ſhe ſaid *I.* I will not take upon me to ſay theſe are the very Words ſhe made uſe of, or that ſhe made uſe of no more Words; it is my Method, if a Queſtion brings out an imperfect Anſwer, and is obliged to be aſked over again, and the Anſwer comes more ſtrong, I take that down as the proper Evidence, and neglect the other: For Inſtance, here have in the Courſe of this Trial been many Queſtions aſked, which have not brought out any ſatisfactory Anſwer to the Counſel, which, when aſked in other Words, and upon Recollection, have produced more proper Anſwers, which I have put down. It is not to be expected I ſhould write every unintelligible Word that is ſaid by the Evidence.

Mr. *Davy.* Are you certain the Witneſs on that Trial ſaid, ſhe had a Cap on?

Gur. She did, or I had not put it down; and had ſhe ſaid a Handkerchief, I doubt not but I ſhould have found it in my Minutes.

Alice Colley again.

Mr. *Moreton.* Look at this Paper (*which was the firſt Advertiſement ſent to the* Daily Advertiſer): Is this your Hand-writing?

A. Col. I believe it is.

Mr. *Moreton.* Here is the Word *Scowerer* ſcratched out, and another Word put for it over it; is that your Hand-writing?

A. Col. That other Word is not my Hand-writing, nor the *P. S.* at the Bottom is not my Hand-writing.

Mr. *Moreton.* Look at this other Paper (*which was the ſecond Advertiſement*).---*A. Col.* I did not write that; I never ſaw it before.

Mr. *Moreton.* Did you write the firſt of your own Accord, or did any body dictate to you?

A. Col. Her Mother did; ſhe told me what to write down.

Mr. *Moreton.* Were you two alone then?

A. Col. I believe there were ſeveral Strangers by at the Time.

Mary Northan ſworn.

Mr. *Nares.* Do you remember carrying any Papers to be printed in the *Daily Advertiſer?*---*M. Northan.* I carried three.

Mr. *Nares.* Who wrote the ſecond?

M. Northan. (*She takes it in her Hand.*) I cannot remember indeed who wrote it. I think Mrs. *Canning* ſent me to the Corner of *More-lane*, at the *White-Lion*, there it was wrote.

Mr. *Nares.* Who wrote the third?

M. Northan. I cannot juſtly remember that.

Croſs-Examined.

Mr. *Willes.* Did you go by yourſelf, or in Company with any body?

M. Northan. I went by myſelf.

Mr. *Willes.* How came you to put in theſe Words, *any Coachman?*

M. Northan. The Mother gave Directions to put in about the Coach, becauſe ſhe was a ſober Body, and we thought ſhe might be forced away in a Coach.

Mr.

Mr. *Willes*. How came the Circumſtance of the Coachman to be inſerted?

M. Northan. Becauſe her Mother had been informed by a Gentlewoman in *Biſhopſgate-ſtreet*, that ſhe heard a Coach drive in great Haſte, and a young Perſon ſcreaming out in it; and that ſhe had Nobody at Home, or ſhe would have ſent and ſtopped the Coach.

Mr. *Willes*. Was this Writing on the Backſide one of the Papers on it, when you carried it to the Printer?

M. Northan. I do not know; if it was read to me, I could tell better *(It is read)*.

Note, *It is ſuppoſed ſhe was forcibly taken away by ſome evil-diſpoſed Perſon, as ſhe was heard to ſcreek out in a Hackney-Coach in* Biſhopſgate-ſtreet: *If the Coachman remembers any thing of the Affair, by giving an Account as above, he ſhall be handſomely rewarded for his Trouble.*

M. Northan. This was wrote at Mrs. *Canning*'s Houſe, I believe, but I cannot tell by whom; I did not mention about the Coachman at the *White Lion*.

Mr. *Willes*. During the Time it was in Mrs. *Canning*'s Houſe, was there any thing wrote in it, or on the Back of it, by any body there?

M. Northan. No, there was not.

Mr. *Willes*. Can you read?

M. Northan. I can hardly read at all. *(She looks at it.)* There was nothing on the Back-ſide when I carried it. *(It is read.)*

Elizabeth Canning *went from her Friends between Nine and Ten on* Monday *Night, betwixt* Houndſditch *and* Biſhopſgate, *freſh-colour'd, pitted with the Small-Pox, high Forehead, light Eyebrows, about five Foot high, well-ſet, had on a purple maſquerade-ſtuff Gown, black-ſtuff Petticoat, a white chip Hat bound round with green, white Apron and Handkerchief, blue Stockings, and Leather Shoes.*

Mr. *Willes*. Is this all you mentioned to the Perſon who wrote?

M. Northan. It is, I believe.

Mr. *Willes*. Do you know who ſcratched out theſe Words? *(Any Coachman, who remembers taking up ſuch a Perſon, and can give any Account where ſhe is, ſhall have two Guineas Reward, to be paid by Mrs.* Canning, *in* Aldermanbury-Poſtern, *Sawyer, which will greatly ſatisfy her Mother.)*

M. Northan. The other is all I gave Directions for; I don't know who ſcratched this out.

Mr. *Nares*. I dare venture to ſay this Alteration was made by the Printer, for I obſerve he has altered the *Engliſh* and Spelling all the Way through by the printed Paper; he ſaw there was ſome Suſpicion of a Coachman put in in a ſtupid Manner, and he began to alter it on the Back-ſide, as it is put down.

Mr. *Willes*. Here is the third Paper; do you know who wrote this?

M. Northan. I don't know; Mrs. *Canning* ſent me to carry it to the Printer.

Mr. *Willes*. Here are two Lines ſcratched out in this; how came that?

M. Northan. The Printer ſcratched them out, and ſaid, they were of no Uſe.

Mr. *Willes*. In the third Letter here are two Lines ſcratched out: Were they ſo when you carried it? The Words are, *Had in her Pocket Twelve Shillings, Nine-pence Half-penny.*

M. Northan. The Printer read it, and ſcratched them out; he ſaid, it was not material to name the Money.

James Lord ſworn.

J. Lord. I have been Apprentice to *Elizabeth Canning*'s Mother between Six and Seven Years. I remember her being miſſing upon New-year's Day was Twelve-month. Mr. *Lyon* came to our Houſe firſt about Nine o'Clock, then about Ten, to know whether Miſtreſs know'd whether *Betty* was come home to her Houſe. Then I was ſent directly to her Uncle *Colley*'s, at *Saltpetre-Bank*: They were all a-bed: Mrs. *Colley* anſwered and ſaid, They had left her about half an Hour after Nine o'Clock, upon the other Side *Aldgate* Church, in *Houndſditch*: Then, after that, I came Home and acquainted Miſtreſs with it. There was great Inquiry about the Neighbourhood all Night long almoſt; I inquired of ſeveral Neighbours that Night.

Mr. *Williams*. When was the next Time you ſaw her?

J. Lord. On the 29th of *January*, the Night before King *Charles*'s Martyrdom, about a Quarter after Ten o'Clock, I was juſt going to make faſt the Door, going to Bed; Somebody lifted up the Latch; it goes with a Bit of String; Miſtreſs was down upon her Knees a-praying to ſee her Apparition, before ſhe came in.

Mr. *Williams*. Did you ſee her down on her Knees before *Elizabeth Canning* came in?

J. Lord. She was down on her Knees ſome time before ever ſhe lifted up the Latch.

Mr. *Williams*. From the 1ſt of *January* to this Time, did you ever ſee the Mother on her Knees?

J. Lord. Yes, I have ſeveral Times, praying to God to hear ſomewhat of her, whether ſhe was alive or dead.

Mr. *Williams*. This Prayer that you mention, and the Poſition of her being down on her Knees on the 29th, was that any thing particular, or was it no more than what ſhe had done before?

J. Lord. It was the ſame as ſhe had ſeveral Times done ſince ſhe miſſed her Daughter?

Mr. *Williams*. You was giving an Account that *Elizabeth Canning* lifted up the Latch, and you was going to make faſt the Door; go on, and give an Account in what Manner ſhe came.

J. Lord. I had the Candle in my Hand, and was going to make faſt the Door, and ſhe came in: Miſtreſs was praying: Miſtreſs aſked who was there? I then looked her up in the Face, and thought it was Somebody elſe came to inquire Tidings after her: I did not know her at firſt: After I had looked her in the Face again, ſhe frightened me, becauſe ſhe looked in ſuch a deplorable Condition. I ſaid to Miſtreſs, it was *Betty*: She ſaid, What *Betty*? I ſaid, Our *Betty*: Upon that Miſtreſs fell in a Fit directly, and continued ſo ſome Minutes, I cannot ſay how long.

Mr. *Williams*. Upon your Oath, do you think it was a real Fit, or a ſham Fit?

J. Lord. I never ſaw her in a Fit before; it was far from a ſham Fit. When *Elizabeth Canning* came in, ſhe was e'en almoſt ſpent: I took her by the Arms, and ſet her down in a Chair: She was e'en almoſt dead, as black as the Chimney-ſtock, black and blue: She was dreſſed up with an old Bit of an Handketchief round her Head, and an old dirty ragged Bed-gown, what they properly call a Jacket.

Mr. *Williams*. Did you ſee what was upon her Head?

J. Lord. She had no Cap, nor Hat; nor Stays on; her Ear was cut, and all bloody.

Mr. *Williams*. Did it bleed as if it had been freſh cut?

J. Lord. It was a-bleeding.

Mr. *Williams*. Was there any Blood upon the Handkerchief?

J. Lord. There was ſome Blood upon the Handkerchief that was about her Head: She had an old Handkerchief in her Hand, and a Bit of one upon her Head.

Mr. *Williams*. What Colour were the Handkerchiefs of?

J. Lord. One was white, but I cannot ſay for the other.

Mr. *Williams*. What Condition did ſhe ſeem to be in with regard to her Health?

J. Lord. She ſeem'd to be almoſt ſpent, juſt gone; and if it had been much further, I believe ſhe muſt have dropt down.

Mr. *Williams*. Who were in the Room at that Time?

J. Lord. There were none but my Miſtreſs and Children in the Room. As ſoon as my Miſtreſs recovered out of her Fit, I was ordered by Miſtreſs to call Mrs. *Woodward*, *Polly Lyon* and Mrs. *Myers*: They came; ſhe began to ſay where ſhe had been confined; the Woman was either named *Wills* or *Wells*, at *Enfield-Waſh*.

Mr. *Williams*. Was this that Night?

J. Lord. It was the ſame Night. So many People came in, I was obliged to keep the Door, to keep People out.

Mr. *Williams*. Who aſked her where ſhe had been?

J. Lord. My Miſtreſs; and ſhe ſaid, ſhe had been at *Enfield-Waſh*, and heard the Name of *Wills* or *Wells*; ſhe did not know which; for ſhe heard them go backwards and forwards in the Houſe, and heard them call her by her Name.

Mr. *Williams*. Did ſhe ſay how ſhe came to go there?

J. Lord. I was not much in the Room all the Time; I was obliged to keep the Door.

Mr. *Williams*. Then you cannot give an Account of what ſhe ſaid any further?

J. Lord. I know nothing further than that ſhe is an honeſt, induſtrious, ſober Girl.

Mr. *Williams*. Upon your Oath, do you, or do you not, know where *Elizabeth Canning* was from the 1ſt of *January*, to the Day before King *Charles*'s Martyrdom, or any Part of that Time?

J. Lord. No; nor never ſet Eyes on her, or heard any thing where ſhe was, till ſhe came Home.

Croſs-Examined.

Mr. *Gaſcoyne*. What Time was you ſent to *Colley*'s Houſe to inquire for the Girl?

J. Lord. It was between Eleven and Twelve at Night when I got there.

Mr. *Gaſ*. How came you to ſit up ſo late that Night?

J. Lord. Mr. *Lyon* came to our Houſe, as nigh as I can gueſs, between Nine and Ten, (which is generally about the Time we go to Bed) and aſked Miſtreſs if ſhe know'd any thing of her Daughter? She ſaid, No; ſhe thought ſhe had been come Home to his Houſe. The next Morning Miſtreſs and I both went to Mr. *Colley*'s to inquire.

Mr. *Gaſ*. Did you not go to Mr. *Lyon*'s firſt?

J. Lord. I think I did not.

Mr. *Gaſ*. What Time in the Morning did you go to Mrs. *Colley*'s?

J. Lord. I believe we went out about Six o'Clock.

Mr. *Gaſ*. What Time did you get Home again?

J. Lord. I believe about Ten, and I went out to inquire after her again; I went one Way, and Miſtreſs another, to the Neighbours about.

Mr. *Gaſ*. To what Places?

J. Lord. I cannot tell all the Places; I did not go to any Place in particular.

Mr. *Gaſ*. Where did your Miſtreſs go?

J. Lord. I cannot tell; ſhe did not tell me; ſhe was juſt like a mad Woman.

Mr. *Gaſ*. Did ſhe order you to go to any Place?

J. Lord. I had no Directions from her to go to any Place in particular.

Mr. *Gaſ*. When did you go to your Work?

J. Lord. I did not go to Work till after Dinner.

Mr. *Gaſ*. What Time do you generally dine?

J. Lord. About One o'Clock.

Mr. *Gaſ*. Was your Miſtreſs at Home, when you came Home from Work?——*J. Lord*. I don't know.

Mr. *Gaſ*. Was the Door open?——*J. Lord*. It always is.

Mr. *Gaſ*. Was you in the Room when your Miſtreſs firſt kneeled down, the Night the Girl came Home?——*J. Lord*. I was.

Mr. *Gaſ*. Did ſhe not adviſe you to kneel down?

J. Lord. She did not.

Mr. *Gaſ*. What was you doing?

J. Lord. I was praying to God, in my Heart, that ſhe might hear of her.

Mr. *Gaſ*. What particular Converſation paſſed between you and your Miſtreſs that Night, before ſhe kneeled down?

J. Lord. I cannot ſay; I did not take Notice of all the Words.

Mr. *Gaſ*. Did ſhe ſay ſhe had more Reaſons for praying that Night, than at any other Time?

J. Lord. No, ſhe did not.

Mr. *Gaſ*. Upon your Oath, whether ſhe did, before the Time ſhe kneeled down, ſay ſhe ſhould ſee her?---*J. Lord*. No, ſhe did not.

Mr. *Gaſ*. Did ſhe ſay ſhe had any Reaſon to expect her that Week?

J. Lord. No.

Mr. *Gaſ*. Did ſhe ſay, ſhe had ſome Knowledge, or Somebody had told her ſhe would come Home that Week?

J. Lord. She did not expect her coming Home that Night, or that Week, no more than any other.

Mr. *Gaſ*. Do you know any thing of your Miſtreſs's going to a Cunning Man?

J. Lord. I know nothing at all about it; She did not acquaint me with it.

Mr. *Gaſ*. What, not of going to a Conjurer?

J. Lord. No; ſhe does not acquaint me with all her Affairs.

Mr. *Gaſ*. Did you never hear her mention ſhe had gone, or would go, to a Cunning Man?——*J. Lord*. No.

Mr. *Gascoyne*. Did you never hear your Mistress relate a Dream or Vision she had had?——*J. Lord*. No, not to my Knowledge.

Mr. *Gas*. Are you sure?

J. Lord. I might, or might not hear it; I cannot tell; the Care of my Mistress's Business lies upon me, and I have other Things to mind.

Mr. *Gas*. Give me a direct Answer, whether you ever heard any such Transaction concerning your Mistress's going to a Conjurer, or having been there?

J. Lord. There was some Talk of a Cunning Man; but I did not know whether she had been with one.

Mr. *Gas*. What was said of the Cunning Man?

J. Lord. I do not know: I remember there was Mention made of a Cunning Man that lived in the *Old-Bailey*.

Mr. *Gas*. What Cunning Man was that that lived in the *Old-Bailey*?

J. Lord. He used to tell Fortunes.

Mr. *Gas*. How came this Cunning Man to be mentioned?

J. Lord. I believe Mistress or Somebody did go to him, but I do not know who.

Mr. *Gas*. For what did they go?

J. Lord. To hear somewhat of her Daughter.

Mr. *Gay*. Did you hear this before or after she had been there?

J. Lord. I believe it was after.

Mr. *Gas*. Who did you hear speak of it?

J. Lord. To the best of my Remembrance, it was my Mistress herself.

Mr. *Gas*. What Conversation passed upon that, when your Mistress first informed you of it?

J. Lord. I did not hear a Word what he said to her; I heard no more than that she had been there.

Mr. *Gas*. Was any body by at that Time?

J. Lord. I cannot say who were in the House at the Time, or whether there was, or was not, any body there but ourselves.

Mr. *Gas*. Did you not inquire what the Cunning Man told her?

J. Lord. No.

Mr. *Gas*. Did you ever hear any body else in Conversation speak of what was done at this Cunning Man's?

J. Lord. No, nor have I heard to this Time; I always believed he could not tell.

Mr. *Gas*. Did you ever hear who your young Mistress was with?

J. Lord. No, I never did.

Mr. *Gas*. Nor any thing about an old Woman?——*J. Lord*. No.

Mr. *Gas*. Have you not heard your Mistress say any Thing about it?

J. Lord. I have heard her say, she feared some rakish young Gentleman had catched her up, and so carried her away; and I have heard her say, she suspected she was murdered.

Mr. *Gas*. What was your own Opinion?

J. Lord. I could not tell what to think.

Mr. *Gas*. Did you ever hear your Mistress say she was taken away in a Coach?——*J. Lord*. No, I never did.

Mr. *Gas*. As to the Night she came in, you say the Door was upon the Latch, and your Mistress fell into a Fit: How came you not to be affrighted when she came in?

J. Lord. As soon as she came in, all the Blood of my Body was in my Face; and when I recovered myself, I said, it was our *Betty*.

Mr. *Gas*. Was you ever affrighted at the Thoughts of an Apparition before?——*J. Lord*. No, I never was.

Mr. *Gas*. How did she appear as to her Face?

J. Lord. She was black and blue on her Face and Arms, like the Stock of a Chimney.

Mr. *Gas*. Did she look as if she had been beat?

J. Lord. She did, just in the same Manner; her Face and Hands would compare, for Blackness, to a Hat almost.

Mr. *Gas*. Had she black Eyes?

J. Lord. I did not see that, any more than other Persons are.

Mr. *Gas*. Did the Black and Blue seem to be Bruises?

J. Lord. The Colour of her Flesh was next a-kin to the Colour of Beating.

Mr. *Gas*. How long did she continue so Black and Blue?

J. Lord. I was kept out of the Room, and a Doctor attended her; it was not so proper for me to go there.

Mr. *Gas*. Can you remember, the Day she went to her Uncle's to Dinner, what Time she was to have come back again?

J. Lord. Yes; towards the Evening, and go with her Mother and buy a Cloak.

Mr. *Gas*. What Time did she call at your House?

J. Lord. About Eleven o'Clock.

Mr. *Gas*. When she came Home, what had she on as to Cloaths?

J. Lord. She had a Piece of an old Handkerchief about her Head, and a black Petticoat, I believe an upper one; I think it was the same she went away with. She had nothing over her but that Jacket.

Mr. *Gas*. How many Petticoats had she on?

J. Lord. I can't say that.

Mr. *Gas*. Did the Petticoat look clean or dirty?——*J. Lord*. It looked as if it had been draggled in Country Dirt, with Dirt and Mud.

Mr. *Gas*. How do you know the Difference between Country Dirt and *London* Dirt?

J. Lord. Because *London* Dirt is black, and the other lighter.

Mr. *Gas*. Did you see the Ear was fresh bleeding?

J. Lord. It was.

Mr. *Gas*. Have you ever been examined before you came into this Court?——*J. Lord*. No.

Mr. *Gas*. Did you ever make your Affidavit before?

J. Lord. No; I never was examined upon Oath before.

Mr. *Gas*. Look at this Bed-Gown.

J. Lord. This is the Bed-Gown she came Home in, the Day before King *Charles*'s Martyrdom.

Mr. *Gas*. Did you ever see it before you saw it upon her, the Night she came Home, on the 29th of *January*?

J. Lord. No; I never did.

Mr. *Gas*. Is it your Mistress's?

J. Lord. No; I am positive it is not.

Mr. *Gas*. What Reason have you to say That is the Bed-Gown?

J. Lord. It looks like it; I am almost positive to it. I saw it the next Day after it was pulled off.

Mr. *Gas*. Did you make your Inquiry any other Day, after the second Day she was missing?

J. Lord. No; I kept on with my Mistress's Business.

Mr. *Gas*. Upon your Oath, do you believe your Mistress did know where she was?

J. Lord. Upon my Oath, I am positive, if my Mistress had known where she was, she would have fetched her Home, wherever she was.

Mr. *Gas*. Did your Mistress say, she expected to see her on the *Sunday* Night?——*J. Lord*. No, she did not.

Mr. *Gas*. In what Position was she when the Girl came in?

J. Lord. She was on her Knees by the Bed-side.

Mr. *Gas*. Did you ever hear she expected her Home that Night, or was told so by the Cunning Man?

J. Lord. No.

Robert Scarrat sworn.

R. Scarrat. I heard *Elizabeth Canning* was come Home on the 29th of *January*, at Night; and as I had never seen her, or spoke to her in my Life, to my Knowledge, I went in out of Curiosity to see her.

Mr. *Moreton*. Had you heard before she was missing?

R. Scarrat. I had, the very next Day after she was missing.

Mr. *Moreton*. What passed after you went in?

R. Scarrat. I was there some Time before she spoke a Word. Mr. *Wintlebury* came in after me: He said, *Bet*, how do you do? She said, O Sir, you don't know what I have suffered. He asked her, where she had been? She said, she had been on the *Hertfordshire* Road. He asked her, how she came to know that? She said, she saw the Coachman, that used to drive her Mistress into *Hertfordshire*, go by. She was asked, how far she might have been in the Country? She said, it might be about nine or ten Miles.

Mr. *Moreton*. Did she give any Reason for that?

R. Scarrat. I did not hear her. I asked her, if she knew the Name of the Person, and said, I'll lay a Guinea to a Farthing, she has been at Mother *Wells*'s, for that is as noted a House as any is: She said, her Name is Mother *Wills* or *Wills*.

Mr. *Morcton*. Was that Answer after you had said you would lay a Guinea to a Farthing she had been at Mother *Wells*'s House?

R. Scarrat. It was. I asked her about the House: She said, she had been confined in a longish, darkish Room, and saw the Coachman through the Crack of the Window, and that there were some Boards nailed over it. I asked her, whether the Window fronted the Road? She said, it did not; and when she got out, she turned down a little Lane, and then turned into the Fields on her right Hand. I asked her, if she took Notice if any of those Fields were ploughed up? She said, she believed there was. I asked her, when she was in them Fields, on which Hand was the Road? She said, on the right Hand coming to *London*. I asked her, when she came out of these Fields, whether she observed coming over a little Brook? She said, she did. I asked her, if she thought it was a Tan-House? She said, she believed it was. I said, it was Mr. *Neal*'s, a Tanner, at *Enfield-Wash*.

Mr. *Moreton*. Did you know that Road?

R. Scarrat. I did very well; and that there was such a House, and what Sort of a Character it bore, that it was a very bad House. She said, she met a Man, and asked her Road to *London*. She said, she had been robbed, and described the Person that cut her Stays off to be a tall, black, swarthy Woman.

Mr. *Moreton*. Who asked that Question?

R. Scarrat. It was asked, but I can't tell by whom. I said, I had seen Mother *Wells*, and, to the best of my Knowledge, that Description did not answer to her.

Mr. *Moreton*. Did she tell you any Thing else?

R. Scarrat. She said, there were two young Women, one with black Hair and the other fair, stood laughing at her, while her Stays were cutting off.

Mr. *Moreton*. How did she appear to be for Health?

R. Scarrat. She appeared to be very weak and feeble, sitting on a little Stool: To the best of my Knowledge, she had on a dirty Bed-Gown and black Petticoat, and a foul Cap of her Mother's. I went down to *Enfield-Wash* with Mr. *Wintlebury* and Mr. *Adamson* on the 1st of *February*. The People were all taken into Custody.

Mr. *Moreton*. Did she give an Account of any particular Things where she had been confined?

R. Scarrat. She described a black Jug, broken about the Neck, that might hold about four or five Quarts; and she said, she believed there might be about four Quarts of Water in it, and the Jug was left in the Room when she came away; that she had some Bread, but it was so hard, she was forced to dip it in the Water.

Mr. *Moreton*. Who was the first that went into the Room?

R. Scarrat. I believe several of her Friends had been up in the Room before she came down.

Mr. *Moreton*. Upon your Oath, when did you see the black Pitcher first?

R. Scarrat. Upon my Oath, I had never seen it, till I saw her fix upon it in the Room.

Mr. *Moreton*. Was you there when she was in the Parlour?

R. Scarrat. She was brought into the Parlour, supported by two Men. I was in the Parlour then. We made them all sit down, that is, the People that were taken up. The Room was full of Neighbours and People that went down: *Susannah Wells* was on the left Hand of the Fire, and *Mary Squires* sitting by the Fire, with her Head and Knees together. *Canning* looked very hard at her; and whether any body bid her look up, I can't say; but she fixed upon her, and said, That is the Woman that cut off my Stays, and pointed to her. The Gypsey got up, and said, Dear Madam, don't swear my precious Life away. *Canning* said, I know you very well, I know you too well, to my Sorrow. She was asked, if she knew any body else in the Room, and if she knew a young Man, which was *George Squires*? She said, she did not say she did. She pointed to the Gypsey's Daughter and *Virtue Hall*, and said, the young Woman, meaning

meaning the Gypsey's Daughter, was leaning on the Dresser when her Stays were cut off, and *Virtue Hall* was standing by her, when she went into the Room. She was then carried up the Stairs that front the Door. I saw her in one Room, but did not in the first she went into; that was the last she went into there. Coming down Stairs, she said, there was another Room; when she came into the Kitchen, the Door was shut; she said, Through that Door is the Place where I was confined; then the Door was opened, and she went up.

Mr. *Morton.* Was you one of the first that went up?

R. Sarrat. No, I was not. I saw her there with a black Jug in her Hand. She said, that was in the Room. She looked round, and found a Tobacco-Mould, and said, that was there when she was there. She said, an old Cask and a Saddle or two she left there.

Mr. *Mor.* Was she positive that was the Place?

R. Scar. She pointed to the Window, and said, she broke out at that Window.

Mr. *Mor.* Did you go before Justice *Tashmaker?* What Account did she give there?

R. Scar. I did: She gave the same Account there, to the best of my Knowledge, as she did here. When the People were taken up, *George Squires* had a Great-Coat on, and a slouched Hat; he pulled the Coat and Hat off; he was made to put them on again in the House, before he got into the Cart to go before the Justice; but *Canning* would not swear to him.

Mr. *Mor.* Had he the Hat and Coat on at the Justice's?--*R. Scar.* He had.

Mr. *Mor.* Upon your Oath, did you not, from the 1st of *January* to the 29th, know where she was?

R. Scar. I never saw her, to the best of my Knowledge, till she came Home.

Mr. *Mor.* Do you know, at this Hour, any body that does know where she was?---*R. Scar.* No, I do not.

Q. from a Juryman. Which Window did she point to, where she said she got out at?---*R. Scar.* To the End Window.

Cross-Examined.

Mr. *Davy.* Do you know *Wells*'s House?

R. Scar. I do, by passing and repassing.

Mr. *Davy.* Had you ever been in her House before *January* 1753?

Mr. *Mor.* Though you should stigmatize yourself, let not the Truth go undiscovered.---*R. Scar.* I have been there.

Mr. *Mor.* How long ago is it that you was in her House?

R. Scar. It is some Years ago.

Mr. *Davy.* Was you ever in the Hay-loft?---*R. Scar.* I never was.

Mr. *Davy.* Are you very certain of that?---*R. Scar.* I am.

Mr. *Davy.* Did you never jump out at a Window in that Room?

R. Scar. No, I never did; I don't like Jumping so well.

Mr. *Davy.* Where did you live when you went there?

R. Scar. I was then Servant to Mr. *Snee.*

Mr. *Davy.* How often was you there, and when?

R. Scar. I was there once or twice, about four or five Years ago.

Mr. *Davy.* With whom?---*R. Scar.* With two or three Friends.

Mr. *Davy.* Men or Women?---*R. Scar.* Men.

Mr. *Davy.* Were there no Women?---*R. Scar.* No.

Mr. *Davy.* Did you never take a Girl there?

R. Scar. No, never in my Life.

Mr. *Davy.* Was you never there with a Woman?---*R. Scar.* No.

Mr. *Davy.* When was the first Time you was in the Hay-loft?

R. Scar. I never was in it, till the Time I went down with the Girl and them.

Mr. *Davy.* What Rooms in the House had you been in before?

R. Scar. The Kitchen and Parlour, and no other.

Mr. *Davy.* Was you never above Stairs?

R. Scar. No, never before in my Life, till I went down with them, and they were taken in Custody. I never knowed there was such a Room as the Place where the Prisoner was, till then.

Mr. *Davy.* Were there a good many People in the Room, when the Girl told you this?---*R. Scar.* Yes.

Mr. *Davy.* How came you to pitch upon the House of Mother *Wells?*

R. Scar. I judged it might be that House, because I did not know any other House on that Road so likely.

Mr. *Davy.* Did you make that Reply before you asked any Questions?

R. Scar. I said that, when she said she had been on the *Hertfordshire* Road.

Mr. *Davy.* And would you then have laid so much Odds?

R. Scar. Though I said it, I don't know that I should have laid it.

Mr. *Davy.* What Name did she say she heard mentioned?

R. Scar. She said, she heard the Mistress of the House called *Wills* or *Wells.*

Mr. *Davy.* Was the Apprentice by when she mentioned this?

R. Scar. I don't know that he was. Mr. *Wintlebury* was the first Person that she spoke to, as I heard. I was in the Room some Time, and some People spoke to her; but she spoke to none, before she did to him.

Mr. *Davy.* Had you any Acquaintance with Mrs. *Canning*, or her Daughter?---*R. Scar.* No, I had not.

Mr. *Davy.* What led you to go to *Canning*'s House, having no Acquaintance?

R. Scar. A Maid-Servant came into the House where I bedded and boarded, and said, Betty Canning *is come Home*, Bettty Canning *is come Home!* which was the Cause of my going there.

Mr. *Davy.* Then you mentioned several Things to her very familiarly?

R. Scar. I did.

Mr. *Davy.* What were her Answers to them?

R. Scar. Her Answers were, Yes,---she believed,---or, she was sure,---or to that Effect.

Mr. *Davy.* Did you, in the Examination of this Girl, recollect as many Particulars of the House, and about it, as possibly you could?

R. Scar. I did.

Mr. *Davy.* Was you able to describe the House, the Road, the Pond, &c.

R. Scar. I did not mention the Pond, nor nothing in the House. I mentioned the Tanner's House, and a little Bridge that crosses the Brook; and asked her about the Road and the Field, whether it was ploughed up.

Mr. *Davy.* Did you mention one single Particular, to which she answered in the Negative?

R. Scar. That Question is answered; she said the Road was so, and the Fields so.

Mr. *Davy.* Did it never occur to you to ask her about any Thing that you knew was not there, in order to be better satisfied, whether she had been there?

R. Scar. I don't know I thought of such a Thing.

Mr. *Davy.* How soon after she was taken out of the Chaise was it, that you saw her at *Enfield-Wash?*

R. Scar. It was in the Room where the Prisoners were.

Mr. *Davy.* When she came into the Kitchen, did she immediately fix upon that Door, and say, This is the Door of the Room wherein I was confined?

R. Scar. She said that herself; Nobody spoke a Word to her.

Mr. *Davy.* Suppose she had been in the Kitchen, and the Door open, might she not be more positive than if it was shut?

R. Scar. More positive, to be sure, she must be.

Mr. *Davy.* If you had been with her in the Kitchen before, and the Door had been open, and she had not fixed upon the Room, and after that had been carried to all the other Rooms in the House, should you not have doubted of her Veracity?

R. Scar. I don't doubt, but she would have fixed upon that Room at first.

Mr. *Davy.* Attend to the Question. Supposing it had happened, as I have put it, whether that would have led you to doubt her Sincerity?

R. Scar. I should.

Mr. *Davy.* Did you hear what she said before Mr. Alderman *Chitty?*

R. Scar. I did.

Mr. *Davy.* Did she give the same Account on the Trial of *Squires*, she did there?—*R. Scar.* She did, to the best of my Knowledge; but I cannot remember in particular.

Mr. *Davy.* Did she, before the Alderman, mention any Thing of passing through *Bishopsgate-Street?*

R. Scar. No, not to my Remembrance.

Mr. *Davy.* Do you remember she told him of four, five, or six Pieces of Bread, or twenty-four?

R. Scar. I don't remember any particular Pieces of Bread.

Mr. *Davy.* Do you remember any Question of an old Stool?

R. Scar. Not to my Knowledge.

Mr. *Davy.* Nor an old Table?—*R. Scar.* No.

Mr. *Davy.* Nor old Pictures over the Chimney?---*R. Scar.* No.

Mr. *Davy.* Nor Hay?---*R. Scar.* No, not to my Knowledge.

Mr. *Davy.* Can you remember all the Particulars of her making her Escape?---*R. Scar.* No, I cannot.

Mr. *Davy.* Was you examined as a Witness on the Trial of *Mary Squires?*---*R. Scar.* I was.

Mr. *Davy.* In the Evidence you gave, did you not swear, that you had heard her examined before the Sitting Alderman, and that before him she had given the same Account as on that Trial?

R. Scar. It corroborated; to the best of my Knowledge. I swore, to the best of my Knowledge, she did.

Mr. *Davy.* Did you do that, in order to make her whole Story the better to be believed?

R. Scar. I spoke to the best of my Knowledge, and so I do now.

Mr. *Davy.* Did you soften your Evidence, by saying you believed?

R. Scar. I don't remember that I spoke generally to it. I cannot keep such Things in my Head now.

Mr. *Davy.* Did you ever hear her mention any Hay in your Life?

R. Scar. I never did.

Mr. *Davy.* Did you not hear her say upon the Trial, there was Hay in the Room?---*R. Scar.* I don't remember she did.

Mr. *Davy.* Was you in Court the whole Time of the Trial?

R. Scar. I was.

Mr. *Davy.* Have you read the Sessions-Paper since?

R. Scar. No, I have not.

Mr. *Davy.* Did you hear her say before the Alderman, how she made her Escape?

R. Scar. I did; in getting out through a Window.

Mr. *Davy.* As you was in Court all the Time, you must hear what she said of the Manner of making her Escape.

R. Scar. She gave the same Account then as before the Alderman, to the best of my Knowledge. Then I remembered her Evidence before the Alderman a great deal better than I can now.

Mr. *Davy.* Do you think you could then have repeated every Particular?---*R. Scar.* I cannot say I could; it corroborated, to the best of my Knowledge.

Mr. *Davy.* Was not the Evidence she gave on the Trial contradictory to what she gave before the Sitting Alderman?

R. Scar. I cannot exactly remember it.

Mr. *Davy.* Did you, or did you not, tell Mr. Alderman *Chitty*, the Person she described could not be Mother *Wells?*

R. Scar. I did not mention such a Thing to him.

Mr. *Davy.* Did she take the Person that cut her Stays off to be the Mistress of the House?---*R. Scar.* She did.

Mr. *Davy.* Did she know who was the Mistress of the House?

R. Scar. No, she did not.

Mr. *Davy.* Did you know there was a Warrant granted?---*R. Scar.* I did.

Mr. *Davy.* Against whom was it granted?

R. Scar. Against Mrs. *Wells* in particular, for cutting off her Stays.

Mr. *Davy.* Was you not sure it could not be Mother *Wells*, according to *Canning*'s Description?

R. Scar. No, I was not: I said, it might not be her.

Mr. *Davy*. How came you to remember every Particular of what was ſaid at the Houſe of *Canning*, and forget what paſſed before the Alderman?

R. Scarrat. We were a great while before the Alderman, and I could not contain it in my Head.

Mr. *Davy*. Did you know the Outſide of *Wells*'s Houſe?

R. Scar. I did.

Mr. *Davy*. Did you not know whether there was a Pent-houſe, before you went down?——*R. Scar*. I did not.

Mr. *Davy*. Did you, or did you not, before Mr. Alderman *Chitty*, hear her ſay ſhe lay on bare Boards?

R. Scar. She ſaid, ſhe had no Bed to lie upon: I don't remember hearing her ſay ſhe did lie down.

Mr. *Davy*. Do you remember you heard her ſay there was a Grate in the Room?

R. Scar. I do not remember that.

Mr. *Davy*. Did you hear her mention a Saddle?

R. Scar. To the beſt of my Knowledge, ſhe deſcribed a Saddle and an old Caſk; but I cannot ſay.

Mr. *Davy*. How did ſhe deſcribe the Room, when you went down with her?

R. Scar. To the beſt of my Knowledge, ſhe ſaid it was a long, darkiſh Room, but I am not poſitive; but I am poſitive ſhe ſaid it was a long, darkiſh Room, before ſhe went down.

Mr. *Davy*. Where did ſhe ſay that?

R. Scar. I believe, before Alderman *Chitty*; if ſhe did not there, it was in her Mother's Houſe.

Mr. *Davy*. Are you poſitive to all the Queſtions you aſked her at her Mother's, and her Anſwers?——*R. Scar*. I am.

Mr. *Davy*. Did you write any of it down?---*R. Scar*. No, I never did.

Mr. *Davy*. Did ſhe deſcribe the Jug before the Alderman?

R. Scar. I believe ſhe did.

Mr. *Davy*. And the Bread?——*R. Scar*. I believe ſhe did.

Mr. *Davy*. How many Pieces of Bread?

R. Scar. I do not remember how many Pieces; but it was about a Quartern Loaf.

Mr. *Davy*. Are you ſtill in the Service of Mr. *Snee*?

R. Scar. No; I have left it three Years this Month, Old Stile.

Mr. *Davy*. In what Employment are you now?

R. Scar. I work for Mrs. *Waller* in the *Old-'Change*. I am a Hartſhorn-raſper, and live at Mr. *Carlton*'s, a Potter, in *Aldermanbury-Poſtern*.

Mr. *Davy*. How long have you lived there?

R. Scar. I have boarded in that Houſe about a Year and half: I boarded there before I lodged there.

Mr. *Davy*. Have you boarded or lodged at any other Houſe, ſince this Affair at *Enfield-Waſh*?——*R. Scar*. No, I have not.

Mr. *Davy*. How far is Mr. *Carlton*'s from Mr. *Lyon*'s Houſe?

R. Scar. Mr. *Lyon* lives in *Aldermanbury*, and the other is in *Aldermanbury-Poſtern*; they are about ſeven or eight hundred Yards Diſtance.

Mr. *Davy*. How far is Mr. *Carlton*'s from Mrs. *Canning*'s Houſe?

R Scar. It is next Door but one.

Mr. *Davy*. Whoſe Servant came and told you *Elizabeth Canning* was come Home?——*R. Scar*. It was the Apothecary's Maid.

Mr. *Davy*. Did you lodge there then?

R. Scar. I did; and believe I had bedded and boarded there a Year before.

Mr. *Davy*. Did you lodge there the whole Month of *January*?

R. Scar. I did, and did not lie out of the Houſe one Night.

Mr. *Davy*. And work'd for Mrs. *Waller* then?——*R. Scar*. I did.

Mr. *Davy*. Did you work every Day?

R. Scar. No, I did not; but I did that Month from the 5th to the 27th, to the beſt of my Knowledge.

Mr. *Davy*. Where was you from the 1ſt to the 5th of *January* 1753?

R. Scar. I was backwards and forwards at Mr. *Carlton*'s; I eat and drank there.

Mr. *Davy*. Are you certain you dined at Home from the 1ſt to the 5th?

R. Scar. No, I am not, it being Holiday-Time.

Mr. *Davy*. Where did you dine the 1ſt?---*R. Scar*. At Mr. *Carlton*'s.

Mr. *Davy*, What did you do after Dinner?

R. Scar. I went to ſee a Play in *Covent-Garden* Houſe; but being too late, the Houſe was full, we returned Home between Nine and Ten at Night.

Mr. *Davy*. Who were with you?

R. Scar. Mr. *Knowles*, a Coal-merchant, and his Wife. We tried to get in at *Covent-Garden*, then at *Drury-Lane*. When we found we could not, we made the beſt of our Way to Mr. *Knowles*'s Houſe, and there I ſtayed.

Mr. *Davy*. How long did you ſtay there?

R. Scar. I might ſtay there till almoſt nine o'Clock; and then I went Home with Mr. *Carlton*'s Daughter, who is ſince my Wife.

Mr. *Davy*. How long have you been married to her?

R. Scar. Better than eleven Months.

Mr. *Davy*. I hope you had your Health at that Time?

R. Scar. I had, to the beſt of my Knowledge.

Mr. *Davy*. Was you not under the Care of any Surgeon, or Quack?

R. Scar. No, I was not.

Mr. *Davy*. Was you perfectly well at that Time?

R. Scar. I cannot give an Anſwer for a Cold, or the like.

Mr. *Davy*. At what Time of the Day did you go out on the 1ſt of *January* after Dinner?

R. Scar. I went out about Three o'Clock.

Mr. *Davy*. At what Time was you at Mrs. *Carlton*'s at Night?

R. Scar. I was there before Ten o'Clock.

Mr. *Davy*. How did you diſpoſe of yourſelf on the 2d of *January*?

R. Scar. I don't know whether I was at Work, or not.

Mr. *Davy*. I thought you ſaid you did not go to Work till the 5th.

R. Scar. I carried Work Home on the 5th; on the 2d in the Evening I was at a Club in the *Old-Bailey*, and I can bring the Club-Book to ſatisfy you of that.

Mr. *Davy*. How came you to be ſo extremely particular at this Diſtance of Time, where you was on the 1ſt and 2d of *January*?

R. Scar. By looking over Mrs. *Waller*'s Book.

Mr. *Davy*. What led you to be ſo particular in all theſe Circumſtances?

R. Scar. I don't know any thing in particular.

Mr. *Davy*. Did you expect to have been aſked any thing about it in this Cauſe?

R. Scar. I have heard that it ſhould be alledged againſt me, that I took the Girl away.

Mr. *Davy*. When was it at firſt ſo ſuggeſted?

R. Scar. I cannot remember that; it is ſince the Time of finding the Bills againſt the *Abbotſbury* People; but I cannot ſay the Time I did firſt hear it.

Mr. *Davy*. How long have you been acquainted with Mother *Wells*?

R. Scar. It is four or five Years ago.

Mr. *Davy*. Have you been in her Houſe, ſince you left Mr. *Snee*'s Service?

R. Scar. No, not in her Houſe, nor near her Houſe ſince; that is three Years ago.

Mr. *Davy*. Had you never a Quarrel with Mother *Wells*?

R. Scar. No.

Mr. *Davy*. Upon your Oath, did you never threaten that you would be revenged on her?

R. Scar. No; upon my Oath, I never expreſſed any ſuch Words.

Mr. *Davy*. Where does Mr. *Snee* live?

R. Scar. He has a Country-Houſe at *Edmonton*.

Mr. *Davy*. How often have you been in the Houſe of Mother *Wells*?

R. Scar. I have once or twice.

Mr. *Davy*. Will you venture to ſwear, that you have not been there oftener than twice?

R. Scar. I may have been there two or three Times.

Mr. *Davy*. Have you been there no more than three Times, upon your Oath?

R. Scar. I cannot ſay, whether I have or have not: I have called, may-be, three or four Times, I don't know.

Mr. *Davy*. Upon your Oath, have you not been there five Times?

R. Scar. I don't know; I cannot ſay how many Times.

Mr. *Davy*. Will you take upon you to ſay, you have not been there ſix Times?——*R. Scar*. No.

Mr. *Davy*. Upon your Oath, will you take upon you to ſay, you never was there ten Times in your Life?——*R. Scar*. No, I never was.

Mr. *Davy*. Will you ſwear you have not been there eight Times?

R. Scar. I believe I have not.

Mr. *Davy*. Are you poſitive of that?

R. Scar. I believe, I could ſwear I never was there eight Times in my Life.

Mr. *Davy*. Was you at *Edmonton* before the 1ſt of *January* was Twelve-month?---*R. Scar*. Yes; I was, in the *Chriſtmas* Week.

Mr. *Davy*. What was your Buſineſs there then?

R. Scar. I went to ſee ſome Acquaintance and Friends for my Pleaſure, and, I believe, I lay at Mr. *Hubbard*'s, a Shoe-maker, two Nights.

Mr. *Davy*. Had you any Women there?——*R. Scar*. No.

Mr. *Davy*. How did you divert yourſelf, while you was there?

R. Scar. I did not divert myſelf there.

Mr. *Davy*. When did you dance there laſt?

R. Scar. I don't know how long it is ago: I was dancing at the farther *Bell* at *Edmonton*, laſt *Edmonton* Statute.

Mr. *Davy*. Who was your Partner?

R. Scar. She that now is my Wife.

Mr. *Davy*. When you came into Mrs. *Canning*'s Houſe, what made you be ſo particular in aſking Queſtions?

R. Scar. There were others aſked a great many Queſtions beſides me.

Mr. *Davy*. Where had you uſed to ride your Maſter's Horſe to Water, when you lived at *Edmonton*?

R. Scar. Sometimes to one Place, and ſometimes to another.

Mr. *Davy*. Did you never water your Horſe near Mrs. *Wells*'s?

R. Scar. I have at the Brook on this Side her Houſe.

Mr. *Davy*. Did you ever put your Horſe up there?

R. Scar. I once did; I believe he was hung at the Door; I don't remember any of my Maſter's Horſes being put in the Stable.

Mr. *Moreton*. Did you ever ride your Horſe in at the Window, where the Girl jumped out at?——*R. Scar*. No, Sir.

Mr. *Moreton*. Are you ſure, that between the Hours of Nine and Ten on the 1ſt of *January*, you did not go to ſee *Bedlam*?

R. Scar. No, Sir; I am poſitive of that.

Mr. *Moreton*. Tell me the Truth, or perhaps half *Bedlam* will be called to contradict you.——*R. Scar*. No, I did not, Sir.

Mr. *Moreton*. Was you in *Moorfields* that Night?

R. Scar. No, I was not.

Mr. *Moreton*. Did you take away *Betty Canning* that Night up to *Houndſditch*?——*R. Scar*. No, Sir.

Mr. *Moreton*. Did you ſee that Door to the Room open, where *Betty Canning* was confined, when you was there with her?

R. Scar. No, I did not, Sir.

Mr. *Moreton*. If the Door had been open, and ſhe had looked in, and ſhe had not fixed upon the Room, ſhould you have believed her Story?

R. Scar. I verily believe I ſhould not.

Mr. *Moreton*. Was your Situation ſuch, that it was expected of you to be more particular than other People?

R. Scar. No; there were a great Number of People there. I did not regard any more than any body elſe.

Mr. *Moreton*. Had you any thing to do, to direct Mr. Alderman *Chitty* againſt whom he ſhould make out a Warrant?—*R. Scar*. No, Sir.

Recorder. Was there any Lock upon that Door leading to the Hay-loft?

R. Scar. I believe there was none at all; but I did not take Notice of that.

Mary Myers ſworn.

M. Myers. I live in the Neighbourhood, and know the Mother and Daughter.

Mr. *Nares*. How long have you known the Daughter?

M. Myers. About eleven Years. She is a very ſober, honeſt Girl, as any in *England*; ſhe always behaved very handſome to every body.

Mr.

Mr. *Nares.* Do you remember her being miſſing on the 1ſt of *January?*

M. Myers. I do.

Mr. *Nares.* When was the firſt Time you ſaw her after?

M. Myers. On the 29th at Night, at her Mother's Houſe. There were her Mother, Mrs. *Woodward*, and *Mary Lyon* there. *Elizabeth Canning* was ſitting by the Fire-ſide in a very black, dirty, bad Condition; her Face, Arms, and Hands were black; I took it to be a Cold, or Numbneſs occaſioned by Cold; her Nails were as black as my Bonnet, and her Fingers ſtood crooked.

Mr. *Nares.* How was ſhe dreſſed?

M. Myers. She had a black quilted Petticoat on, all torn about the Knees; ſhe had a Bed-gown on, and a Rag about her Head, I believe it was a Muſlin Half-handkerchief; ſhe was very low in her Spirits. I kneeled down on my Knees, to aſk her what was the Cauſe of her being in that Condition? She told me, ſhe went on the 1ſt of *January* to ſee an Aunt and Uncle, and ſtayed with them till Night, and they ſaw her into *Houndſditch*; and how ſhe was robbed and ſtripped in *Moorfields* by two Men, and they gave her a Blow on her Head, and deprived her of her Senſes, and was carried into a Houſe by theſe two Men; and when ſhe came in, there were an elderly Woman and two young ones; the old Woman took hold of her Arm, and aſked her if ſhe would go their Way; and ſhe ſaid, No; that then ſhe went and took a Knife out of a Drawer, and cut the Lacing of her Stays, and took them off, and gave her a great Slap on the Face, and told her ſhe ſhould ſuffer in the Fleſh; and opened a Door, and ſhoved her up a Pair of Stairs into a Room; and after ſhe was in, ſhe d———d her, and ſaid, if ſhe moved or ſtirred, or made any Reſiſtance, ſhe would come and cut her Throat.

Mr. *Nares.* What Time did ſhe ſay ſhe was carried in there?

M. Myers. About Four in the Morning, as ſhe reckoned.

Mr. *Nares.* Were there any other People in the Room, beſides what you have mentioned?—*M. Myers.* There were ſeveral others.

Mr. *Nares.* Did you ſee *Scarrat* there?

M. Myers. I did not know he was there, till I got off my Knees from talking to her.

Mr. *Nares.* What did ſhe tell you was in the Room?

M. Myers. She told me there was Hay there, and a Pitcher with Water in it, ſhe believed about a Gallon of it; and that there was a Fire-place in it, and about the Value of a Quartern Loaf of Bread in Pieces.

Mr. *Nares.* Did ſhe ſay there was a Grate in the Room?

M. Myers. She did; and that ſhe took the Bed-gown and Rag out of the Grate in the Room.

Mr. *Nares.* Did ſhe give any Deſcription of the Size of the Room, whether long, round, or ſquare?

M. Myers. No; I cannot ſay ſhe did. She ſaid ſhe got out at the Window at the End, by pulling down two Boards, and put her Head and Shoulders out, and took out ſome Part of the Window, and pulled out her Legs, and ſo dropped down; and that ſhe tore her Ear in coming out. I looked at her Ear, and it appeared to be a great Scratch; there was a great deal of Blood appeared to be freſh, and dropped of Blood (while I was there) upon her Shoulder. She was aſked, how far the Houſe was off? She ſaid, about ten Miles out of Town. She ſaid, while ſhe was in the Room, there was a Stair-caſe lay cloſe to the Room, and ſhe heard People run up and down in the Nights, and ſhe heard the Name of Mother *Wills*, or Mother *Wells*, mentioned. I was cloſe by her, and heard every Word ſhe ſaid; ſhe ſpoke very low.

Mr. *Nares.* Had *Scarrat* ſpoke to her before ſhe ſaid Mother *Wills*, or *Wells?*—*M. Myers.* I don't know that he had.

Mr. *Nares.* If he had ſpoke to her, ſhould you have known it?

M. Myers. I ſhould: I did not hear him ſpeak to her at all then.

Mr. *Nares.* Tell the Court what ſhe ſaid farther.

M. Myers. She ſaid, ſhe eſcaped about Four in the Afternoon, and aſked her Way to *London.* She was ſo low, that I could ſcarce hear what ſhe ſaid.

Mr. *Nares.* Did you go before Mr. Alderman *Chitty?*

M. Myers. No, I did not.

Mr. *Nares.* Did you go down to *Enfield-Waſh* afterwards?

M. Myers. I did on the *Thurſday* after her Return. There were in the Chaiſe with me, the Mother and Daughter, and Mrs. *Garrat*; and ſeveral other People went down, ſome on Horſeback. Mr *Adamſon* was one on Horſeback. We met him, as we were going. He had been there. He ſpoke to the Coachman, and aſked him what made him ſo long in coming; and ſaid they were out of Patience in waiting.

Mr. *Nares.* Did he ſay any thing to the Girl?

M. Myers. He ſaid to her, *Bet*, what Sort of a Room was you in? She ſaid, Sir, it is an odd Sort of a Room, there is Hay, and a Fire-place in it. He ſaid again, What do you ſay? Is there Hay in it, *Bet?* That is all he ſaid, and went away directly.

Mr. *Nares.* When he ſpoke to the Girl in this Manner, did he tell her there was Hay?

M. Myers. He did not. We then proceeded on, and came to the Houſe at *Enfield-Waſh*; and *Bet* was carried into the Kitchen, and from thence into the Parlour. The Gentlemen deſired her there to be very cautious and careful what ſhe ſaid, and take Time; and after that up Stairs. After ſhe had looked about, ſhe pointed to *Mary Squires*, and ſaid, That is the old Woman that cut my Stays off.

Mr. *Nares.* Was ſhe ſitting or ſtanding then?

M. Myers. I cannot ſay; there were a great Crowd of People; I could not get to the Sight of her.

Mr. *Nares.* Did the Deſcription ſhe had given of the old Woman ſhe told you of on the 29th at Night, tally with the old Woman, when you ſaw her?

M. Myers. Indeed, it did. She then ſaid, Theſe two young Women were in the Room (that was *Virtue Hall*, and the Gypſey's Daughter). The old Gypſey-Woman ſaid, ſhe never ſaw her in her Life before, and hoped ſhe was not come to take her Life away, or ſomething to that Purpoſe.

Mr. *Nares.* Was the Day mentioned, when *Elizabeth Canning* ſaid ſhe was robbed?---*M. Myers.* I don't know that.

Mr. *Nares.* Did you hear the old Woman ſay ſhe had been any Diſtance from *Enfield-Waſh?*

M. Myers. No, I did not; but I heard the old Woman ſay ſhe had lain there but three Nights, and *George* ſaid ſo too. After that they carried *Elizabeth Canning* up one Pair of Stairs, and into two Rooms; one of them was lock'd, and the Key ſent for; ſhe ſaid, none of them were the Room in which ſhe was confined: Then ſhe was carried through the Kitchen and up into another Room; then ſhe ſaid, Gentlemen, this is the Room that I was in; but here is more Hay in it, than there was when I was here.

Mr. *Nares.* Was you in the Room then?

M. Myers. I was. She took her Foot, and put the Hay away, and ſhewed the Gentlemen two Holes; and ſaid, they were in the Floor, when ſhe was in it before.

Mr. *Nares.* Had you heard her mention them two Holes before?

M. Myers. No, I never did. Mr. *Adamſon* ſet his Back againſt a Window, and aſked her what ſhe had ever obſerved out of that Window? She ſaid, Hills at a Diſtance.

Mr. *Nares.* Which Window was this?

M. Myers. That next to the Fire-place. She had told us there was a Pewter Baſon there, and a Saddle; but when we came there, there were two Saddles.

Mr. *Nares.* Did you look out at the Window?

M. Myers. I cannot ſay I did.

Mr. *Nares.* When he put his Back to the Window, could ſhe have ſeen what was to be ſeen there?

M. Myers. No, ſhe was not ſo high up to it.

Mr. *Nares.* Did you find the Pewter Baſon there?

M. Myers. We did.

Mr. *Nares.* Did ſhe mention what Colour the Pitcher was of, at her firſt mentioning it?

M. Myers. I cannot ſay ſhe did; but ſaid it would hold a Gallon of Water.

Mr. *Nares.* Where did you firſt ſee the Pitcher?

M. Myers. In the Kitchen.

Mr. *Nares.* Did you go to Juſtice *Taſhmaker's?*

M. Myers. No, I did not. The other Woman and I were a-cold, ſo we went over to a Public-Houſe.

Croſs-Examined.

Mr. *Willes.* Was her Linen dirty when you was with her on the 29th of *January?*

M. Myers. I looked all about the Neck and Shoulders; it was not very dirty, but it was dirty, it was ſoiled from her Body.

Mr. *Wil.* Was you by when ſhe was undreſſed?

M. Myers. No, I was not.

Mr. *Wil.* Do you know what Number of Petticoats ſhe had on?

M. Myers. No, I do not.

Mr. *Wil.* Pray, did any of you know Mr. *Scarrat?*

M. Myers. I knew him.

Mr. *Wil.* Do you believe old Mrs. *Canning* had any Knowledge of him?

M. Myers. I believe ſhe might.

Mr. *Wil.* Did you hear her call him by his Name?

M. Myers. No, I did not.

Mr. *Wil.* Why do you think ſhe might know him?---*M. Myers.* Becauſe he lived in the Neighbourhood, next Door to her but one.

Mr. *Nares.* Who was there when you was there?--- *M. Myers.* There was Mrs. *Woodward*, Mrs. *Lyon*, and *Elizabeth Canning*'s Mother.

Mr. *Nares.* Did you hear *Scarrat* examine *Elizabeth Canning* where ſhe had been?---*M. Myers.* No, I did not.

Mr. *Nares.* Did you obſerve the Blood to drop very faſt from her Ear?

M. Myers. No; it had dropped upon her Shoulder, and another Drop was then at her Ear.

Mr. *Nares.* Was the Handkerchief then on her Head?

M. Myers. It was.

Mr. *Nares.* Was there much Blood on the Handkerchief?

M. Myers. There was a pretty deal upon it.

Mr. *Nares.* Was you at *Enfield-Waſh*, when *Canning* was carried into the Kitchen?---*M. Myers.* I was.

Mr. *Nares.* Do you remember the Door to be open that leads up into the Hay-loft, when ſhe was there?

M. Myers. I don't remember it was.

Mr. *Nares.* Upon her being carried into the Kitchen, did ſhe ſay, ſhe had been there before?

M. Myers. No, I did not hear any thing of that.

Mr. *Nares.* When Mr. *Adamſon* aſked, what Proſpect there was out of the Window, did not ſhe ſay, there were Trees near it?

M. Myers. Not as I heard.

Mr. *Nares.* I think you ſay, ſhe deſcribed the elderly Woman?

M. Myers. I heard her deſcribe the two Girls that were by; one was a black Girl, the other a fair one, and the old Woman, a tall, black, ſwarthy Woman.

Mary Woodward ſworn.

M. Woodward. *Elizabeth Canning*'s Mother ſent for me the Night ſhe came Home. I went there about half an Hour after Ten, and ſtayed till about One. There came Mr. *Scarrat*, Mr. *Wintlebury*, and others, after I was there. Mrs. *Canning* aſked me, who ſhe ſhould ſend for? I ſaid, Send for her beſt Friends. I mentioned Mr. *Lyon* and his Wife, and others. She ſent the Apprentice; he returned, and ſaid, he was gone to-Bed. There came Mrs. *Myers* and *Polly Lyon*; the latter lives Servant with Mr. *Roberts.*

Mr. *Williams.* Had you any Converſation with *Elizabeth Canning?*

M. Woodward. I had: The firſt Word ſhe ſaid to me was, Mrs. *Woodward*, I am almoſt ſtarved to Death. (She was ſitting in the Chimney-corner, and lifted up her Head, and put her Hands together.) I have had nothing, ſaid ſhe, but Bread and Water ſince New-year's Day at Night, and I have had no Bread ever ſince *Friday.* I aſked her, where ſhe had been? She ſaid, ſhe had been confined in a Room in a Houſe on the *Hertfordſhire* Road.

Mr. *Williams.* Was this before any body came in?

M. Woodward. Upon my Oath, this ſhe ſaid before any body came in. I knowing nothing of the *Hertford* Road, aſked her no more of it.

Mr. *Williams*. Do you remember her mentioning any body's Name?

M. Woodward. I did not obſerve, through the whole Time I was there, that ſhe mentioned any body's Name. I mulled her a little Wine, but was never out of the Room. I aſked her, what was become of her Cloaths?

Mr. *Wil*. Go on; you need not give a particular Account of the firſt Robbery in *Moorfields*.

M. Wood. She ſaid, about half an Hour after ſhe came to her Senſes, ſhe came to a Houſe where ſhe was confined; there were three Women took hold of her; the old Woman aſked her, if ſhe would go their Way? She anſwered, No. Upon that ſhe went to a Dreſſer or Dreſſer-drawer, and took a Knife, and ripped the Lacing of her Stays, and after that took up her Petticoats, and looked at them, and took her a Slap on the Face, and ſaid, D—n you, you Bitch, I'll give you that; and turned her up a Pair of Stairs into this Place, where ſhe was confined, with threatening Oaths to cut her Throat if ſhe heard her cry out. I aſked her, what Sort of an old Woman this was? She ſaid, ſhe was a tall, black, ſwarthy Woman; and the young Women did nothing but laugh at her. I was there with her beſt Part of Half an Hour before the others came in.

Mr. *Wil*. Was there any thing from your Examination, that could poſſibly lead her to give her Anſwer?

M. Wood. No; nor her Mother never ſpoke to her, during the whole Time I was talking to her.

Mr. *Wil*. Did ſhe tell you this of her own Accord?

M. Wood. She began and went on, after I aſked her where ſhe had been confined.

Mr. *Wil*. Did ſhe ſay, during her whole Confinement, that ſhe ſaw any body?

M. Wood. Not as I remember. She was in a moſt deplorable Condition; ſhe had an old ragged Bed-gown on, and a Bit of an Handkerchief.

Mr. *Wil*. Look at this Bed-gown: Is this the ſame?

M. Wood. I do really believe this to be it; but I will not take upon me to ſwear it.

Mr. *Wil*. Had you ever ſeen it before that Night?

M. Wood. No, never.

Mr. *Wil*. Upon your Oath, do you know whether that is her Mother's?

M. Wood. Her Mother never had ſuch a Thing on her Back in her Life.

Mr. *Wil*. Look upon this Half-Handkerchief.

M. Wood. This I know is the ſame ſhe came Home in.

Mr. *Wil*. You ſay you mulled her ſome Wine; did ſhe drink much?

M. Wood. I gave her about half a Tea-cup full, and about the Value of a Nutmeg in Quantity of Bread ſoaked in Wine; ſhe rolled it about in her Mouth, and ſaid, Mrs *Woodward*, I cannot ſwallow it, and ſpit it out. She ſpoke very faint and low.

Mr. *Wil*. Do you believe ſhe was really in that bad State of Health, in which ſhe appeared to be?

M. Wood. I believe ſhe was as bad as ſhe appeared to be; I am ſenſible of that. She ſupped about a Spoonful of the Wine; whether ſhe ſwallowed it all or not, I don't know. She gave an Account of having no Stools in that Time, and the Apothecary did all he could to aſſiſt her in that Caſe.

Mr. *Wil*. When was ſhe able to go abroad?

M. Wood. On the *Tueſday* Se'nnight after ſhe came Home (which was on a *Monday*) ſhe came to my Houſe, and was there almoſt three Weeks; ſhe was ill all the Time, and the Doctor and Apothecary came to her; during Part of the Time ſhe was at my Houſe, ſhe was dangerouſly ill. She was brought in a Man's Arms, and put in a Chair to go to Mr. *Fielding*'s, the Day after ſhe came to my Houſe.

Croſs-Examined.

Mr. *Gaſcoyne*. Did you obſerve her Ear at all?

M. Wood. I did not that Night ſhe came Home, but the Apothecary's Man did; the Handkerchief was all bloody; it bled ſo, that it ſhocked me, I could not look at it; it was very cold Weather, and the Blood had congealed, and was thick upon her Ear; and ſitting by the Fire, I fancy, that made her bleed afreſh.

Mr. *Gaſ*. Do you remember Mrs. *Mayle* inquiring for the Shift that ſhe came Home in?

M. Wood. Yes, ſhe ſaw it; her Mother ſhewed it her.

Mr. *Gaſ*. Do you know it was the Shift ſhe came Home in?

M. Wood. I do.

Mr. *Gaſ*. Do you remember Mrs. *Mayle*'s Obſervation?

M. Wood. I do; that was, that ſhe would take her Oath that no Man ever lay with her, for if there had, there would have been Nature on one Side or other.

Mr. *Gaſ*. Do you remember whether ſhe obſerved whether it was clean or dirty?

M. Wood. Upon my Oath, ſhe did not obſerve any thing elſe in my Hearing.

Mr. *Gaſ*. Was the Shift dirty?

M. Wood. It was; but not ſo dirty, as if ſhe had been at hard Work in it.

Mr. *Gaſ*. What did you think of it?—*M. Wood*. It was dirty.

Mr. *Gaſ*. Was it as dirty as if it had been worn by a Perſon that was dragged from *London* to *Enfield-Waſh*, and lay upon Hay ſo long afterwards?

M. Wood. Yes, it was.

Mr. *Gaſ*. Did you ever expreſs yourſelf to the contrary to any body?

M. Wood. No, I never did.

Mr. *Gaſ*. Whether you ever expreſſed you were ſurprized that the Shift was no more dirty, upon being worn ſo long?

M. Wood. No, I never ſaid ſuch a Thing.

Mr. *Gaſ*. Did you obſerve any Splaſhes of Dirt on it?

M. Wood. I did not; if there had been any, I muſt have ſeen them.

Mr. *Gaſ*. Were there no Spots on it at all?

M. Wood. There were no Spots of any kind in the World.

Mr. *Gaſ*. Take care, you are upon your Oath.

M. Wood. I am ſo.

Mr. *Gaſ*. Did you think the Shift was not ſo dirty as it might have been, if ſhe had worked in it all the Time?

M. Wood. I think it might have been as dirty in a Week, if ſhe had worked in it all the Time?

Recorder. Did you ſee Mrs. *Mayle* there?——*M. Wood*. I did.

Recorder. Did not ſhe ſay, it could not have been worn above a Week?

M. Wood. No, I never heard her.

Recorder. Whether Mrs. *Mayle* and Mrs. *Canning* did not quarrel?

M. Wood. No, not in my Hearing.

Recorder. Was ſhe there above once?---*M. Wood*. I never knew ſhe was.

John Wintlebury ſworn.

I have known *Elizabeth Canning* the Mother about fourteen or fifteen Years; ſhe lives in *Aldermanbury-Poſtern*, and bears as good a Character as any in the Pariſh. I have known the Daughter, I believe, twelve Years; ſhe is a very ſober Girl as any I know; and I believe the whole Neighbourhood will ſay ſo. She lived with me about eighteen Months, about three or four Months before this happened. She always behaved herſelf in a very ſober Manner. I keep a Public-Houſe. I have a back Room, where ſhe would commonly be. She very ſeldom came forward.

Mr. *Moreton*. Did ſhe ſhew a Diſpoſition to be forward, or gay?

J. Wintlebury. Quite different. I don't believe ſhe went out once in a Quarter of a Year. When ſhe went away from me, many of the Neighbours would have had her.

Mr. *Mor*. Do you remember her being miſſing on the 1ſt of *January*?

J. Wint. I do; and her coming Home on the 29th. I ſaw her that Night at her Mother's Houſe, ſitting by the Fire.

Mr. *Mor*. How came you to go there?

J. Wint. A Neighbour came and told me, ſhe was come Home.

Mr. *Mor*. Do you know who that Neighbour was?

J. Wint. I do not.

Mr. *Mor*. Was it Mr. *Scarrat*?

J. Wint. No, it was not. I went; and when I came into the Room, I met with ten or a dozen People: There was the Girl, in a very bad Condition; with a Handkerchief wrapped about her Head, and, I think, it was bloody on one Side. She was very weak. I took hold of her Hand, and ſaid, *Bet*. She ſaid, O Lord, Sir, you don't know what I have gone through! or ſomething to that Effect. Said I, You are at Home now; and, it is to be hoped, you have Friends to aſſiſt you if you have been uſed ill. I aſked her where ſhe had been? She ſaid, On the *Hertfordſhire* Road. I ſaid, How do you know that? She ſaid, ſhe remembered ſeeing (through ſome Cracks, when ſhe was in the Room) the Coachman that uſed to carry Things for me.

Mr. *Mor*. What Coachman had you uſed to ſend Things by?

J. Wint. By the *Royſton* or *Hertford* Coach. I aſked her, how far ſhe was from *London*? She ſaid, about ten or eleven Miles. Then I ſaid, Pray can you tell whoſe Houſe you were at? She ſaid, I cannot; but I heard the Name *Wills*, or *Wells*, by People below Stairs.

Mr. *Mor*. Do you know *Robert Scarrat*?——*J. Wint*. I do.

Mr. *Mor*. Was he in the Room, when ſhe mentioned the Name *Wills* or *Wells*?

J. Wint. He might be; I did not ſee him then.

Mr. *Mor*. Do you recollect that *Scarrat* mentioned *Wills* or *Wells* to her?

J. Wint. To the beſt of my Knowledge, he did not.

Mr. *Mor*. Did you ſee *Mary Myers* there?

J. Wint. I can't remember.

Mr. *Mor*. Did you ſee a Woman kneeling by the Side of her?

J. Wint. I don't know, indeed. I ſtayed there but about three or four Minutes, and there were a great many People in the Room.

Mr. *Mor*. Was you before Mr. Alderman *Chitty*?

J. Wint. I was; but that is quite out of my Memory. I don't know the Particulars that paſſed.

Mr. *Mor*. Was you at *Enfield-Waſh*?

J. Wint. I was, with Mr. *Colley*, Mr. *Sparham*, Mr. *Adamſon*, Mr. *Lyon*, and Mr. *Hague*. I got down before the Chaiſe came down, and went to the *Sun*. The Headborough went with a Warrant to *Wells*'s before me ſome Time: After that I went into the Houſe, the Parlour, and Kitchen, and up Stairs, and into another Room out of the Kitchen; it is a long Room, it goes up about four or five Steps: I obſerved there was a great deal of Hay there; it ſeemed as if it had been toſſed up afreſh, it laid very light.

Mr. *Mor*. Did Mr. *Naſh* go in with you?

J. Wint. I was in before him an Hour. He and Mr. *Lyon*, Mr. *Hague*, and Mr. *Aldridge*, came all down together: We were there an Hour before them.

Mr. *Mor*. Who went down with you?

J. Wint. Mr. *Adamſon* and Mr. *Scarrat* did. We put up at the *Sun*; and another or two went down on Foot.

Mr. *Mor*. Who was in the Room with you?

J. Wint. Mr. *Adamſon* was, and them.

Mr. *Mor*. What did you obſerve in the Room?

J. Wint. There was an old Cheſt of Drawers, a Saddle, and a Place where Somebody had laid on, and a Rug upon them: I did not diſturb it much: I can't tell what was under the Rug; it ſeemed to be a Parcel of old Sacks. I obſerved a broken Pitcher.

Mr. *Mor*. Did ſhe tell you, the Night of her coming Home, of a Pitcher?

J. Wint. She did, of a broken one. She deſcribed it by being a broken one, and which would hold about a Gallon, or ſomething like that: And when I ſaw it in this Room, I thought it was the ſame ſhe deſcribed.

Mr. *Mor*. Look at this Pitcher; do you think this is it?

J. Wint. I believe it may be it.

Mr. *Mor*. Whether or no you know of any of your Friends carrying that Pitcher up into the Workſhop?

J. Wint. I believe I was the firſt Perſon of us that went into the Room.

Mr. *Mor*. Are you ſure there was a broken Pitcher in the Room, when you went in firſt?

J. Wintele. I am ſure there was.

Mr. *Moreton*.

Mr. *Moreton*. How long did you ſtay in the Room then?

J. Wintlebury. I ſtayed but a little Time, and then came down again.

Mr. *Mor*. Did you ſee any Thing of a Man that obſtructed any body from going into this Hay-loft?

J. Wint. No. This was about Half an Hour before *Elizabeth Canning* was come. Mr. *Naſh*, Mr. *Aldridge*, Mr. *Hague*, and Mr. *Lyon*, were not come then. When they came, they deſired me to go and deſire them to make haſte; then I took my Horſe, and went and met the Coach. After this, *Canning* came down, and was brought into the Kitchen, and ſet upon the Dreſſer, and after that into the Parlour; there ſhe was deſired to fix upon the Perſon that cut her Stays off: She fixed upon *Mary Squires*.

Mr. *Mor*. Was you near *Elizabeth Canning* then?

J. Wint. I was; and ſo were a great many more.

Mr. *Mor*. Did ſhe ſee *Squires*'s Face before ſhe fixed upon her?

J. Wint. She ſaw a little of her Face, I ſuppoſe. There were about eight or nine People round the Fire. The old Gypſey had a little Pipe in her Hand, ſitting crouching, with her Head and her Knees together; and as *Canning* looked round, ſhe ſaid, That is the Woman that cut my Stays off.

Mr. *Mor*. Had *Elizabeth Canning* given you any Deſcription of the Perſon, that cut off her Stays, before?

J. Wint. I can't ſay ſhe had.

Mr. *Mor*. What was done after *Canning* had charged her?

J. Wint. *Squires* got up, and ſaid, What, I, Madam! did I cut your Stays off? *Canning* ſaid, Yes; you cut my Stays off in ſuch a Place in the Kitchen. Then ſhe went and ſat down again.

Mr. *Mor*. Did *Mary Squires* ſay where ſhe was at the Time thoſe Stays were cut off?

J. Wint. No; ſhe did not mention any Thing, as I heard.

Mr. *Mor*. Did ſhe mention how long ſhe had been at *Wells*'s Houſe?

J. Wint. No, not at that Time.

Mr. *Mor*. What do you mean by ſaying, *at that Time?* Did ſhe at any other Time?

J. Wint. She did not at any other Time, to my Knowledge.

Mr. *Mor*. Did ſhe deſire *Canning* not to ſwear her Life away?

J. Wint. Indeed, I don't know that ſhe did.

Mr. *Mor*. What was done after this?

J. Wint. Then *Canning* was carried up Stairs, and did not fix upon any of the Rooms: I think there are three of them: They were going to carry her farther, and ſhe ſaid, I was not carried ſo high; I did not go up above four, five, or ſix Steps at the moſt.

Mr. *Mor*. Who did ſhe ſay ſo to?

J. Wint. She ſaid ſo to me. Upon this ſhe was brought into the Kitchen again, and the Hay-loft Door was open, and ſhe went up there and looked about her, and ſaid, This is the Room in which I was confined.

Mr. *Mor*. Where was ſhe, when ſhe ſaid this?

J. Wint. This ſhe ſaid as ſhe was going up Stairs. I believe I then had hold of her Hand. When ſhe was in the Room, Mr. *Adamſon* put his Back againſt a Window, and aſked her, if ſhe could mention any Thing that ſhe could ſee out at that Window.

Mr. *Mor*. Could ſhe at that Time ſee any Thing out at it?

J. Wint. Then, I know, ſhe could not.

Mr. *Mor*. But could ſhe before he had put his Back to it?

J. Wint. He was up Stairs before her.

Mr. *Mor*. Was Mr. *Naſh* in the Room then?

J. Wint. Very likely he was; but I don't know that.

Mr. *Mor*. What was her Anſwer to Mr. *Adamſon?*

J. Wint. She ſaid there were ſome Hills a pretty Way off; and one, two, or three Houſes on the left-hand Side.

Mr. *Mor*. Did ſhe give a true Deſcription of the Proſpect?

J. Wint. She did.

Mr. *Mor*. Which Window was this?

J. Wint. This was the Window neareſt the Fire-place, in the Eaſt. After this Mr. *Adamſon* opened the Window: The Girl ſaid, That Window was nailed up when I was here. I looked at the North Window, where ſhe got out at. That was a little Caſement, about 9 by 18, or 10 by 20: There were Boards nailed over this North Window: It ſeemed to be freſh done, and in a very cobbling Way: The Nails were not drove home, but bent double; it did not ſeem to be done by a Man; and, I think, Mr. *Adamſon* made the ſame Obſervation.

Mr. *Mor*. Did you make that Obſervation to any Body then?

J. Wint. No, I did not. We all went away to Juſtice *Taſhmaker*.

Mr. *Mor*. Did *Elizabeth Canning* ſee *George Squires*, when ſhe was firſt brought in?---*J. Wint*. No.

Mr. *Mor*. When did ſhe firſt ſee him?

J. Wint. I believe ſhe firſt ſaw him when ſhe went into the Parlour, when we went in firſt; then *George* was in a very great Hurry, and ſeemed much perplexed, and ran up Stairs, and was going to go away; he was bundling up ſome Stockings: Some People, two or three, went in, and ſaid, Where are you going? You muſt not go away. And they would not let him go; and brought him into the Parlour again. Then he had a large Great-Coat on.

Mr. *Mor*. Who were there, two or three People?

J. Wint. There was one *Ball*; he is ſince dead. *George Squires* grew obſtreperous, and wanted to get out at the Window, and *Ball* called out for more Help; and then, I think, another Perſon went in.

Mr. *Mor*. Was you then in the Room?

J. Wint. I was not. When *Canning* was brought in, ſhe was aſked, if ſhe knew that Perſon? meaning *George*. She ſaid, ſhe could not ſay it was the Man, but it looked very much like him. He had before this pulled his Great-Coat off; then they made him put the Great-Coat on. She ſaid, He looks very much like the Man, but I will not poſitively ſwear to him.

Mr. *Mor*. Where was this?

J. Wint. In the Parlour. She ſaid alſo, there were two Girls in the Room when her Stays were cut off. We had her out into the Kitchen, and brought them in one by one, and ſhe pitched upon *Virtue Hall* and *Lucy Squires*. Then we went before Juſtice *Taſhmaker*; there *Canning* was examined.

Mr. *Mor*. Did ſhe give the ſame Account there, as ſhe gave to you?

J. Wint. I don't know that ſhe varied in her Account at all.

Mr. *Mor*. Was it the ſame ſhe gave before Mr. Alderman *Chitty?*

J. Wint. I will not be poſitive to what ſhe gave before the Alderman; I can remember but a little of that, about how ſhe was robbed.

Mr. *Mor*. Was you preſent at the Trial of *Mary Squires?*

J. Wint. I was.

Mr. *Mor*. Did you hear her give her Evidence in this Court?

J. Wint. I did.

Mr. *Mor*. Could you obſerve any material Difference between that and what ſhe did before Juſtice *Taſhmaker?*

J. Wint. No, I could not.

Mr. *Mor*. Had you any Reaſon at all to doubt her Story?

J. Wint. No, I had none at all.

Mr. *Mor*. Did Mr. *Naſh* ſay, as he was going Home, he was not ſatisfied with *Canning*'s Account?

J. Wint. He did not appear to be diſſatisfied.

Mr. *Mor*. Nor Mr. *Hague?*---*J. Wint*. No.

Mr. *Mor*. Nor Mr. *Aldridge* neither?---*J. Wint*. No, Sir.

Mr. *Mor*. Did you dine at *Newington?*

J. Wint. No, I did not.

Croſs-Examined.

Mr. *Willes*. Don't you ſubſcribe towards the Support of *Canning?*

J. Wint. No, Sir.

Mr. *Willes*. Is yours a Tavern or Ale-houſe?

J. Wint. An Ale-houſe.

Mr. *Willes*. At the Time *Canning* lived with you, was ſhe at all fond of Men?

J. Wint. No, ſhe was not.

Mr. *Willes*. How old was ſhe, when ſhe came firſt?

J. Wint. She might be about ſeventeen Years of Age.

Mr. *Willes*. What was the Reaſon ſhe left your Service?

J. Wint. Becauſe ſhe got a better Place; that was the only Reaſon.

Mr *Willes*. Was ſhe employed in your Houſe in ſerving Cuſtomers?

J. Wint. Sometimes; very ſeldom. She very ſeldom came into our outward Room amongſt the Cuſtomers.

Mr. *Willes*. How came you, on the Trial of *Mary Squires*, to ſay ſhe had a Bed-gown and a Cap on?

J. Wint. I ſay now, I did not know whether it was a Cap.

Mr. *Willes*. Did you call it a Cap or Handkerchief upon that Trial?

J. Wint. I don't know which I then ſaid.

Mr. *Willes*. Do you know *Robert Scarrat?*

J. Wint. I do.

Mr. *Willes*. How long have you known him?

J. Wint. May-be a Year and a Half, or two Years. He is a Hartſhorn-raſper.

Mr. *Willes*. Has he uſed to uſe your Houſe?

J. Wint. Yes, he has as a Cuſtomer.

Mr. *Willes*. Did he uſe to uſe your Houſe when *Canning* was your Servant?

J. Wint. No; he may once or ſo, but I don't believe he did.

Mr. *Willes*. Did you know him before this Accident happened?

J. Wint. I hardly did.

Mr. *Willes*. How came you, on *Squires*'s Trial, to give no Account of what paſſed at *Enfield?*

J. Wint. I believe I did not.

Mr. *Willes*. How came you to omit ſo many material Circumſtances?

J. Wint. I believe the Gentlemen did aſk me no more then.

Mr. *Willes*. Was *White* in, when you firſt came down?

J. Wint. No, he was not.

Mr. *Willes*. When ſhe was carried into the Kitchen, and ſet upon the Dreſſer, did ſhe ſay ſhe had been in that Room before?

J. Wint. No, I never heard her ſay ſo.

Mr. *Willes*. Did ſhe ſay there were Trees grew againſt that Window, hen Mr. *Adamſon* had his Back againſt it?

J. Wint. No, I don't remember it. I remember Mr. *Adamſon* turned about and opened the Window, and looked out: She ſaid then, that Caſement was nailed up when ſhe was there.

Mr. *Willes*. Did you make any Remarks, whether there had been Nails to faſten it?---*J. Wint*. No, I did not inſpect into it.

Mr. *Willes*. Can't you recollect what ſhe ſaid before Alderman *Chitty?*

J. Wint. I remember but little of what paſſed there.

Mr. *Willes* to *T. Gurney*. Turn to your Notes of what this Evidence ſaid on the Trial of *Squires*, concerning what paſſed before Mr. Alderman *Chitty*. Can you ſwear to them?

T. Gurney. To the Subſtance of the Evidence I can; though not always to the exact Words.

Mr. *Willes*. Do you ever put down any Thing you don't hear?

T. Gurney. No, never.

Mr. *Willes*. Give the Court an Account what you have there put down.

T. Gurney. On that Trial this Evidence was aſked, if he had heard the Evidence *Canning* had then given? To which he anſwered, He had; and that ſhe gave the ſame Account the Night ſhe came Home; but not quite ſo fully that Night, as ſhe did before the Sitting Alderman on the *Wedneſday* after.

Mr. *Willes*. What did he ſay paſſed the Night ſhe came Home?

T. Gurney. He ſaid, he ſaw her the Night ſhe came Home, at her Mother's Houſe; ſhe appeared in a very bad Condition, and had a dirty Bed-gown and Cap on. He aſked her how ſhe did? She anſwered, Very bad; and that ſhe had been ſomewhere on the *Hertfordſhire* Road, which ſhe knew by ſeeing the *Hertfordſhire* Coach go backwards and forwards. After which he was aſked, if he had heard *Canning*'s Evidence then given, as mentioned before?

Mr. *Willes* to *Wintlebury*. How long was ſhe before Alderman *Chitty?*

J. Wintlebury. I don't know.

Mr. *Willes.* How did ſhe get there?

J. Wint. I believe, ſhe went in a Coach.

Mr. *Willes.* What Day did ſhe go to *Enfield?*

J. Wint. On the *Thurſday* after ſhe came Home.

Mr. *Willes.* How did ſhe go down?

J. Wint. I believe, in a Chaiſe and Pair. The Chaiſe would hold four People, and four People were in it.

Mr. *Willes.* How far is it there?---*J. Wint.* It is about eleven Miles.

Mr. *Willes.* Did you ſee her ſet out?---*J. Wint.* No, I did not.

Mr. *Willes.* What Time did ſhe get down there?

J. Wint. At about Ten or Eleven o'Clock in the Morning.

Mr. *Willes.* Had ſhe any Refreſhment there?

J. Wint. There was a little Wine brought her there. I believe ſhe did not drink a Spoonful of it.

Mr. *Willes.* Did ſhe go over to *Cantril*'s?

J. Wint. I don't know whether ſhe did or not.

Mr. *Willes.* How far is Juſtice *Taſhmaker*'s from *Enfield-Waſh?*

J. Wint. It may be three Miles.

Mr. *Willes.* How far is it out of the Way to *London* from *Enfield-Waſh?*

J. Wint. It may be an hundred and fifty Yards.

Mr. *Willes.* When did ſhe return to Town?

J. Wint. She returned the ſame Night.

Mr. *Willes.* Was *Scarrat* your Cuſtomer when *Canning* lived with you?

J. Wint. He was not, as I know of. I did not know him then.

Mr. *Willes.* Was there any Intrigue betwixt *Scarrat* and her?

J. Wint. No; ſhe would hardly go to the Door to ſpeak to any body. I believe her quite different from an intriguing Perſon.

Mr. *Willes.* How long have you known *Scarrat?*

J. Wint. I have known him about a Year and a Half.

Mr. *Willes.* Did you hear any Part of what paſſed before Mr. Alderman *Chitty?*

J. Wint. I heard a little, but did not take much Obſervation of it; and ſhe talked ſo low. I heard her ſay two Men met her and robbed her in *Moorfields*.

Mr. *Willes.* Did what you heard vary from what you heard on *Squires*'s Trial?---*J. Wint.* No, it did not.

Recorder. You have heard the Note-taker ſay, you ſaid ſhe was more full before the Sitting Alderman than in the Account ſhe had given before; and here you ſay you took little Notice of it.

J. Wint. I may forget Things. If I ſaid ſo then, I might forget ſince.

Joſeph Adamſon ſworn.

J. Adamſon. I have known *E. Canning* eleven or twelve Years, ever ſince ſhe was big enough to play about her Mother's Door. I am one of the Perſons that went down to *Enfield-Waſh*. I had not ſeen her for three Months before that Day. Mr. *Wintlebury* and one *Scarrat* went down with me; the laſt was a Stranger to me: We were the only Men that had Horſes. We had been there an Hour and a Half. They told me, I muſt go back and prevent the Chaiſe from ſtopping. I ſaid, I took the Horſe without Leave, and I would not go back. I took the Horſe, and went back.

Mr. *Moreton.* Did you tell *Canning* there was Hay in the Room?

J. Adam. I did not, either directly or indirectly, from firſt to laſt; nor have I aſked her a Queſtion ſince, only when we were in the Room. After I had ſpoke to the Coachman to make what Haſte he could, they aſked me, if we had taken any People up? I ſaid, We had; and ſome of the People were uneaſy to be gone. Then I aſked, what Sort of a Place ſhe was confined in? She ſaid, an odd, or a wild Sort of a Place; ſome Hay, and ſomething elſe which I can't remember: I think it was a Chimney in the Corner.

Mr. *Mor.* Did you mention Hay to her?

J. Adam. I never did, to my Knowledge. I then rode on; and as her Maſter Mr. *Lyon* and others were going from the Ale-houſe to Mother *Wells*'s, I hallooed to them, and told them what the Girl had told me, that is, that there was ſome Hay in the Room, and a Fire-place, or a Chimney, I can't tell which. When ſhe came down, I took her out of the Chaiſe, and ſet her on a Dreſſer; ſhe ſat there ſix, ſeven, or eight Minutes.

Mr. *Mor.* Did ſhe make any Obſervations there?

J. Adam. She did not. Then we took her into the Room where they all were (there was a Room full of People); ſhe turned herſelf round by the Door, till ſhe came to where *Mary Squires* ſat, and ſaid, That is the Woman that cut my Stays off.

Mr. *Mor.* Did any body give her any Intelligence which was Mrs. *Wells?*

J. Adam. I dare ſay Nobody did; becauſe her Maſter gave her a very ſtrict Charge to take Care who ſhe charged.

Mr. *Mor.* Do you remember Mrs. *Wells*'s ſaying any thing?

J. Adam. I do not. After this, ſhe was carried up the great Stairs, and at the Bottom, ſhe ſaid, I believe this is the Stair-caſe. (This was juſt as we came out of the Room.) We went up Stairs into every Room (I believe there are four of them). She ſaid, None of them is the Room. Then ſhe was brought down again, and we took her through the Kitchen and up the Stairs into the Hay-loft. She pauſed a little before ſhe ſpoke; and the firſt Word that I remember ſhe ſaid, was, There is more Hay than there was (as I remember) in the Room. Then I cautioned her to be careful, and let go her Arm, and went up towards the Hay, and felt it; and it was quite light, as though it had not lain there a long Time. Some People ſaid, they thought there had been ſome put lately in. I ſaid, I thought there was not; for I went round the Houſe to make Obſervation, and did not think there had been any brought in; becauſe, if there had, there muſt have been ſome ſcattered. Then they had got the Jug and Baſon, and ſome other Things that ſhe knew; but I can't ſay how ſhe came to pitch upon them, becauſe I was making Obſervations on the Hay. I walked then directly between her and the Caſement, and turned round, and ſet my Back againſt the Caſement, and ſaid, If you have been confined in this Room ſo long, you will be able to give a very good Account of it, and I expect you will. She ſaid, That was nailed up when I was here. What, boarded up? ſaid I. No, ſaid ſhe, but I tried to open it, and could not. She deſcribed Fields, and a Hill at a Diſtance, and ſome Trees; but the moſt remarkable Thing was, ſome Houſes to be ſeen on the Left-hand Side the Lane.

Mr. *Mor.* Are you ſure ſhe ſaid ſo?

J. Adam. I am.

Mr. *Mor.* Are you ſure ſhe could not ſee them when ſhe ſpoke?

J. Adam. I ſtood ſo, that I am ſure ſhe could not, I ſtood ſo betwixt them and her. After the Gentlemen had all looked out to ſee how the Deſcription anſwered, I aſked her, where ſhe had looked out to ſee the *Hertfordſhire* Coach? She pointed to the Window which was boarded up; and ſaid, That is the Window; and that alſo is the Window that I made my Eſcape out at.

Mr. *Mor.* Did you look to ſee whether there was any Reaſon to think any body had got out?

J. Adam. I helped *Colley*, her Uncle, to pull the Boards down. I called all the Gentlemen to ſee that it was not in the ſame Condition with the reſt of the Things in the Room, with Cobwebs, as other Places had. The Wood was freſh ſplit with driving a great Nail through it, and appeared as freſh as it could be; that is, the Crack ſeemed quite freſh.

Mr. *Mor.* Was the Crack before you pulled them down, or done by pulling them down?

J. Adam. That was before we attempted to pull them down.

Q. from a Juryman. Was it boarded all over the Window?

J. Adam. It was boarded like a little Shutter. It was one Piece of Wainſcot that went clear acroſs, and covered it all pretty near to the Top. There was a Caſement on the right-hand Side, and the other Side had nothing in it.

Mr. *Mor.* Did you make any Obſervations on the Outſide of this Window, whether there was the leaſt Appearance of any Thing, as though any body had got out there?

J. Adam. *Colley* and I went out; there we ſaw the Surface of the Plaiſter was ſcratched off, and we ſhewed it to ſeveral People.

Mr. *Mor.* What were their Names?

J. Adam. I don't know them; but there were a great many People looked at it, and the freſh Pieces of the Mortar on the Ground, then below the Window. Juſt on the Edge, between the Plaiſtering and Brick-work, it was broke.

Mr. *Mor.* Do you remember ſeeing Mr. *Hague* and Mr. *Aldridge* there?

J. Adam. I do. Mr. *Aldridge* and I both made Obſervations on the Girl's pauſing a little.

Mr. *Mor.* Did Mr. *Aldridge* ſeem to ſhew any Diſſatisfaction upon that then?

J. Adam. No. I obſerved a large Pitcher in the Parlour, when we firſt went in. There were ſix or eight of us went in, two-and-two; and when there was no Reſiſtance, I and Mr. *Colley* went behind the Houſe.

Mr. *Mor.* Did you ſee a Pitcher in the Hay-loft or Workſhop?

J. Adam. I did.

Mr. *Mor.* Look at this Pitcher; do you know it?

J. Adam. I ſuppoſe that is it, it is like it; I ſaw it ſince at the Manſion-Houſe before my Lord-Mayor; it was broken as this is.

Mr. *Mor.* Did you carry the Pitcher there?---*J. Adam.* No, Sir.

Mr. *Mor.* Do you know any body that did?

J. Adam. No, I do not.

Mr. *Mor.* Did *Canning* make any Obſervation on the Pitcher, whether it was, or was not the Pitcher, that was in the Room when ſhe was there?

J. Adam. I did not hear that; I was making Obſervations on the Hay then.

Croſs-Examined.

Mr. *Davy.* Was the Door that leads up into the Workſhop open or ſhut, when ſhe went into the Kitchen the firſt Time?

J. Adam. I really cannot tell.

Mr. *Davy.* When ſhe was gone from the Kitchen to the Stair-caſe of the Houſe, what did ſhe ſay there?

J. Adam. She ſaid at the Bottom of it, ſhe believed that was it.

Mr. *Davy.* How many Stairs were there?

J. Adam. I cannot tell; there is a Hatch or Door on the Top-Stair.

Mr. *Davy.* Upon your Oath, could ſhe not ſee the whole Flight of Stairs up from the Bottom, where ſhe then ſtood?

J. Adam. Upon my Oath, I cannot tell whether ſhe could or not.

Mr. *Davy.* Was that Stair-caſe any thing like the few little Steps that lead up into the Hay-loft?

J. Adam. There is a very great deal of Difference.

Mr. *Davy.* Did you aſk her, how ſhe could make that Miſtake?

J. Adam. I did; and ſaid, You ſee you was once miſtaken in the Stair-caſe.

Mr. *Davy.* What was this in Anſwer to?

J. Adam. She had ſaid, That was the Corner where the Girl ſtood and laughed at me, when my Stays were cut off; which ſhe ſaid afterwards was *Virtue Hall.*

Mr. *Davy.* When you ſtand at the Bottom of the Stairs leading up into the Workſhop, don't you ſee there are but few Steps?

J. Adam. I cannot tell whether the Steps are without the Door, or after the Door is open?

Mr. *Davy.* How long was ſhe in the Kitchen the ſecond Time, before ſhe fixed upon the Room ſhe was confined in?

J. Adam. I believe ſhe was led up into the Room directly.

Mr. *Davy.* Was the Door open then, when ſhe came from the other Stairs?

J. Adam. I believe it was, and ſome People going up.

Mr. *Davy.* Did ſhe ſay, when ſhe was in the Kitchen, (pointing to the Door) That is the Door that leads to the Room I was confined in?

J. Adam. I do not remember that.

Mr. *Davy.* Who ſhook up the Hay?

J. Adam. I do not know.

Mr. *Davy.* Upon your Oath, did not you, when you was up there, put your Hand into the Hay?

J. Adam. Yes; I did, to ſhew it was light; I ſet my Foot upon it firſt.

Mr. *Davy.* Were Mr. *Naſh*, Mr. *Aldridge*, and Mr. *Hague*, in the Room then?

J. Adamſon.

J. Adamſon. I cannot tell whether they were or not; I believe they were not. They might be all there, or none of them, for aught I know.

Mr. *Davy.* How much Hay was there in the Room?

J. Adam. I think there might be about half a Load, or more; I cannot tell Hay by the Bulk of it.

Mr. *Davy.* How came *Scarrat* and you to toſs up, which ſhould go back to *Canning?*

J. Adam. It was an indifferent Perſon ſaid, To end Diſpute, you had better toſs up. We had ſome Words after that; and I went at laſt, but againſt my Will.

Mr. *Davy.* How came you to have Words, after it was decided by Lot?

J. Adam. After *Scarrat* had won, I ſaid, he was to go.

Mr. *Davy.* Had any body obſerved at that Time, that ſhe had not mentioned any Hay being in the Room?

J. Adam. I had not heard any body mention any thing about it; but when I went, ſhe told me there was ſome.

Mr. *Davy.* What did you mean, when you came back, in ſaying, We are all right, ſhaking your Hat?

J. Adam. Going through the *Waſh*, my Horſe got away from me. (I believe I had my Hat in my Hand.)

Mr. *Davy.* Was you rejoiced, when ſhe ſaid there was Hay?

J. Adam. No, Sir.

Mr. *Davy.* Was you ſurpriſed?——*J. Adam.* No, Sir.

Mr. *Davy.* Why did you tell them there was Hay in it?

J. Adam. Becauſe ſhe ſaid ſo.

Mr. *Davy.* Why ſhould you come back to tell them ſhe ſaid there was Hay in it, if ſhe had never obſerved there was Hay?——*J. Adam.* I don't remember any body obſerved ſhe had not mentioned Hay.

Mr. *Davy.* Had you heard ſhe had deſcribed the Particulars of the Room?

J. Adam. I had never heard ſhe had given a Deſcription of the Room.

Mr. *Davy.* Then why did you go to *Enfield-Waſh?*

J. Adam. I went with Mr. *Wintlebury* for Company; he deſired I would go with him. The Warrant was gone down before, and we went with an Intent to meet them.

Mr. *Davy.* Had you been before the Sitting Alderman?

J. Adam. No, I had not.

Mr. *Davy.* Did you go down to aſſiſt in taking the People up?

J. Adam. I did not know any body would be taken up.

Mr. *Davy.* Did you go down to ſee whether the Room anſwered the Deſcription?——*J. Adam.* I had not heard her deſcribe any.

Mr. *Davy.* Do you remember your ſaying theſe Words, *What, Hay,* Bet?

J. Adam. I don't remember that I ever mentioned the Word *Hay.* I remember ſhe ſaid *Hay,* and ſomething elſe; and I ſaid, *And what?* then ſhe told me, a Fire-place.

Mr. *Davy.* Whether, before you put your Back to the Window, had you not heard ſhe had given an Account of ſome Particulars in the Room?

J. Adam. No, I had not. I did it to ſee whether ſhe could give an Account of the Proſpect or no.

Mr. *Davy.* Should not you think it more adviſable for the People to be ſatisfied with the Account ſhe could give of the Things in the Room firſt?

J. Adam. She was in the Room.

Mr. *Davy.* Upon your Oath, did ſhe tell you there were Trees to be ſeen out of the Window?——*J. Adam.* Yes, ſhe did, upon my Oath.

Mr. *Davy.* Where did ſhe ſtand then?

J. Adam. She was juſt by the Caſement.

Mr. *Davy.* Did you fill the Window ſo that ſhe could not poſſibly ſee Trees?——*J. Adam.* I ſtood ſo near her, that I believe ſhe could not ſee out at the Window.

Mr. *Davy.* Are you ſure ſhe could not ſee Trees?

J. Adam. I believe ſhe could not.

Mr. *Davy.* Was you cloſe to the Window?

J. Adam. No, not cloſe to that, but cloſe before her; which I think would anſwer the End, to prevent her looking out better.

Mr. *Davy.* How far was ſhe from the Window?

J. Adam. She might be two Yards from it, and I a Yard and a Half.

Mr. *Davy.* Was the Window boarded?

J. Adam. It was not. I aſked her the Queſtion; ſhe ſaid, it had not been boarded up.

Mr. *Davy.* Did you ever ſee a Window in the Country, where there have been no Hills to be ſeen out of it?

J. Adam. Yes, I have, upon the Sea-coaſts.

Mr. *Davy.* How long had ſhe been in the Room before you tried this Experiment?——*J. Adam.* About five or ſix Minutes.

Mr. *Davy.* Had ſhe not Time enough to look out there?

J. Adam. I don't think ſhe had.

Mr. *Moreton.* When did you hear ſhe was come Home?

J. Adamſon. I never heard ſhe was, till the Night before we went down.

Mr. *Moreton.* Did you go down voluntarily, as a Friend of the Girl, or upon Requeſt?

J. Adam. No; it was upon the Requeſt of Mr. *Wintlebury,* and others. I was juſt come off a Journey, and took a Friend's Horſe without Leave.

Mr. *Moreton.* Did you tell Mr. *Lyon* there was a Fire-place or Chimney, as well as Hay?

J. Adam. Yes, I mentioned both to him.

Mr. *Moreton.* Did Mr *Lyon* hear your Obſervations on the Hay?

J. Adam. No; he then was engaged in the Right-hand Corner of the Room; there they had got the Jug, a Baſon, and Tobacco-mould.

Mr. *Moreton.* Suppoſing ſhe could ſee the Trees, could ſhe ſee the Houſes on the Left-hand Side the Way?

J. Adam. No; them ſhe could not ſee, till we looked.

Mr. *Moreton.* What is the Character of *Elizabeth Canning?*

J. Adam. I never heard a bad Character of her before this in my Life. I always looked upon her to be a Girl of a good Character.

Baron *Legge.* At the Time you ſtood there, and aſked what could be ſeen out at the Window, and ſhe ſaid Trees, and Hills at a Diſtance, did ſhe tell you what was betwixt the Trees and the Window?

J. Adam. I don't remember any thing ſhe ſaid beſides.

Baron *Legge.* Did ſhe mention any Foot-way near there?

J. Adam. No, not as I remember.

Baron *Legge.* Were the Boards pulled down from the Window before the Girl came there, or after?

J. Adamſon. They were not pulled down till after ſhe came. I aſked her, which was the Window from whence ſhe had ſeen the *Hertfordſhire* Coach? She ſaid, That; and pointed to it. Then I ſaid, Let's ſee whether we can ſee the Road out at it or not: Then I went to pull the Board down, and the Man who ſaid he was her Uncle helped; we wrenched it off.

Baron *Legge.* Could you have ſeen the *Hertfordſhire* Coach go by, as the Board was then up?

J. Adam. I might, as it was light over the Board, had I looked over it.

Baron *Legge.* Were there any Cracks big enough in the Board to look through?

J. Adam. I cannot ſay there were.

Sutherton Bakler ſworn.

I live at *Aldermanbury-Poſtern.* I was applied to on the 30th of *January,* the Day after *Elizabeth Canning*'s coming Home, to come to her. I attended her, and found her in a very low and weak Condition. She was ſo extremely low, that I could ſcarcely hear her ſpeak. She was in Bed, with cold clammy Sweats upon her. She complained of being very faint and ſick at Times, with a Pain in her Bowels; and complained of having been coſtive all the Time of her Confinement. I ordered her a purging Medicine; but her Stomach was too weak, and could not bear the Medicine ſhe took. Finding that, I ordered a Glyſter to be adminiſtered on the 30th in the Evening.

Mr. *Nares.* Did they give it her?

S. Bakler. They did, I think. I alſo ordered opening Medicines the ſame Day. She had no more Medicines till the 3d of *February:* Then I ordered another Glyſter, that had ſome little Effect, and brought away ſome ſmall Quantity, but did not anſwer the End. I ordered her another on the 5th, that had no Effect at all. She continued ſtill bad. Dr. *Eaton* was ſent for upon the 6th. He wrote proper Preſcriptions for her for fourteen Days.

Mr. *Nares.* How long was ſhe before ſhe had her Health tolerably?

S. Bakler. He preſcribed diuretic Medicines and gentle Cathartics; and after a Fortnight he did not come paſt three or four Days, and ſhe was tolerably well in about a Month. Her Face appeared very wan. Her Face uſed to be of a remarkable red Complexion; but her Colour was quite gone, and her Arms of a livid Colour, ſpotted. I had known her ſome Years.

Mr. *Nares.* Had you ever attended her with Medicines before this?

S. Bakler. No, never.

Mr. *Nares.* How came ſhe to go to *Enfield,* when the Glyſters had not had the Effect?

S. Bakler. I thought ſhe was very unable to bear it, and wondered that ſhe did: I thought it extremely improper. I thought ſhe could not bear the Fatigue.

Mr. *Nares.* What may you imagine thoſe Symptoms you ſaw upon her to be owing to?

S. Bakler. I don't know that: She was very much emaciated and waſted, from what ſhe was when I ſaw her before.

Mr. *Nares.* Do you think the Confinement you have heard of would not occaſion it?

S. Bakler. To be ſure, by living upon what ſhe ſays, ſhe muſt be very much waſted. Dr. *Eaton* was called in, becauſe they thought her in a very dangerous Way.

Mr. *Nares.* From the Appearance of her at the Time that you ſaw her, was there any Appearance of her having been in a Salivation?

S. Bakler. She was very much emaciated and waſted, to be ſure; but I never did ſee a Perſon as ſoon as they came out of a Salivation in my Life, or attended one in it.

Mr. *Nares.* Had ſhe any Appearance of a Woman that had been brought to-bed?

S. Bakler. She looked like a Perſon half-ſtarved, in a weak, waſting, decaying Way: But what was the Cauſe of it, I do not know.

Croſs-Examined.

Mr. *Willes.* When ſhe complained ſhe had no Stool, what did ſhe ſay about making Water?

S. Bakler. I believe ſhe did not make Water till the Doctor had attended her, which was not till the ſixth Day, by giving her Diuretics.

Mr. *Willes.* How long did ſhe ſay ſhe had been without a Stool?

S. Bakler. She ſaid, ſhe had not had any during the Time of her Confinement; but did not ſay ſhe had not made Water.

Mr. *Willes.* Did ſhe ſay ſhe had made Water?

S. Bakler. I do not remember ſhe ſaid ſhe had made Water.

Mr. *Moreton.* Do you believe, that a Perſon that is half-ſtarved is not ſo fat as a Perſon that is full-fed?

S. Bakler. No, to be ſure, Sir, he cannot.

Mr. *Willes.* What Colour were her Nails?

S. Bakler. Her Arms were black and livid, and her Nails looked of a Sort of a blueiſh Caſt.

Dr. *Eaton* ſworn.

Dr. *Eaton.* I am a Phyſician. The firſt of my attending *Elizabeth Canning* was at her Mother's Requeſt, on the 6th of *February:* Hearing it was a compaſſionate Caſe, I attended her. I found her in a very weak Condition, and was very apprehenſive ſhe would die: She appeared to me to be in very great Danger for a few Days. She complained of Colics and Pains in her Bowels, and could ſcarce keep any thing upon her Stomach. I cannot ſay ſhe entirely kept her Bed. She took a little Chicken Broth.

Mr. *Williams.* Did you ſee any Signs of an Impoſture?

Dr. *Eaton.* No, I ſaw none at all.

Mr. *Williams.* Had you heard ſhe had been away from her Friends?

Dr. *Eaton.* I had. I was very full of Buſineſs: I only attended to her: I did not aſk Queſtions about her Confinement. I found ſhe was coſtive to a very great Degree. She had had one Stool before I came. I happened to ſee the Apothecary, and he was relating this Caſe to me: He was ſaying what he intended to give her. I ſaid, mild Things, after ſo long Faſting, would be better; and he gave it her, and it had had ſome Effect. It was ſeven or eight Days before the Danger began to be over.

Mr.

Mr. *Williams*. How long did you attend her?

Dr. *Eaton*. I attended her from the 6th to the 20th of *February*, the 20th included, every Day; and after that every other Day, for a few Days; the laſt Time was on the 4th of *March*: Then ſhe was well enough to go abroad in the Neighbourhood; and I believe ſhe had been abroad a Day or two before that.

Mr. *Wil*. Have you not had Objects under your Care in Salivations?

Dr. *Eaton*. I have.

Mr. *Wil*. Whether that does not leave very remarkable Symptoms in the Mouth, Throat, and Breath?

Dr. *Eaton*. Yes; it does for ſome Time after.

Mr. *Wil*. Was there the leaſt Symptom of this?

Dr. *Eaton* Oh! nothing like it, nothing like it, I'll aſſure you, nothing like it in the World: It was nothing like coming out of a Salivation.

Mr. *Wil*. Did you obſerve her Arms or Legs?

Dr. *Eaton*. I did not take ſo much Notice of them.

Mr. *Wil*. If you had not been told the real Caſe, what ſhould you have imagined it to have been?

Dr. *Eaton*. I can't but ſay, the Caſe correſponded with a Perſon that had ſuffered Hunger, Thirſt, and Cold, and great Hardſhip.

Croſs-Examined.

Mr. *Davy*. Did you obſerve her Hands and Legs?

Dr. *Eaton*. Nobody deſired me to take Notice of her Hands and Legs.

Mr. *Davy* When had ſhe her firſt Evacuation?

Dr. *Eaton*. She had the firſt, the Day before I came, which was the 6th; then I heard that ſhe had had one the Day before; and I believe ſhe had the next Day after.

Mr. *Davy*. Was there any Difficulty after that?

Dr. *Eaton*. There was; and Medicines ordered pretty commonly, to the 20th. I gave her Diureticks a pretty deal.

Mr. *Davy*. Had you any Converſation with her?

Dr. *Eaton*. I had none at all. I was very full of Buſineſs at that Time, and I did my Buſineſs as well as I could.

Mr. *Davy*. Did you examine any outward Appearance?

Dr. *Eaton*. No, I did not. They complained ſhe had too little Evacuation by Urine.

Mr. *Davy*. How was her Pulſe?

Dr. *Eaton*. She had a ſingular Pulſe: I was afraid of her falling into a Fever, and I ordered that which was material for a Fever.

Mr. *Davy*. Had you never a Patient in this Condition before?

Dr. *Eaton*. Many.

Mr. *Davy*. Did all their Diſorders proceed from Hunger, Thirſt, and Cold?

Dr. *Eaton*. No. She was weak and emaciated, and her Stomach weak. When we preſcribe for a Perſon, we attend to all the Circumſtances, and aſk all the Queſtions neceſſary to let us into the concomitant Symptoms. I formed my Opinion from what I found, a low, flaſhing Pulſe, and fluttering. Every Thing correſponded to what they ſaid; and therefore I had no Reaſon to diſbelieve the Story.

Mr. *Davy*. Whether all the Symptoms you obſerved in the Defendant, might not ariſe from another Cauſe than that which is now aſſigned?

Dr. *Eaton*. I'll give you the beſt Account of that I can. It might poſſibly in part ariſe from other Cauſes, and it might not.

Mr. *Davy*. May not a Perſon be reduced to a low State by a Fever?

Dr. *Eaton*. To be ſure, they may: If I am ſent for to a Patient, and they tell me they have ſuffered with Hunger or Thirſt, I never doubt it.

Mr. *Davy*. That is not the Queſtion: Is it not poſſible a Perſon may be reduced to the Condition ſhe was, by ſome other Ailment?

Dr. *Eaton*. I think it is poſſible.

Mr. *Davy*. Might not ſhe be in the Condition you ſaw her, and yet her whole Story a great Lye?

Dr. *Eaton*. All I can ſay, it might proceed from another Cauſe: but I muſt beg leave to mention one Thing, and that is, it may proceed from another Cauſe, as when in a Fever a Perſon's Stomach is taken away, then that Cauſe of Hunger comes not by Force, but becauſe they can't eat; but the Conſequence was ſuch, it muſt proceed from her having loſt her Appetite ſome way or other. A Perſon may loſe their Appetite by a Fever, or by Force. It is plain ſhe had not eat for ſome Time.

Mr. *Davy*. If they had not told you that this Girl had been half-ſtarved, and kept from Meat, Drink, and expoſed to Cold, ſhould you have concluded, upon your own Obſervations, that ſhe had been ſo uſed?

Dr. *Eaton*. I ſhould have concluded ſhe had either by Diſtemper loſt her Appetite, or by ſome other Accident.

Mr. *Nares*. Is it poſſible for one to live twenty-eight Days without any more Subſiſtence than ſhe mentions?

Dr. *Eaton*. There is no Doubt of the Poſſibility of a Perſon's ſubſiſting twenty-eight Days, as in this Caſe.

Mr *Nares*. Did you obſerve the Defendant's Ear?

Dr. *Eaton*. There was a Diſorder behind her Ear. After I had attended her ſeven or eight Days, the Surgeon was taken ill, and they had not mentioned that to me till then; upon which I looked upon it: It had inflamed her Face, and threatened it ſomething like a St. *Anthony's Fire*, and I ordered a Fomentation for it.

Mr. *Nares*. What might cauſe it to be ſo bad?

Dr. *Eaton*. I take it, her bad Habit of Body, concurring with this Sore upon her Ear, occaſioned that like a St. *Anthony's* Fire upon her Face.

Mr. *Moreton*. We are now coming to *Enfield-Waſh*.

Robert Beals ſworn.

R. Beals. I was ill laſt *Chriſtmas* was Twelvemonth. I attend *Stamford-Hill* Turnpike in *Tottenham* Road, towards *Enfield*, betwixt *Tottenham* and *London*: About the Middle of *February* I heard of this Story, about a Girl being forced away from her Friends near *Moorfields*, to a bad Houſe at *Enfield-Waſh*, and had been kept there a Month on a Pitcher of Water and ſome mouldy Cruſts.

Mr. *Moreton*. How did you hear of it?

R. Beals. My little Children, about eight or nine Years old, brought the Account from School. I ſaid, upon hearing this, I believed I was at the Gate when the poor Girl came by.

Mr. *Moreton*. Give an Account of what you ſaw.

R. Beals. About the Fore-end of *January*, I was ſtanding at the Gate between Ten and Eleven, or near Eleven at Night; it was a very calm ſtill Night; I heard ſomething of a ſobbing, crying Voice; it came from towards *Newington*, going towards *Tottenham*; at firſt I ſaw Nobody; I ſtood ſtill; it came nearer me.

Mr. *Moreton*. How far off do you imagine it to be, when you heard the ſobbing at firſt?

R. Beals. It may be two or three hundred Yards. At laſt I perceived there were more than one. As they came near, I ſaw there were two Men, and a young Perſon, ſeemingly by her Voice. I had a large Candle burning (the Stile is at the End of the Turnpike over the Way). As ſoon as they got up to the Light, I ſaw them more plain. One Man was taller than the other. They went towards the Stile; one, the foremoſt, began to ſay, *Come along, you Bitch, you are drunk*; that was ſaid when the Candle began to ſhine upon them. I put myſelf a little farther out without-ſide the Poſts, that they might ſee me. The Woman ſeemed not willing to go along with them, by her crying and ſobbing, but never ſpoke a Word. The Man behind made a Sort of a Laugh, and ſaid, *D---n the Bitch, how drunk ſhe is!* When they came up to the Stile, the tall one got over firſt, and the hindmoſt lifted her over by either one Leg or both Legs; ſhe came down upright on the other Side; then ſhe hung back, and fell on her Breech upon the Step, and cried bitterly. I thought ſhe would go no farther. As I thought they could ſee me, I expected ſhe would have ſaid ſomething to me; but ſhe did not ſpeak a Word. He before, plucked her up by the Hands at full Length, and ſaid, *D---n you, you Bitch, come along, you are drunk*; the other came on the other Side of her, and they went away together; he laughed, and ſaid, *D---n the Bitch, how drunk ſhe is!* He that came over laſt joſtled her along. I could ſee them ſome Way after they got over the Stile. One of them never let go her Hand all the Time I ſaw them.

Mr. *Moreton*. From what you heard, did you think that ſhe was a Perſon in Diſtreſs?

R. Beals. I did; ſhe burſt out a-freſh with ſobbing, going off. They were out of my Sight preſently.

Mr. *Moreton*. Did you ſee her Face?

R. Beals. I can't ſay I did: I might ſee one Side of her Face.

Mr. *Moreton*. How was ſhe dreſſed?

R. Beals. She had ſomething of light-coloured Cloaths on.

Mr. *Moreton*. About what Size?

R. Beals. She did not ſeem to be tall; they both of them ſtood above her.

Mr. *Moreton*. Had the two Men Great-Coats on?

R. Beals. I can't tell whether they had or not.

Mr. *Moreton*. What Reaſon have you to believe this was the Beginning of *January*?

R. Beals. I think it was, to the beſt of my Knowledge. I was not well then: I attended ſome Nights for my Partner, and fell ill about three Weeks after; and from that, when I came to recollect it, I thought it was about the Beginning of *January*.

Mr. *Moreton*. Do you know *Moſes Holloway*?---*R. Beals*. I do.

Mr. *Moreton*. Was he well or ill then?

R. Beals. I don't know whether he was well or not. Sometimes I have done Duty for him, and he for me.

Recorder. Are you ſure it was the Beginning of *January*?

R. Beals. I really believe it was.

Mr. *Moreton*. Why did you not attempt to give her your Aſſiſtance?

R. Beals. There were two Men with her, and we are fearful in our Buſineſs; except they aſk us any Queſtions, we never meddle with ſuch; and I was then alone.

Mr. *Moreton*. When did you give Information of what you heard and ſaw?

R. Beals. I never did till about ſix Weeks after. At firſt, I thought it might have been one of the Men's Wives, or Siſter, or ſome drunken Girl.

Mr. *Moreton*. Is it a common Thing to ſee a drunken Woman along with two Men?

R. Beals. I never ſaw one ſo particular as this.

Croſs-Examined.

Mr. *Willes*. When was you firſt taken ill?

R. Beals. It was in the Beginning of *February*. I was much troubled with the Rheumatiſm.

Mr. *Willes*. Do you always attend your Duty?

R. Beals. Sometimes I do, and ſometimes I do not.

Mr. *Willes*. How far is your Turnpike from *Moorfields*?

R. Beals. It is about three Miles.

Mr. *Willes*. How far is it from *Stamford-Hill* Turnpike to *Enfield-Waſh*?

R. Beals. It is ſeven Miles.

Mr. *Willes*. Is it poſſible for a Woman to walk to, or be carried by two Men from your Turnpike to *Enfield-Waſh* in a Quarter of an Hour?

R. Beals. No, Sir, it is not poſſible.

Mr. *Willes*. Was ſhe walking on her Feet?

R. Beals. She was, and went pretty faſt.

Mr. *Willes*. Did you imagine ſhe was in a Fit of Convulſions?

R. Beals. No, Sir, I took her to be in Liquor.

Mr. *Willes*. Was you near enough for her to have ſeen you?

R. Beals. I was.

Mr. *Willes*. What did the Men ſay?

R. Beals. One ſaid, *Come along, you Bitch, you are drunk*; and the other ſaid, *How drunk the Bitch is!*

Mr. *Willes*. What was the Colour of her Gown?

R. Beals. It was a lightiſh one, it looked ſo.

Mr. *Willes*. Had ſhe a Gown on?---*R. Beals*. I think ſhe had, I durſt to ſay ſhe had, or elſe I ſhould have taken more Notice of it.

Mr. *Dilles*. Did ſhe keep crying all the Time?---*R. Beals*. She did.

Mr. *Will*. Was it Crying or Screaming?

R. Beals. It was only Sobbing and Crying.

Mr. *Willes*. Was ſhe near enough that ſhe might have cried out to you for Help?----*R. Beals*. Yes, that ſhe was.

Mr. *Willes*. How came you not to tell this to any of your Neighbours before?---*R. Beals*. I did not, till I mentioned it to my Children innocently, not thinking to hear any thing more of it.

Mr.

Mr. *Willes.* Was it a dark or light Night?

R. Beals. It was a dark Night.

Mr. *Willes.* Could you diſtinguiſh whether ſhe had a Hat or Bonnet on?

R. Beals. I can't ſay what, ſhe had ſomething on her Head.

Mr. *Willes.* Had ſhe a Cap on her Head?

R. Beals. I can't ſay whether ſhe had or not; I believe ſhe had; ſhe appeared to be a young Perſon with light-coloured Cloaths on.

Mr. *Willes.* Had ſhe an Apron on?

R. Beals. I don't remember whether ſhe had or not; I rather believe ſhe had.

Mr. *Willes.* Don't you keep *Chriſtmas?*—*R. Beals.* Yes, Sir.

Mr. *Willes.* Don't you know New-year's Day?

R. Beals. We don't keep that.

Mr. *Willes.* Was you garniſhed out on this Day with Roſemary, or an Orange on a Skewer?—*R. Beals.* We don't do no ſuch thing.

Mr. *Willes.* Is it not a Cuſtom in your Pariſh, on New-year's Day, to wiſh one another a happy New-year?

R. Beals. Yes, Sir, it is.

Mr. *Willes.* Do you remember this Morning you had wiſhed any of your Neighbours ſuch?

R. Beals. No, I do not: Indeed I don't remember what Day it was.

Mr. *Willes.* Don't you remember any thing to diſtinguiſh this to be New-year's Day?

R. Beals. No, I do not; I made no Remark at all, being very ill at the Time.

Mr. *Moreton.* Do you remember at what Time you begun to attend the Turnpike?

R. Beals. Mine began on the *Sunday* in the Evening, when we come in our Turns; but we often come out of Turn.

Mr. *Moreton.* Was there any Moon?

R. Beals. I am ſure there was no Moon, and a very ſtill Night, and it rained a little.

Mr. *Willes.* How far may your Road be over?

R. Beals. It is about eight or ten Yards over.

Mr. *Moreton.* Did you ſee her go any Part of the Way without a Man holding her by the Hand?—*R. Beals.* No, I did not.

Mr. *Moreton.* My Lord, I only mention this as circumſtantial: Grant me the Woman was at this Turnpike, I'll not call another Witneſs. We are now going to call a Perſon that ſaw a Perſon in the Situation that *Canning* returned in on the 29th.

Thomas Bennet ſworn.

T. Bennet. I live at *Enfield*, at the Ten-mile Stone: I was coming Home from my Shop near Mrs. *Wells*'s Houſe, on the 29th of *January* 53; between her Houſe and the Ten-mile Stone, between Four and Five in the Afternoon, there was a miſerable poor Wretch to look to, in the Gravel-pit Gate-way, a five-acre Field near the Ten-mile Stone, betwixt two little Houſes, *Richard Wright*'s and Widow *Jenge*'s.

Mr. *Nares.* Deſcribe her Dreſs.

T. Bennet. She had neither Gown, nor Stays, nor Cap nor Hat on, only a ragged dirty Thing, a Half-Handkerchief like, and a Bit of ſomething that reached down below her Waiſt, and no Apron on, and her Hands lay before her: She was coming in at that five-acre Field Gate-way.

Mr. *Nares.* How far is this beyond the Ten-mile Stone?

T. Bennet. It is but the Breadth of the five-acre Field, and twenty or thirty Pole on the other Side, and about a Quarter of a Mile on this Side Mrs. *Wells*'s: She aſked me the Way to *London*; I told her; ſhe ſaid ſhe was affrighted by the Tanner's Dog. I bid her turn on the right Hand, and then on the left, and that would bring her to *London*. She was going to turn out of the great Road into the Foot-way.

Mr. *Nares.* Whereabouts is the Tanner's Houſe?

T. Bennet. That is a little farther nearer *London*.

Mr. *Nares.* Which Way did ſhe come?

T. Bennet. I can't tell which Way ſhe came; I ſaw her firſt coming in there; but ſhe went for *London*: If ſhe had not ſpoke to me, ſhe would have gone the wrong Way for *London*.

Mr. *Nares.* How far was ſhe from the Tanner's Houſe?

T. Bennet. She was about half a Quarter of a Mile from it.

Mr. *Nares.* How came you to know this was the 29th of *January?*

T. Bennet. On the 30th of *January*, (which was the Day after I met her) a Man came to me about taking my Son Apprentice: I met him according to Appointment on the next Day, which was on a *Wedneſday*, at *Waltham-Croſs*, in order to put my Son out Apprentice, but we did not agree; and the Day after, which was on a *Thurſday*, I came to *London*; and on the *Friday*, which was next Day, I met Mrs. *Kimpſton* near the Ten-mile Stone, coming by this very Gate-way; ſhe told me what had happened at Mrs. *Wells*'s; then I ſaid, I will be hanged if I did not meet the young Woman near this Place, and told her the Way to *London*.

Croſs-Examined.

Mr. *Gaſcoyne.* Which Way was ſhe going?

T. Bennet. Out of the high Road into the Fields.

Mr. *Gaſ.* Where did you gather up the Word *Half-Handkerchief*, upon your Oath?

T. Bennet. I never gathered it up at all; it is what I ſaid at firſt, and always took it ſo.

Mr. *Gaſ.* How do you know ſhe had no Stays on?

T. Bennet. I ſaw her Shift-Sleeves, and ſhe had no Gown on.

Mr. *Gaſ.* Which Way was ſhe coming from?

T. Bennet. I can't tell that; ſhe met me juſt coming in at the Gate-way.

Mr. *Gaſ.* Which is neareſt *London*, that Gate-way or the Tanner's Houſe?——*T. Bennet.* The Tanner's Houſe is.

Mr. *Gaſ.* Which Way did you direct her?

T. Bennet. I directed her in the Foot-way by the Road-ſide.

Mr. *Gaſ.* Where was you the Day the People were taken up?

T. Bennet. That very Day I was at *Hodſdon*, at Mr. *Pierce*'s, to put my Son Apprentice to a Butcher.

David Dyer ſworn.

D. Dyer. I live at *Enfield-Waſh*, about a Quarter of a Mile on this Side Mother *Wells*'s, right againſt the Ten-mile Stone. I was at my Door three Evenings before Mrs. *Wells* and her Family were taken up; I was chopping ſome rotten Buſhes; about Four in the Evening I ſaw a poor diſtreſſed Creature come by me out of the Common Field, from Mrs. *Wells*'s-ward, for *London*.

Mr. *Nares.* Deſcribe how ſhe was dreſſed.

D. Dyer. Upon my Word, I can't give any Account of her Cloathing; ſhe had a Thing tied over her Head like a white Handkerchief, with her Hands before her; ſhe walked very weakly. She was a ſhortiſh Sort of a Woman, and had a ſhortiſh Sort of a Thing about her, it did not come very low about her. I looked at her Face as ſhe came by me: I ſaid, Sweetheart, do you want a Huſband? She did not ſpeak to me.

Mr. *Nares.* How ſoon after this did you ſee her again?

D. Dyer. It was a conſiderable Time after that; when I ſaw her, I took her to be the ſame; when I ſaw her, I believed her to be the ſame.

Mr. *Nares.* Stand up, *Elizabeth Canning*. Look upon her, is that the ſame Perſon?

D. Dyer. I have ſeen her betwixt that Time and this; this is the young Woman, I think, that paſſed by me at the Gate-way; I do believe this is ſhe.

Mr. *Nares.* Have you ſeen the Place ſhe got out at, at Mrs. *Wells*'s?

D. Dyer. I have many a Time.

Mr. *Nares.* Might ſhe come that Way from her Houſe, where you met with her?

D. Dyer. Yes, ſhe might, from either the back or fore Part of her Houſe, that Way.

Croſs-Examination.

Mr. *Davy.* Was ſhe a likely Girl in the Face?

D. Dyer. The Girl was a likely Girl enough to look at, but her Cloaths were not; ſhe looked as if ſhe wanted ſome Victuals.

Mr. *Davy.* You did not miſtake her for a Blackmoor?

D. Dyer. No, I did not.

Mr. *Davy.* Was ſhe not black in the Face?

D. Dyer. No, ſhe was not.

Mr. *Davy.* Was ſhe freſh-coloured.

D. Dyer. No, I did not ſee any red in her Face; ſhe looked thin and weakly; ſhe had not much Colour.

Mr. *Davy.* Did ſhe look pale in the Face?

D. Dyer. She looked whitely.

Mr. *Davy.* Then ſhe was not red?---*D. Dyer.* No.

Mr. *Davy.* Nor yet black?---*D. Dyer.* No.

Mr. *Davy.* Then ſhe was white?---*D. Dyer.* Yes.

Mr. *Davy.* Was it pretty late at this Time?

D. Dyer. It was not dark; I ſaw her Face very plain.

Mr. *Davy.* Did you take particular Notice of her Face?

D. Dyer. I did; I took particular Notice of her, I looked at her very wiſhfully.

Mr. *Davy.* If ſhe had had black Eyes, ſhould you have ſeen them?

D. Dyer. Yes, I ſhould.

Mr. *Davy.* If ſhe had had a Bruiſed Face, ſhould you have ſeen it?

D. Dyer. I can't ſay whether ſhe was or was not bruiſed.

Mr. *Davy.* How long did that ſhortiſh Thing come down?

D. Dyer. I can't ſay.

Mr. *Davy.* Did ſhe walk faſt or ſlow?

D. Dyer. She walked very ſlowly.

Mr. *Davy.* Of what Colour were her Cloaths?

D. Dyer. I can't ſay as to that.

Mr. *Davy.* What was the Colour of that ſhort Thing you mention?

D. Dyer. I can't ſay.

Mr. *Davy.* What the Colour of her Petticoat?---*D. Dyer.* I can't ſay.

Mr. *Davy.* Was it a red one?---*D. Dyer.* Indeed, I can't tell.

Mr. *Davy.* Did you ſee a coloured Handkerchief, tied over the white Handkerchief on her Head?---*D. Dyer.* I did not.

Mr. *Davy.* Are you ſure the Priſoner is ſhe?

D. Dyer. I am pretty ſure; I am partly poſitive; I will not be punctual.

Mr. *Davy.* You ſay, ſhe had her Hands before her?---*D. Dyer.* She had.

Mr. *Davy.* Had ſhe a pretty Hand?

D. Dyer. I did not handle them; they were as other People's are.

Mr. *Davy.* A white Hand?---*D. Dyer.* Yes.

Mr. *Davy.* How ſoon after this did you ſee her again?

D. Dyer. I can't tell; it was after I heard there had been People taken up at Mother *Wells*'s, for confining ſuch a Girl; then I ſpoke of this.

Recorder. How do you live?

D. Dyer. I get my Living by my daily Labour.

Mary Cobb ſworn.

M. Cobb. I live in *Silver-Street*, at *Edmonton*; I was going Home from *Tanners-End*; I was in *Ducks-Fields*, juſt at the ſetting-in of Day-light (as much as I can remember) on the 29th of *January*. On a *Monday* Night, I met a Perſon; ſhe had a Handkerchief pinned over her Head, it almoſt hid her Face; ſhe had a black Petticoat, and an old Bed-gown on; it was either a quilted Thing, or it was a printed or flowered Thing; the Flowers ſeemed to be faded. She wrapped her Arms in it. The firſt Sight I had of her, ſhe was getting over a Stile, and looked at me, and made a Slip, but did not fall: She came up directly towards me, and looked at me, and I at her: I was afraid, and moved ſlowly. I turned about, as ſhe came up to me, and looked at her: I thought ſhe would have aſked me Charity; I put my Hand in my Pocket, and had no Half-pence. I had a Mind to have ſpoke to her; but having nothing to give her, I did not. I perceived her to have a young Face. She appeared to be in a very wretched, miſerable Condition, as ever I ſaw a Perſon in all my Life. She walked creeping along. I could not tell what to make of it, whether ſhe was afraid of me, or what.

Mr. *Williams.* You ſay, you had a Mind to have ſpoke to her; what would you have ſaid?

M. Cobb. I wanted to aſk her, why ſhe walked ſo?

Mr. *Williams.* How do you recollect it was the 29th of *January?*

M. Cobb. When I heard the Affair, it came into my Head, that this was the Perſon that came down to Juſtice *Taſhmaker*'s; then I heard it was on a *Thurſday* Night ſhe got away, and I thought from that it was impoſſible; but when it came to be publiſhed in the Papers, I found it to be on the ſame Day of the Month, by looking back.

Mr. *Williams.* What Size did she appear to be?

M. Cobb. Much about a Head shorter than myself.

Mr. *Wil.* Have you ever seen her since?—*M. Cobb.* No, I have not.

Mr. *Wil.* Look at *Elizabeth Canning* now, there she stands.

M. Cobb. The Size answers: I firmly believe this to be the same Person, by the Tip of her Nose; that bears some Resemblance to the Person I saw.

Mr. *Wil.* Have you any Reason to believe this is not she?

M. Cobb. No, I have not.

Cross-Examined.

Mr. *Willes.* How many Fields are there, called *Ducks-Fields?*

M. Cobb. There are three of them.

Mr. *Willes.* How far is that Part of the Foot-way, where you met this strange Creature, from the great Road?

M. Cobb. There is nothing but a Ditch parts it.

Mr. *Willes.* What Time does the Day shut in on the 29th of *January?*

M. Cobb. I can't say I have made Remarks on that.

Mr. *Willes.* Where was you going to?—*M. Cobb.* To my own House.

Mr. *Willes.* What Time was it when you came Home?

M. Cobb. Then the Children had lighted a Candle.

Mr. *Willes.* Where had you been?

M. Cobb. I had been at *Tanners-End* to Mrs. *Carter*'s House, to carry Home a Child's Vest that I had made.

Mr. *Willes.* What Time did you set out from Home?

M. Cobb. About Three in the Evening.

Mr. *Willes.* How far is your House from Mrs. *Carter*'s?

M. Cobb. About a Mile.

Mr. *Willes.* How long did you stay at Mrs. *Carter*'s?

M. Cobb. There was Nobody at Home there, and I left my Errand, and I never stopped or stayed, but came away.

Mr. *Willes.* Did you call any where coming back?

M. Cobb. No. I had another Place to go to, and I was afraid of being too late; so did not go, but returned Home. I met several People, and stopped a little on the Return.

Mr. *Willes.* How long in all might you be detained, after you went from Mrs. *Carter*'s?—*M. Cobb.* It might be a Quarter of an Hour.

Mr. *Willes.* How many Times might you stop?

M. Cobb. I am in a public Way of Business, and met several People; I think I stopped three or four Times.

Mr. *Willes.* From the Time you left Mrs. *Carter*'s House, to the Time you met this Girl, how long might that be?

M. Cobb. It might be about a Quarter of an Hour.

Mr. *Willes.* Then you met this Woman at three Quarters after Three o'Clock?—*M. Cobb.* It was later than that.

Mr. *Willes.* How long might you be in going from your own House to Mrs. *Carter*'s?

M. Cobb. I do think, by the Length of the Way, I might be about a Quarter of an Hour in going.

Mr. *Willes.* Was you stopped in going?

M. Cobb. I don't remember I was.

Mr. *Willes.* Was you above an Hour from your own House, before you met this Girl?

M. Cobb. Yes, Sir, to be sure, I was about two Hours.

Mr. *Willes.* How far from your own House did you meet her?

M. Cobb. It was about a Quarter of a Mile from it.

Mr. *Willes.* Tell me how you account for having spent two Hours in only going a Mile and three Quarters?

M. Cobb. I proposed to be at Home in two Hours, and I exceeded it about a Quarter of an Hour. I really think it was about Five o'Clock.

Mr. *Willes.* Where is your House?

M. Cobb. In *Church-Street, Edmonton*; but I met her between the five and six-mile Stones from *London.* The six-mile Stone stands near the *Nether Bell*; but the House I lived at then, was beyond the seven-mile Stone.

Mr. *Willes.* Was her Face brown or white?

M. Cobb. I observed the Tip of her Nose; it was a young Face; she looked very dismal and black, in a dirty Way.

Mr. *Willes.* Did you see her Hands?

M. Cobb. I did not; they were wrapped up.

Mr. *Willes.* Did no Words pass?

M. Cobb. I did not speak a Word to her, or she to me. I thought she wanted Charity by her deplorable Condition.

Mr. *Willes.* What are you?—*M. Cobb.* I am a Widow.

Mr. *Willes.* Any Family?

M. Cobb. The eldest of my Children is at Home with me; she is in the twelfth Year of her Age.

Mr. *Willes.* When did you first mention meeting such a Creature?

M. Cobb. That very Night I heard of the Affair of *Elizabeth Canning*'s Confinement; which was the *Friday* Night following.

Mr. *Willes.* Who told you of it?

M. Cobb. I can't tell who; but several of my Neighbours did.

Mr. *Willes.* Who first spoke to you to come here to be an Evidence?

M. Cobb. Justice *Tashmaker* did; that was after the Trial of *Squires.*

Mr. *Willes.* How long after that?

M. Cobb. I can't tell; it was the Week after; but what Day of the Week, I know not.

Mr. *Willes.* In what Manner did he apply to you?

M. Cobb. He came to my House, and asked me, if I met such a Person? I told him, as I have told you before.

Mr. *Willes.* Did he describe any Person to you?

M. Cobb. No, none at all, any more than it was talked on. I told him, I could not take an Oath to swear to her.

Mr. *Willes.* When was you subpœna'd?

M. Cobb. On *Monday* was a Fortnight.

Mr. *Willes.* Who served you with it?

M. Cobb. I don't know the Gentleman; he is pretty much pitted with the Small-pox.

Mr. *Willes.* Was you ever examined on your Oath before?

M. Cobb. No, I never was.

Mr. *Willes.* How long have you been in Town?

M. Cobb. Ever since *Monday* Morning.

Mr. *Nares.* Can you recollect what Time it was when you met this Girl?—*M. Cobb.* I know it was pretty near dusk.

Mr. *Nares.* What is your Business?---*M. Cobb.* I am a Mantua-maker.

Mr. *Nares.* How many Children have you?

M. Cobb. I have but two at Home with me; I maintain them with my own Labour.

Mr. *Nares.* My Lord, we have closed the Account of a Person's being seen going and coming. We shall next begin our Defence to the *alibi* of *Mary Squires.*

MONDAY the 6th of *May.*

(*Here* Mary Squires, George *her Son, and* Lucy *and* Mary *her two Daughters, were brought into Court, to be seen by the Witnesses as they were called.*)

William Howard sworn.

Mr. *Nares.* Do you know Mr. *Edward Aldridge?*---*W. Howard.* I do.

Mr. *Nares.* Do you remember any thing about his coming down to you about *Elizabeth Canning?*

W. Howard. The two *Edward Aldridges* came both together twice; the first Time of their coming, I can't say positively to the Day, it was about three or four Days after the People were taken up at Mrs. *Wells*'s, as near as I can remember.

Mr. *Nares.* What are these two *Edward Aldridges?*

W. Howard. One of them is a Silversmith in *Foster-Lane*; the other is my Neighbour.

Q. from a Juryman. What is your Employment?

W. Howard. I live upon a small Fortune, and a little Employment under the Government.

Mr. *Nares.* What Account did they come upon?

W. Howard. They brought me a printed Case of *Elizabeth Canning*, and recommended a Contribution on her Behalf.

Mr. *Nares.* Whether this was *Edward Aldridge* of *Foster-Lane?*

W. Howard. Yes, it was; and the other with him. The second Time of coming was about six or seven Days after the first.

Mr. *Nares.* Did he say, he was dissatisfied with the Story, or that he believed it?

W. Howard. There was not a Syllable of his Disbelief; but I understood him, as though it was a Thing he believed. The printed Case they brought each Time of coming; there were two initial Letters at the Bottom of it, and an Account that *Virtue Hall* had impeached. We were talking about the Girl's being confined: I said, What do you think of it? He said, There was one Thing, I think, the Girl is not clear in, and that is the Description of the Room.

Recorder. What did he say upon the whole?

W. Howard. He said, he thought the Girl had been used ill, and he did believe she was there; but he was not quite clear in her Description of the Room.

Mr. *Nares.* In both the Times, did he express any Dissatisfaction, or could you understand him, that he thought the Girl was an Impostor?

W. Howard. He said nothing at all in Contradiction to the Girl.

Cross-Examined.

Mr. *Willes.* Where do you live?

W. Howard. I live right against *Wells*'s House.

Mr. *Willes.* Tell us what particular Words the Silversmith made use of to recommend a Contribution to you.

W. Howard. I don't remember any more than what I said.

Mr. *Willes.* Then the only Means was, by bringing a printed Case?

W. Howard. And the little Conversation we had about it.

Mr. *Willes.* The first Time you saw him, did he mention any Disbelief of her Story?—*W. Howard.* No, Sir.

Mr. *Willes.* Could you collect, he either believed or disbelieved her Story?

W. Howard. Every thing that passed the first Time was in Favour of the Girl.

Mr. *Willes.* But it was not so the second?

W. Howard. There was that single Objection made.

Mr. *Willes.* How far is your House from Mother *Wells*'s?

W. Howard. About fifty or sixty Yards.

Mr. *Willes.* Did you live at *Enfield* during the Month of *January* that Year?---*W. Howard.* I did; and have seen all *Wells*'s Family pass and repass about their private Affairs.

Mr. *Willes.* What Time in the Month of *January* did you first see *Squires*'s Family about the House?

W. Howard. Really, I used to take but very little Regard of any thing in Mrs. *Wells*'s House. I can't recollect the Time positively; if I mention a Time, I must guess at it.

Mr. *Willes.* Look at this black Pitcher; do you know it?

W. Howard. I know nothing of it. I can't swear particularly to a broken Pitcher.

Mr. *Willes.* Have you seen them carry such a black Jug as that to your Pump?

W. Howard. I can't recollect any such Thing; I give all my Neighbours Privilege to come for Water.

Mr. *Nares.* What Character does Mrs. *Wells*'s House bear?

W. Howard. As bad as can be.

Recorder. Do you remember your first Time of seeing the Gypsey?

W. Howard. I never used to take Notice of them.

Mr. Just. *Clive.* Did you ever know there were Gypsies there, before the Time you saw them?

W. Howard. I never did. I know there used to be bad People.

Mrs. *Howard* sworn.

Mrs. *Howard.* The last Evidence is my Husband. I know the two *Aldridges*; one lives in *London*, the other by us.

Mr. *Nares.* When did you see them both at your House?

Mrs. *Howard.* The first Time that I call to Mind was, I believe, on the *Saturday* or *Monday* after *Wells* and the People were taken up. I remember, I came down Stairs, and they were both in the Parlour. The Country *Aldridge* said, they were come to us; the *London Aldridge* said, it was with a Desire that I and my Husband would contribute. I asked him, whether or no he was of Opinion, the Girl had been used as she had said?

He

He aſked the Country *Aldridge*, whether he had any of the Caſes? and ſaid, he would ſhew me one; then I might judge better: He took it out of his Pocket, and the Country *Aldridge* gave it to me.

Mr. *Nares.* Did he ſay any Thing to you, from which you could conclude, that he believed or diſbelieved her Story?

Mrs. *Howard.* When he gave it me in my Hand, I aſked Mr. *Aldridge*, what he thought of it? The Anſwer he made was, As ſure as he was alive, he was aſſured the Girl had been uſed as ſhe had ſaid in the Caſe; and that Mr. *Say* printed them *gratis* for the Uſe of the Girl, and he ſhould have more to give away.

Mr. *Nares.* Which *Aldridge* was this?

Mrs. *How.* This was the *London Aldridge.*

Mr. *Nares.* Was this all the Converſation?

Mrs. *How.* He was with me almoſt Half an Hour; and he recommended it to me and my Huſband to ſubſcribe, and deſired me to get my Friends to do the ſame: I ſaid, my Acquaintance were chiefly in *London.*

Mr. *Nares.* When did he come again?

Mrs. *How.* Within eight or ten Days after he came again, and brought me another printed Caſe; and there was wrote at Bottom, that *Virtue Hall* had made an Information. He ſaid, it was to raiſe Money for the Girl; and if we did not aſſiſt, the Gentlemen in *London* would not think we wanted to get rid of the bad Company we had about us.

Mr. *Nares.* What did he ſay about the Girl's being in the Room?

Mrs. *How.* Upon my Word, I don't remember he mentioned any thing to me about it then. I never ſent for him, or ſpoke to him, till he came to me in my own Parlour.

Mr. *Nares.* Look at the Woman there (*meaning* Mary Squires); do you know her?

Mrs. *How.* That is the Woman, I think, I have ſeen paſs and repaſs; but never was nigh her to ſpeak to her.

Mr. *Nares.* When was the firſt Time you ſaw her, can you recollect?

Mrs. *How.* The firſt time, to be poſitive, was the *Sunday* was Se'nnight before ſhe was taken up. I ſaw her, the Son, and two Daughters, at Mrs. *Wells*'s Door: I do think they are the ſame. It is a great while ſince; there may be an Alteration; her Daughter *Mary* uſed to come to our Pump for Water: The firſt Time I took Notice of them, my Servants told me they were Gypſies; then I bid them not to unbolt the Door.

Recorder. The *Sunday* was Se'nnight before they were taken up was the 21ſt of *January.*

Mr. Juſtice *Clive.* How do you know it was the *Sunday* was Se'nnight before?

Mrs. *How.* I'll tell your Lordſhip why I know it was that Day; becauſe on the *Friday* my Servant told me ſhe was there; and ſhe called me out, when the Girl was taking ſome Linen off the Hedges at *Wells*'s; ſhe was in a brown ſtuff Gown and a ſpeckled Hat; and when ſhe came up to the Frame of my Pump on the *Saturday*, ſhe turned about and made me a Curtſey, and I bowed to her as ſhe went out at the Gate: This was the *Saturday* before the *Sunday* of my firſt ſeeing the old Woman, and Son, and two Daughters.

Recorder. What Time of the *Sunday* was it you ſaw them?

Mrs. *How.* It was in the Afternoon: I was told they were her Son and two Daughters, and I looked wiſhfully at them.

Mr. *Nares.* Did you ſee the old Woman after this?

Mrs. *How.* I did; I ſaw her put into the Cart after ſhe was taken up.

Mr. *Nares.* When you ſaw her put into the Cart, ſo ſoon after you ſaw them at the Door, did you believe it to be the ſame Perſon you ſaw at the Door?---Mrs. *How.* Yes, I did believe it then.

Mr. *Nares.* You ſay, you was told there were Gypſies there before; did you ever ſee Gypſies there before that Time?

Mrs. *How.* No, not to my Knowledge. That was the Reaſon I cautioned my Servants to have nothing to ſay to them; but let them come as the reſt of the Neighbours for Water; for we refuſe none, unleſs they give Offence: But I cautioned my Servants not to let her into the Houſe.

Croſs-Examined.

Mr. *Willes.* How far might they be off at the Time you ſaw them firſt?

Mrs. *How.* As nigh as I can gueſs, not above fifty or ſixty Yards: I was within my own Gate, which faces it exactly.

Mr. *Willes.* Are you ſhort-ſighted?———Mrs. *How.* Yes, I am.

Mr. *Willes.* When did you firſt ſee one of the Gypſey's Girls come for Water to your Pump?

Mrs. *How.* It was that *Saturday* Morning.

Mr. *Willes.* Which Daughter was it?

Mrs. *How.* I do think it was *Mary.*

Mr. *Willes.* Which Pariſh-Church did you go to on the *Sunday* Morning?---Mrs. *How.* We go to *Enfield* Church.

Mr. *Willes.* Have you Service all Days of the Week?

Mrs. *How.* I believe we have; but I am not able to walk ſo far.

Mr. *Willes.* Do you keep King *Charles*'s Martyrdom?

Mrs. *How.* No; but I keep my Son's Birth-day; as the Stile is altered, that comes to be the 29th of *January.*

Mr. *Willes.* Was that the *Monday* immediately after the *Sunday* you ſaw her, or not?

Mrs. *How.* No, it was the *Monday* was Se'nnight.

Mr. *Willes.* What did the Daughter fetch the Water in?

Mrs. *How.* I have ſeen her ſeveral Times at the Pump in that Time; and I have ſeen them come with a Pail and a large Pitcher: One Time in particular ſhe was met by another, and they took it and carried it for her: One Morning I ſaw her with a very little black Pitcher.

Mr. *Willes.* Can you ſpeak of its being broke about the Neck?

Mrs. *How.* I don't know.

Mr. *Willes.* Are you a Church-woman or a Diſſenter?

Mrs. *How.* I am a Church-woman.

Mr. *Nares.* How near was you to the Girl when you obſerved her?

Mrs. *How.* As near as I am to that Gentleman (*pointing to a Perſon about three or four Yards off*).

Mr. *Nares.* Then you was near enough to diſtinguiſh the Girl?

Mr. *How.* I was. She made me a Curtſey, and looked me full in the Face, and I her: I think ſhe looked fatter in the Face than ſhe does now.

Mr. *Nares.* Did you think it was a Gypſey's Face?

Mrs. *How.* I thought as other People did.

Mr. *Nares.* Was you near enough to know *Mary Squires* as ſhe paſſed and repaſſed?---Mrs. *How.* Yes, I was. She was in the Foot-way, and I within my Gate.

Mr. *Nares.* From what you obſerved of her then, do you think her to be the ſame Perſon?---Mrs. *How.* I do; but can't be poſitive.

Recorder. Are you poſitive?

Mrs. *How.* No, I am not: I never converſed with her, or ſhe with me.

Recorder. Was your Huſband with you that *Sunday?*

Mrs. *How.* No, he was not; he was gone to Church.

Recorder. Did you tell him when he came from Church?

Mrs. *How.* I think I did.

Recorder. Can you be poſitive to your Sight forty or fifty Yards off.

Mrs. *How.* I was more poſitive when I ſaw her paſs and repaſs, than I was on that *Sunday.*

Recorder. Can you be particular to the Days you ſaw her paſs and repaſs?

Mrs. *How.* No; I can't, my Lord.

William Headland ſworn.

Mr. *Nares.* Where did you live laſt *Chriſtmas* was Twelve-month?

W. Headland. I can't really ſay where I was then: I believe I was at *Enfield*, becauſe my Father lives there.

Mr. *Nares.* How old are you?

W. Head. I was twenty Years of Age the 30th of laſt Month.

Mr. *Nares.* Do you remember being at your Father's about a Year and a half ago?

W. Head. I know I was there when I came out of Place: I had not been in Place theſe two Years till laſt *Chriſtmas:* I did live at *Henham-Hall*, with *Henry Headland*, my Couſin; that is thirty-eight Miles from *London.*

Mr. *Nares.* During the Time you was there, was there any Talk about *Canning* and the Gypſey?

W. Head. Yes; that was in laſt *January* was Twelve-month: I remember *Wells* being taken up; I was at Home then.

Mr. *Nares.* How far is your Father's from Mrs. *Wells*'s Houſe?

W. Head. There is only a Lane and two Fields part us.

Mr. *Nares.* Do you know the Window where it is ſuppoſed the Girl got out at? What does that Window front?

W. Head. It is by the Corner of the Lane; you may ſee into the Road.

Mr. *Nares.* Where does the other Side look to?

W. Head. There is only a little Window, which looks into the Field.

Mr. *Nares.* Did you find any Thing, and when, near that Place?

W. Head. One Day I was going to the Shop, and there were a Parcel of People come about *Wells*'s Houſe: I went there, and found a Piece of Lead, juſt at the Corner of the Window that joins to the Houſe; it looked as if it came out of ſome Window.

Mr. *Nares.* How near to the Houſe did you take it up?

W. Head. Within a Yard, or thereabouts, under the Window that fronts the Road: I doubled it up as ſoon as I found it, becauſe I thought I would carry it Home.

Mr. *Nares.* What made you take ſuch Notice of it?

W. Head. Becauſe it was bloody; and I heard *Bet Canning* had torn her Ear.

Mr. *Nares.* For God's Sake tell me the true Reaſon, upon Oath, why you took Notice of that Lead?

W. Head. Becauſe I heard the young Woman had torn her Ear againſt the Caſement, or Something.

Mr. *Nares.* Was it bloody when you picked it up?

W. Head. It was all bloody; I believe it was Blood. I carried it Home, and gave it to my Mother.

Mr. *Nares.* Did you tell your Mother why you brought it Home?

W. Head. I did.

Recorder. When did you hear *Elizabeth Canning* had torn her Ear?

W. Head. I do not know.

Recorder. What Day did you pick up this Lead?

W. Head. I cannot tell.

Mr. *Nares.* Whether ever you ſaw *Mary Squires* the Gypſey?

W. Head. Yes, Sir.

Mr. *Nares.* Look about the Court.---*W. Head.* That is the Woman (*pointing to her*); I know her from a thouſand.

Mr. *Nares.* Did you ſee that Gypſey Woman at any Time before you took up the Lead?---*W. Head.* Yes, Sir.

Mr. *Nares.* How long before?

W. Head. Indeed I cannot ſay how long before; but I ſaw her on the 9th of *January*, I know.

Mr. *Nares.* Why do you think it was the 9th of *January?*

W. Head. Becauſe it was on a *Tueſday*, *Waltham* Market-day.

Mr. *Nares.* Had you ever ſeen her before?

W. Head. That was the firſt Day.

Mr. *Nares.* Where did you ſee her?

W. Head. I ſaw her under Mr. *Loomworth Dane*'s Back-wall, telling a young Man his Fortune.

Mr. *Nares.* Where does Mr. *Dane* live?

W. Head. At the Sign of the *Bell*, at *Enfield* Highway. A young Man came from a Coachman; he was in a ſilver-laced Hat; I ſtood looking at her; ſhe ſaid, Go along, Boy, leſt your Maſter ſhould want you. I ſtood leaning againſt a Tree, and then went a little farther; and could not hear what they ſaid.

Mr. *Nares.* How could you tell ſhe was telling his Fortune?

W. Head. Becauſe I ſaw her lay hold of his Hand.

Mr. *Nares.* Are you ſure it was ſo early in *January* as the 9th?

W. Head. I am.

Mr. *Nares.* Did you ſee her any Day after?

W. Head. Yes, I ſaw her on the 12th, in Mrs. *Wells*'s Houſe: I went there to carry two Pails of Water; there were the Gypſey's two Daughters; one of them had a Pair of Pumps on, and was buckling them up.

Mr. *Nares.*

Mr. *Nares*. Look about the Court, and see if you see her.

W. Headland. That is the Girl (*pointing to* Mary Squires); I am sure it is one. If you were in your brown Camblet Gown, I should know you better; I then could swear to it.

Mr. *Nares*. Do you believe this is her?

W. Head. I do really believe it is.

Mr. *Nares*. What did you carry that Water for?

W. Head. It was two Pails of Wash for a Sow that was big with Pigs.

Mr. *Nares*. Where did you carry it from?

W. Head. From my Mother's.

Mr. *Nares*. How do you know it to be the 12th?

W. Head. Because it is *Epping* Market-day.

Mr. *Nares*. What Day of the Week is that on?

W. Head. It is on a *Friday*.

Mr. *Nares*. Did you see her any Time after this?

W. Head. Yes; I was in Madam *Johnson*'s Walk, and saw her coming down a Field. I spoke to her, and said, You are ganging Home, it is very cold. She said, So it is.

Mr. *Nares*. Did you see her after that?

W. Head. Yes; I saw her getting into the Cart, when she was taken up.

Mr. *Nares*. Was she the first or last that got into the Cart?

W. Head. She was the first, I believe; but I am not sure.

Mr. *Nares*. Was you in Court when Mrs. *Howard* was examined?

W. Head. No, Sir.

Mr. *Nares*. From what you observed of her before, and from what you observed since, are you sure this is the same Person?

W. Head. I am sure it is the same.

Cross-Examined.

Mr. *Willes*. What Business is your Father?

W. Head. He is a Gardener.

Mr. *Willes*. Where had you lived before you came home to your Father, before *January* was a Twelve-month?

W. Head. I worked at several Farm Houses.

Mr. Just. *Clive*. Had you been a hired Servant, or worked by the Day?

W. Head. I worked with one Man a Matter of two Years.

Mr. Just. *Clive*. Before you came home to your Father, who did you work with then?——*W. Head*. I cannot tell indeed; I might be out of Place, for what I know.

Mr. *Willes*. What Time of the Year is *Christmas* in?—What Month is it in?——*W. Head*. I do not know what Month in particular.

Mr. Just. *Clive*. There are twelve Months; pick out which *Christmas* is in.

W. Head. Indeed I cannot rightly say what Month it is in.

Mr. *Willes*. How many Days are there in a Week?

W. Head. There are seven, if you put *Sunday* in.

Mr. *Willes*. What, is not *Sunday* one of your Days?

W. Head. Yes; but some People make but six Days in the Week.

Mr. *Willes*. Who are they?——*W. Head*. The *Jews* do not.

Mr. *Nares*. You say you worked with one Man two Years before you came home to your Father; how long did you live in one Place together?

W. Head. I have lived half a Year, and three Quarters of a Year together.

Mr. *Nares*. Tell who you lived with three Quarters of a Year.

M. *Head*. I cannot rightly tell.

Mr. *Nares*. Can you tell any Master you lived with two Years?

W. Head. I worked for one Mr. *Long* for half a Year together; he lives at *Freezy-Water*. I worked for Farmer *Allen*, at *Enfield* Highway, right against the *Black-Horse*; I have worked many Times for him.

Mr. Just. *Clive*. How long together?

W. Head. It might be a Quarter of a Year together, or less.

Mr. *Nares*. Who did you work with first?——*W. Head*. Mr. *Allen*.

Mr. *Nares*. Did you ever live as a hired Servant in a Family with any body?——*W. Head*. Yes; I lived in *Featherstone-Street* at 'Squire *Feast*'s Brew-house, with one Mr. *King*, ten or eleven Weeks.

Mr. *Nares*. Did this Master you lived with keep *Christmas?*

W. Head. I reckon he does.

Mr. *Nares*. Cannot you tell what Month *Christmas* is in?

W. Head. I can hardly tell.

Mr. *Nares*. Tell as well as you can.

W. Head. I cannot tell.

Mr. *Nares*. Is it in Winter or Summer?—*W. Head*. It is in Winter.

Mr. *Nares*. Is it before or after *January?*——*W. Head*. I cannot tell.

Q. from a Juryman. Can you read and write?

W. Head. I can read and write too, a little.

Mr. Just. *Clive*. Where did you find this Lead?

W. Head. I found it at the End of the Wall, by the Window fronting the Road.

Mr. Just. *Clive*. What Sort of a Bit of Lead was it?

W. Head. It was a Piece of Window Lead.

Lord Mayor. Explain what you mean by Window Lead.

W. Head. It was such as they put the Glass into.

Mr. Just. *Clive*. Was it one single Piece?

W. Head. No; there were two or three Pieces of it, all joined together; so I bent it together, and put it into my Pocket, and gave it my Mother.

Mr. Just. *Clive*. What did you say to her at the Time you gave it her?

W. Head. I bid her take it, because, they say, *Bet Canning* had tore her Ear at the Window; but it is lost since.

Mr. *Willes*. How long before *Squires* was taken up, and put into the Cart, was it that you first saw her?

W. Head. She was taken up on a *Thursday*, and if she had stayed till *Friday*, it would have been three Weeks.

Q. from a Juryman. Whether you shewed this Piece of Lead to any Body after you picked it up, besides your Mother?

W. Head. No, I shewed it to Nobody.

Elizabeth Headland sworn.

Mr. *Nares*. Did your Son, at any Time, bring any thing home to you, which he said he found?

E. Headland. Yes, Sir, it was a Piece of Window Lead; there was a Piece of Solder on it. It was a small Time after the People were taken up.

Mr. *Nares*. What Account did he give you of it?

E. Head. I looked at it; there was some Blood upon it; he said, he picked it up a little Way off from Mrs. *Wells*'s Window, where it was supposed the Girl got out at; I wrapped it up in a Piece of Paper, and laid it on a Shelf.

Mr. *Nares*. How came it not to be here?

E. Head. I brought it to *London* with me at *Michaelmas* Time, and carried it down again before *Christmas*; I laid it in a Table-drawer; and when I went to look for it last *Friday* was a Week, I could not find it but I found the Piece of Paper it was wrapped in. This is really Truth.

Cross-Examined.

Mr. *Willes*. Was it two or three Days after they were taken up?

E. Head. Indeed I cannot tell.

Mr. *Willes*. Was it the Day they were taken up?

E. Head. No, it was not; it was some time after.

Mr. *Wiles*. Was the Blood wet or dry upon the Lead?

E. Head. It was dry.

Mr. *Willes*. This Son of your's, how has he spent his Time, where has he lived? He says he is twenty-one Years of Age.

E. Head. He is. He has lived in Service some Part of his Time; and sometimes he has lived at Home; he has gone to drive Plough, and to Day-labouring Work.

Mr. *Willes*. Has he been a dutiful Sort of a Boy, or one that you can say much in his Favour?

E. Head. I have no Occasion to give the Boy an ill Word.

Mr. Just. *Clive*. When did he come home from Service?

E. Head. He has not been out these three Years, till within this Half-Year; he has been at Home a Year and half, I believe; but used to be out at Hay-making and Harvest-work.

Mr. Just. *Clive*. How long had he lived at Home with you, before the People were taken up at *Wells*'s?

E. Head. He had been at Home all the Winter long, and I believe from the *Michaelmas* before.

Mr. Just. *Clive*. Where was the last hired Service he was in before *January* was Twelve-month?

E. Head. Upon my Word, I can't tell; he was two Years ago with a Gentleman at *Hackney*; but he did not live there above two Months.

Samuel Story sworn.

Mr. *Nares*. Are you of any Business?

S. Story. I live upon my Fortune, at *Waltham-Abbey*, in *Essex*.

Mr. *Nares*. Look at that old Woman (*meaning* Mary Squires): Did you ever see her before?

S. Story. I have divers Times: That is the Gypsey. I do not know her by Name.

Mr. *Nares*. Tell us, when you think you first saw her?

S. Story. I have seen her several Times at a House in *White-Webbs-Lane*, that is since pulled down, going to the Chace; that used to be my constant Road to ride out, two or three Times a-Week. Then I lived in *Turkey-Street*, *Enfield-Wash*. I have been moved from thence about a Year and half. I have seen her both before and since I removed. The last Time I saw her was on the 23d of *December*, 1752, except the Time I saw her in *Newgate*.

Mr. *Nares*. Where did you see her?

S. Story. She was standing within the Door of Mrs. *Wells*'s House.

Mr. *Nares*. What Reason have you to think it was on that Day?

S. Story. It was the *Saturday* before *Christmas* Day, a very fine frosty Morning; which induced me to take a Walk to see Mr. *Howard*, who lives directly over-against Mrs. *Wells*'s. I walked the Horse-pad, because it was better beaten; and my Feet are a little tender. When I came over-against Mrs. *Wells*'s House, I saw the Gypsey at the Door. Curiosity led me a little out of the Path, to see if it was the same Gypsey I had seen in the House in *White-Webbs-Lane*.

Mr. *Nares*. Did you go close to her?

S. Story. Not very close; I might go, perhaps, within ten Yards of her.

Mr. *Nares*. Was you so near her, as to form any Judgment whether it was the same Person?

S. Story. I was; I was certain it was the same Person.

Mr. *Nares*. Did you see her after that?

S. Story. No; I never saw her afterwards, till I saw her in *Newgate*, about the 14th or 15th of *March*.

Recorder. Upon the Oath you have taken, is this the same Person?

S. Story. Upon my Oath, it is. When I came to see her in *Newgate*, it was on a *Friday*. I was denied Admittance then, but I went to Alderman *Glynn*, and begged the Favour of an Order; and then I saw her.

Mr. *Nares*. Who denied you?——*S. Story*. The Keeper did.

Mr. *Nares*. Was you then satisfied it was the same Woman?

S. Story. I was then, and am now, well satisfied, that this is the same Woman.

Mr. *Nares*. Have you any other Reason, so as to be certain it was the 23d of *December* you saw her?

S. Story. I have. I observed it was a hard Frost in the Morning; and the Weather altered about Noon to Sleet and Rain, by which it was very wet, and the Wind and Weather drove on my right Side, as I was going Home; and I being subject to the Rheumatism, was taken with it; and the St. *Anthony*'s Fire seized me about the *Monday* or *Tuesday* following; then I sent for an Apothecary, and he attended me afterwards. So I am very positive as to the Day, for I never went out after that *Saturday*, when I came home, for near two Months after.

Cross-Examined.

Mr. *Willes*. Did you find Mr. *Howard* at Home?

S. Story. I did.

Mr. *Willes*. How long did you stay there?

S. Story. I believe I might stay best Part of an Hour there.

Mr. *Willes*. While you was there, did you hear there were any Gypsies at that Time there?

S. Story. No; we had no Talk about them, as I remember.

Mr. *Willes.* Was it in your going there, or Return, that you saw her?

S. Story. It was in my going there.

Mr. *Willes.* Was she standing without the Door, or within?

S. Story. She was just within, at the Threshold of the Door.

Mr. *Willes.* Did you look fronting or side-ways?

S. Story. The Door is opposite to Mr. *Howard*'s. I went a little farther out of my Way, to see whether it was the same Gypsey that I had seen in *White-Webbs-Lane.*

Mr. *Willes.* How long was it before this, that you had seen her before?

S. Story. I saw her when I lived in *Turkey-Street*, and I moved from thence on the *Michaelmas* before. I had seen her at Times for three Years together.

Mr. *Willes.* Can you name any particular Time before this?

S. Story. I remember I had seen her in the Spring of the Year.

Mr. *Willes.* Did you ever converse with her?

S. Story. No, I never did, Sir.

Mr. *Willes.* Was you ever in the same Room with her?——*S. Story.* No.

Mr. *Willes.* At this Time you went a little out of your Way, did you say any Thing to her, or she to you?——*S. Story.* I did not.

Mr. *Willes.* What did she appear to be doing?

S. Story. Nothing at all.

Mr. *Willes.* Had she a Pipe in her Mouth?——*S. Story.* No, she had not. She had a dirty Clout or Handkerchief over her Head.

Mr. *Willes.* Who used to be with her in *White-Webbs-Lane?*

S. Story. There used to be two younger Women with her at Times, which, I have heard since, are her Daughters.

Mr. *Willes.* Was there a Man?——*S. Story.* Yes, there was.

Mr. *Willes.* At this Time, at *Wells*'s, did you see any of these young People with her?——*S. Story.* I did see a young Girl with her.

Mr. *Willes.* Look at these two young People, and see whether either of these are them.

S. Story. I cannot swear to their Faces. The Girl's Back was towards me then, talking to the old Woman; she stood without the House. I cannot swear to the Girl.

Mr. *Willes.* When was it you first recollected these Circumstances of having seen her there?

S. Story. In my Illness the Apothecary told me what had happened at Mrs. *Wells*'s House.

Mr. *Willes.* Can you tell what Day it was?

S. Story. That I cannot, to two or three Days; it was after they were taken up.

Mr. *Nares.* It comes out now, which I did not know before, that you had seen this Woman two or three Years before that?

S. Story. I had, and took Notice of them as a Parcel of Gypsies. They used to have two Asses and a little Horse: I have seen the Horse grazing in *White-Webbs-Lane*, as I have rode through there; and the two Asses, I have met with them on the Road, and the two young Women and a Man; but their Dress is so altered now, that I could not know them. They used to have a perfect Gypsey's Dress, with Blankets over their Shoulders, and Handkerchiefs over their Heads (you might see their black Locks through them), following the two Asses. The last Time I met them, I believe, might be at the Beginning of *December*, just against *Durant*'s House.

Mr. *Nares.* I believe, you was rather too ill to go out, to be a Witness when the Trial of *Squires* came on?

S. Story. I was; I thought I should have died.

Recorder. Was you ever of any Business?

S. Story. I was a Finisher of Clock Dial-Plates.

Recorder. Was you acquainted with Mr. *Lyon* before?

S. Story. I have seen him before at *Newington-Green*; I rented a House that he built.

William Smith sworn.

Mr. *Nares.* Where do you live?

W. Smith. I live in *Ranton-Row*, at *Enfield*; I am a Farmer.

Mr. *Nares.* What do you rent *per* Year?

W. Smith. An hundred and five Pounds *per* Year, and have these twenty Years; it belongs to the Duke of *Portland.*

Mr. *Nares.* Look, if you see *Mary Squires* in Court.

W. Smith. Yes, Sir; I see her.

Mr. *Nares.* Did you ever see her before?——*W. Smith.* Yes, I have.

Mr. *Nares.* Tell us where you remember to have seen her about a Year and a Half ago.

W. Smith. I saw her in my Cow-House on the 15th of *December* 1752.

Mr. *Nares.* Had she been about the Country some Time?

W. Smith. She had a pretty while; I saw her several Times.

Mr. *Nares.* Have you seen her before that Time?——*W. Smith.* I have.

Mr. *Nares.* How came she in your Cow-House?

W. Smith. They came to ask for Lodgings; I was not at Home.

Mr. *Nares.* Who do you mean by *They?*

W. Smith. The Company that was with her.

Mr. *Nares.* Who did they ask?

W. Smith. My Housekeeper; her Name is *Swain.*

Mr. *Nares.* When did you first see them about your House?

W. Smith. The next Day in the Morning, which was the 15th of *December.*

Mr. *Nares.* Had you any Conversation with them?

W. Smith. I had none at all.

Mr. *Nares.* Are you sure this is the Woman?

W. Smith. I am, that was in my Cow-House; there were two Men and two Women with her; she called them her Sons and Daughters.

Mr. *Nares.* Do you see any Man in Court that is like her Son?

W. Smith. I did not take so much Notice of them, as I did of her; because I have seen her often.

Mr. *Nares.* What Reason have you to think it was the 15th of *December?*

W. Smith. I was out the Day before at Dr. *Crow*'s, stamping of Apples; and when I came Home, my People told me, the People that had laid there before, came to ask for Lodging again. They had lodged in our Cow-House and Barn before that.

Mr. *Nares.* Are you sure of that?

W. Smith. They have asked me before this; and used commonly to come about once a Year, for a pretty many Years together.

Mr. *Nares.* Has this Woman herself asked you for Lodging?

W. Smith. She has. I have known her a pretty many Years, and have seen them about the Country; they lost their Horse the while they were at my House; I think, they said it was a little black one; the Son asked my People, in my Hearing, whether they saw him, or no.

Mr. *Nares.* How long did you see them afterwards?

W. Smith. They lay at my House till the *Sunday* after. They were there three Nights and two Days, and lay in my Cow-House; they came on the 14th, but then I was not at Home.

Mr. *Nares.* How long, from that Time, was it before you saw them again?

W. Smith. I was at Home once when the Son came, as they called him, to ask for the Horse.

Mr. *Nares.* Was you examined on the Trial of *Mary Squires?*

W. Smith. Yes, Sir.

Mr. *Nares.* Did you then swear she was the same Woman?

W. Smith. Yes.

Mr. *Nares.* Do you now believe she is the same?

W. Smith. I do.

Cross-Examined.

Mr. *Willes.* Was you examined when *Mary Squires* and *Susannah Wells* were tried?

W. Smith. I was.

Mr. *Willes.* How long after *Wells* was taken up?

W. Smith. It was soon after.

Mr. *Willes.* How soon?

W. Smith. Within a Fortnight or three Weeks after.

Mr. *Willes.* Was you examined in this Place, where you are now?

W. Smith. I don't know.

Mr. *Willes.* Where was it?

W. Smith. I don't know where; but I am sure I was examined.

Mr. *Willes.* Had you any Conversation with the Gypsey on the 15th of *December*, in the Morning?

W. Smith. No, I only went and looked at them; she did not speak to me.

Mr. *Willes.* Then you cannot say you know the Faces of the two Men, and two young Women?

W. Smith. No, I do not.

Mr. *Willes.* How long before that *December* might it be, when they were there before?

W. Smith. May-be it was a Twelvemonth before.

Mr. *Willes.* Did you ever see them at Mrs. *Wells*'s House in your Life?

W. Smith. No, Sir.

Mr. *Willes.* How far is your House from Mrs. *Wells*'s?

W. Smith. It is near two Miles Distance.

Mr. *Willes.* What had you been doing the Day they came to your House?

W. Smith. I had been stamping Apples to make Cyder with, at Dr. *Crow*'s.

Mr. *Willes.* Were the Apples your own Apples?

W. Smith. They were. I went there for the Use of his Press; he gave me Leave.

Mr. *Willes.* How long had these Apples been gathered?

W. Smith. I believe, about two Months.

Mr. *Willes.* Do you keep your Apples so long before you grind them?

W. Smith. Yes, and longer too.

Mr. *Willes.* When did they go away?

W. Smith. On the *Sunday* Morning, the third Day.

Mr. *Willes.* Did you know where they were going?

W. Smith. No, I did not.

Mr. *Willes.* Did you see her, after that Time, till you saw her in *Newgate?*

W. Smith. No, Sir.

Mr. *Willes.* Was you any Time in *January* at Mrs. *Wells*'s?

W. Smith. No, Sir; I seldom go by there.

Mr. *Willes.* Had they any Thing to sell?

W. Smith. No, not as I saw.

Mr. *Willes.* Did you ask Dr. *Crow* Leave to use his Press?

W. Smith. He was then dead, I believe; I asked his Gardener; the Family were not in the Country then.

Mr. *Willes.* Why do you fix upon that Day, you stamped your Apples on, to be the 14th of *December?* Did you make any Minute of the Day?

W. Smith. I know it was that Day; I did make a Minute; I sold some Corn that Week, and delivered it the same Week, and I set it down in my Book.

Mr. *Willes.* Don't you sell Corn almost every Week?

W. Smith. I do.

Mr. *Willes.* What Day of that Week did you sell your Corn?

W. Smith. It was on the *Saturday.*

Mr. *Willes.* Where is that Book?——*W. Smith.* It is at Home.

Mr. *Willes.* Why is it not here?

W. Smith. I did not know I should have Occasion for that here.

Mr. *Willes.* Is your House farther from *London* than Mrs. *Wells*'s?

W. Smith. Much about alike for that.

Mr. *Willes.* Is it in the Way to Mrs. *Wells*'s?

W. Smith. No, it is out of the Way, on the left Hand.

Mr. *Willes.* Is it in the Road to *Basingstoke?*

W. Smith. I know nothing of the Place.

Mr. *Nares.* You say you was not examined in the Place you are now in, at the other Trial; do you know whether it was in this Court or no, you was examined?

W. Smith. I was examined.

Mr. *Nares.* Was it when *Squires* and *Wells* were tried, or at any other Time?

W. Smith. I think it was then.

Mr. Just. *Clive.* Was you ever examined in this Court?

W. Smith. I never was, but once.

Mr. Just. *Clive.* Was you ever examined in a Court of Justice, at any Time, but when you was examined about the Gypsey and *Wells?*

W. Smith. No.

Mr. Just. *Clive.* Where was you examined?

W. Smith. Some Gentlemen examined me about it.

Mr. Just. *Clive.* Was it in this Court, or at *Hicks*'s-*Hall?*

W. Smith. I don't know *Hicks*'s-*Hall.*

Mr. *Nares.* Was the old Gypſey in Court at the Time?

W. Smith. No, ſhe was then in *Newgate.*

Court. This muſt be before the Grand Jury at *Hicks's-Hall*, when the Bill was found.

Loomworth Dane ſworn.

L. Dane. I keep the *Bell* at *Enfield-Waſh*; I have lived there two Years and a half; but I have lived near there about twelve Years and a half.

Mr. *Nares.* Do you remember ever ſeeing *Mary Squires* there? Look, and ſee if you ſee her in Court.

L. Dane. That is the Woman, I am ſure *(pointing to her)*. I cannot ſay I ever ſaw her before Winter was Twelve-month.

Mr. *Nares.* What Part of the Winter did you ſee her?

L. Dane. I cannot remember the firſt Time; but I am ſure I ſaw her on old *Chriſtmas-Day*, and, I believe, I ſaw her before.

Mr. *Nares.* What Reaſon have you to remember the Day?

L. Dane. My Man came to me, and I promiſed him a Holiday on the Old *Chriſtmas-Day.*

Mr. *Nares.* When did you promiſe him that?

L. Dane. I promiſed it him on New *Chriſtmas-Day.*

Mr. *Nares.* Had he one on the New?

L. Dane. Yes, Sir. On the Old *Chriſtmas-Day* I went up to my Shop (I keep a Collar-maker's Shop); while I was there, Farmer *Norton* came and aſked me, if I had ever a Collar that would fit his Horſe; I meaſured his Horſe, and put it down in my Book; he ſaid, he would come and ſettle with me on the *Sunday* following. I fitted it, and carried it Home, and left it that very Day, as I went to Dinner.

Mr. *Nares.* What Book did you ſet it down in?

L. Dane. In my Day-Book; it is a Piece of Paper ſewed together.

Mr. *Nares.* Could you have remembered it without that Circumſtance?

L. Dane. I cannot ſay I could.

Mr. *Nares.* Where is that Book?

L. Dane. I believe I can produce it; it is not here; but I am ſure it was Old *Chriſtmas-Day.*

Mr. *Nares.* Did you take particular Notice of her that Day?

L. Dane. Yes, Sir, I did. I was filling a Barrow of Gravel, from a Heap at my Door, to lay down in the Yard; I ſtood reſting myſelf; ſhe came by me, and I looked very wiſhfully at her. As ſhe went by me, the Wind blowed up her Gown, and there was a great Hole in the Heel of her Stocking. I ſaw her till ſhe got into the Field.

Mr. *Nares.* Did you ſee her when ſhe was in Confinement?

L. Dane. I did, and when ſhe was taken up, and ſaw her go into the Cart.

Mr. *Nares.* From what you obſerved on her going by, did you believe it was the ſame Perſon?—*L. Dane.* Yes, Sir, I am ſure of it.

Mr. *Nares.* Are you ſure now this is the ſame Perſon?

L. Dane. Yes, Sir, I am. I ſaw her in *Newgate*, and was ſure of it then.

Croſs-Examined.

Mr. *Willes.* Did you ever converſe with her?

L. Dane. No, never at all.

Mr. *Willes.* How near was ſhe to you when ſhe walked by?

L. Dane. I believe it might be two or three Yards off.

Mr. *Willes.* Have you a Coach-Road goes by your Houſe?

L. Dane. Yes, Sir, the *York-Road.*

Mr. *Willes.* Do you know *William Headland*, that has been examined?

L. Dane. I do.

Mr. *Willes.* Did you ſee any body with her?

L. Dane. No, I ſaw Nobody with her.

Mr. *Willes.* Was that the only Time?

L. Dane. I believe I ſaw her ſeveral Times, but cannot fix upon the Days.

Mr. *Willes.* Did you ſee any young People with her?

L. Dane. I ſaw her Son ſeveral Times.

Mr. *Willes.* How long after?——*L. Dane.* I cannot ſay how long.

Mr. *Willes.* Did you ever ſee her Daughters with her?

L. Dane. No, only when they were taken up.

Mr. *Willes.* Was it a very high Wind that Day?——*L. Dane.* It was.

Mr. *Willes.* What had ſhe on her Head?——*L. Dane.* I cannot tell.

Mr. *Willes.* Was her Face covered over?——*L. Dane.* No, it was not.

Mr. *Willes.* How did ſhe walk?

L. Dane. She went crouching and cringing.

Mr. *Willes.* Which Way was her Face?

L. Dane. It was then towards the Town; I looked at her very wiſhfully.

Mr. *Willes.* Then you cannot ſay you ſaw her before?

L. Dane. I believe I did.

Mr. *Willes.* Do you know *Elizabeth Headland?* What is her Character, a good or bad one, in the Neighbourhood?

L. Dane. I never heard ſhe robbed any body.

Mr. *Willes.* Is it as good as the reſt of her Neighbours?

L. Dane. I cannot ſay that; her's is not ſo clear as ſome People's are; but I never heard ſhe was a Thief.

Mr. *Willes.* What is her Son's Character?

L. Dane. I know no Ill of him.

Mr. *Willes.* Do you know *David Dyer?*—*L. Dane.* Yes, Sir, I do.

Mr. *Willes.* What is his Character?

L. Dane. He is a very honeſt Man.

Mr. *Nares.* I own the Boy has given a ſtrange Account; but did you ever hear any Harm by him?

L. Dane. No, never in my Life.

Mr. *Nares.* In what Particular is the Mother's Character ſuppoſed to be bad?

L. Dane. I do not know, not I.

Mr. *Nares.* How far does *David Dyer* live from you?

L. Dane. He lives oppoſite me.

Mr. *Nares.* What is his Buſineſs?——*L. Dane.* He is a Shepherd.

Mr. *Nares.* Did you ever hear any Harm of him?

L. Dane. No, never in my Life: He has a good Character.

Samuel Arnot ſworn.

S. Arnot. I live at *White-Webbs*, on *Enfield* Chace; and have lived there theſe fourteen Years.

Mr. *Nares.* What are you?—*S. Arnot.* I am a labouring Man.

Mr. *Nares.* Do you know ſuch a Perſon as *Mary Squires?*

S. Arnot. Yes, Sir.

Mr. *Nares.* Look, and ſee if you ſee her.

S. Arnot. That is the Woman *(pointing to her)*.

Mr. *Nares.* How long have you known her?

S. Arnot. The firſt of my ſeeing her was on a *Friday* Morning: She aſked me, if I ſaw a little brown Horſe? This was as near as I can gueſs, about nine or ten Days before New *Chriſtmas-Day.*

Mr. *Nares.* How came you to fix upon that Time?

S. Arnot. I had been at a Place called *Clay-Hill*, and met her in the Buſhes: She aſked me if I ſaw this Horſe, and ſaid his Legs were tied, and he had a Clog upon him: Then I turned back again, and aſked, what Sort of a Clog? She ſaid, her Name was *Squires.*

Mr. *Nares.* For what Reaſon did ſhe tell you that?

S. Arnot. Becauſe I might give her an Account of the Horſe, if I light of him.

Mr. *Nares.* Upon your Oath, are you ſure this is the Woman?

S. Arnot. Upon my Oath, I am, Sir.

Mr. *Nares.* Did you ever ſee her any Time but that?

S. Arnot. I never ſaw her after that Time till I ſaw her in *Newgate*; but do not know the particular Day I ſaw her there.

Mr. *Nares.* How long was it after you had ſeen her before?

S. Arnot. It was, I believe, a Quarter or Half a Year after.

Mr. *Nares.* Was you certain then it was the ſame Perſon?

S. Arnot. I was, Sir; and, to the beſt of my Knowledge, I believe now it is the ſame.

Croſs-Examined.

Mr. *Willes.* What is your Employ?

S. Arnot. I follow labouring Work: I work ſometimes at *Cheſhunt*, and ſometimes at other Places.

Mr. *Willes.* Have you any Family?

S. Arnot. I have a Wife and three Children.

Mr. *Willes.* Why are you poſitive as to the Time?

S. Arnot. Becauſe it was on a *Friday* Morning that I ſaw her; and on the *Sunday* following I met her again, and aſked her if ſhe had found her Horſe; and ſhe ſaid, No.

Mr. *Willes.* Why do you apprehend it was nine or ten Days before New *Chriſtmas* you had this Converſation with the Gypſey?

S. Arnot. I think New *Chriſtmas* was the *Sunday* Se'nnight following.

Mr. *Willes.* Are you ſure *Chriſtmas-Day* was on a *Sunday* that Year?

S. Arnot. No; it was on a *Monday*. I ſay, it was the *Sunday* was Se'nnight before New *Chriſtmas* that I ſaw her.

Mr. *Willes.* Was there any body with her at that Time?

S. Arnot. There were a Man, two Women, and two Children with her, this ſecond Time; there was Nobody with her the firſt Time.

Mr. *Willes.* Had ſhe either of the Times a Horſe or Aſs with her?

S. Arnot. No, neither.

Mr. Juſt. *Clive.* Who carried the Children?

S. Arnot. They walked on Foot.

Mr. *Willes.* How old might they be?

S. Arnot. Four, or five, or ſix, or ſeven Years old.

Mr. *Willes.* What was the Colour of the Horſe ſhe enquired after?

S. Arnot. A little brown one, with his Legs tied together.

Mr. *Willes.* Do you know Farmer *Smith?*

S. Arnot. I do; his Houſe ſtands about two or three Pole from mine.

Mr. *Willes.* Did theſe two Children ſeem to be Gypſey Children?

S. Arnot. I did not obſerve their Colour; they ſeemed to belong to that Gang.

Mr. *Willes.* Do you know of their lying in Farmer *Smith*'s Cow-houſe?

S. Arnot. I do; they did, to the beſt of my Knowledge.

Mr. *Willes.* If thoſe People had lain there, do you think he would not have remembered there being two Children with them?

S. Arnot. His Remembrance is nothing to me.

Mr. *Nares.* Did you ſee them at Farmer *Smith*'s?

S. Arnot. I never ſaw them in the Cow-houſe: I know no otherwiſe than as I met them on the Chace, and heard they lay there; and it being ſo near my Houſe, I could hear them talk in the Cow-houſe. On the *Sunday* Morning I met her betwixt *Clay-Hill* and *White-Webbs:* I aſked her, whether ſhe had found the Horſe or not? She ſaid, ſhe had not.

Mr. Juſt. *Clive.* Was it then that the Man, two Women, and two Children, were with her?

S. Arnot. It was.

Mr. Juſt. *Clive.* Look about the Court, and ſee if you ſee the two Women that were with her.

S. Arnot. I cannot ſwear to any Perſon beſides her, really: I did not take Notice of the two Women; I did not converſe with them.

Mr. *Nares.* Did the Notice you took of her, the firſt Time you ſaw her, give you ſuch an Idea of her Perſon, as to aſk her, of your own Accord, whether ſhe had found her Horſe?

S. Arnot. It did.

Recorder. What particular Reaſon have you to imagine that theſe two Children were with them at Farmer *Smith*'s?

S. Arnot. I don't know that: I heard a Noiſe of the Voices of ſmall People; I cannot ſay they were Children, young or old.

Recorder. Could you diſtinguiſh the Voice of Children?

S. Arnot. I could, to be ſure; but I did not ſee the old Woman.

Baron *Legge.* You ſay, you firſt of all ſaw the old Woman on a *Friday*; when was it you ſaw her next?

S. Arnot. On the *Sunday* after the *Friday.*

Baron *Legge.* Did you ſee her the next *Sunday* after that *Sunday* again?

S. Arnot. No.

Elizabeth Arnot ſworn.

E. Arnot. I am Wife to *Samuel Arnot:* We have lived where we do fourteen Years.

Mr. *Nares.* Do you know *Mary Squires?*

E. Arnot. Yes, Sir.

Mr. *Nares.* Look about the Court, and ſee if you can ſee her.

E. Arnot.

E. Arnot. There she is; I am sure it is her.

Mr. *Nares.* When was the first Time you remember to have seen her?

E. Arnot. It was about a Week before New *Christmas.*

Mr. *Nares.* How came you to fix upon that Time?

E. Arnot. To the best of my Knowledge, it was: I know it was about a Week before the first New *Christmas.*

Mr. *Nares.* Where did you see her?

E. Arnot. I saw her lying in Farmer *Smith*'s Cow-house, close to my House: I saw her come out of the Cow-house into the Lane on the Chace. She asked me, if I saw a little Horse of her's? I said, I had not. This is the Truth.

Mr. *Nares.* Was your Husband with you at that Time?

E. Arnot. He was not.

Mr. *Nares.* Did you see any others in Company with her?

E. Arnot. I saw several more, but I did not take Notice of them: I saw her Son on the Chace, whistling for his Horse.

Mr. *Nares.* Did you see her after that?

E. Arnot. No, never, only in *Newgate*, till now.

Mr. *Nares.* What Time was that you saw her in *Newgate?*

E. Arnot. I don't know the Time; I never kept the Account of that.

Mr. *Nares.* Was it before or after her Trial?

E. Arnot. It was after her Trial.

Mr. Just. *Clive.* Should you know the Son if you was to see him?

E. Arnot. I took so little Account of him, I can't say whether I should know him or not.

Mr. *Nares.* Did you ever see a Woman like the old Woman in your Life?——*E. Arnot.* No, never before I saw her.

Mr. *Nares.* Did you think the Woman you saw in *Newgate*, was the same Person you saw enquiring for her Horse?

E. Arnot. The very same Person.

Mr. *Nares.* Do you think this is the same Person here, you saw there, and in *Newgate?*——*E. Arnot.* The very same.

Cross-Examined.

Mr. *Willes.* How long was she with you enquiring for her Horse?

E. Arnot. It might be some Minutes before she turned her Back, and went to look for him.

Mr. *Willes.* Did you see her in the Cow-house?

E. Arnot. No, I did not; I saw her coming out of it.

Mr. *Willes.* Did she mention the Colour of the Horse?

E. Arnot. She did not.

Mr. *Willes.* What did you say to her?

E. Arnot. I told her I had not seen him.

Mr. *Willes.* Was this the only Space of Time you had to see her Face, till you saw her in *Newgate?*——*E. Arnot.* It was.

Mr. *Willes.* How long were you talking together?

E. Arnot. It might be two or three Minutes.

Mr. *Willes.* Do you swear absolutely that was the Person?

E. Arnot. I do, Sir.

Mr. *Nares.* Did you change a Word with the Son?

E. Arnot. I did not.

Mr. *Nares.* Was you near the Cow-house?

E. Arnot. My House joins almost to it: She came out of the Farmer's Yard, and said, Good Woman, did you see a little Horse of mine?

Mr. *Nares.* Did she come towards you before she spoke to you?

E. Arnot. No; I was going for a Pail of Water, and she came out to look for her Horse.

Mr. Just. *Clive.* How came you to say that Man was her Son?

E. Arnot. She said, it was her Son that was calling her Horse.

Sarah Star sworn.

Mr. *Nares.* Do you know *Mary Squires?*

S. Star. I do; that is the Gypsey *(pointing to her)*. I live the next Door to Mrs. *Wells*'s House at *Enfield-Wash:* My Husband rents a Farm there.

Mr. *Nares.* How long have you lived there?

S. Star. I have lived there three Years this *May.*

Mr. *Nares.* When was the first Time you saw the Gypsey?

S. Star. She was at my House on the 18th or 19th of *January* was Twelve-month.

Mr. *Nares.* By what do you recollect the Day?

S. Star. My Husband was gone to *Hertford* for a Load of Pease for a Gentleman in Town: The Note is in Court, as far as I know, with the Date on it: Mr. *Miles*, the former Attorney, had it of me.

Mr. *Nares.* Did you ever see her at any other Time?

S. Star. I never saw her before or after, till she was taken up.

Mr. Just. *Clive.* How near do you live to Mrs. *Wells*'s House?

S. Star. My House is as near to her House, as it is across the Sessions-house Yard.

Mr. *Nares.* What Conversation passed between you?

S. Star. At first she came and asked at the Door, if I had any Delft to mend, or China? My Man and Boy were at Dinner: I bid them give her an Answer, because I was busy. Then she came into the Kitchen to me, and asked to buy some Pork of me, and brown Bread: I said, I had but that Piece of Bread in the House, and more need to buy than to sell. Then she asked me to sell her some Chitterlings, I having some, and black Puddings, lying on the Table: I gave her a good Piece of Chitterling to get rid of her.

Mr. *Nares.* How long might this Conversation take up?

S. Star. I had rather set a lesser Time than it was. I do believe she was three Quarters of an Hour with my Men and me, that is, in my Sight and Hearing. She offered to tell my Servants their Fortunes, and to tell me mine. She was some time in the Porch with my Servant; but I believe she was in my Sight three Quarters of an Hour.

Mr. *Nares.* Did she tell any of them their Fortunes?

S. Star. After she found she could not tell me mine, she said, Don't be scared at me; for I have been before Dukes, Lords, and Earls, and I hurt Nobody, Madam; I will not hurt you. She did not tell any of my Servants their Fortunes in my Hearing. I wanted to get rid of her, for I was terribly scared, seeing such a strange Gypsey-Woman; though I have seen Hundreds of Gypsies at one Time or other: The Man took her into the Porch, then the Boy bolted the Door, so we got her out. I saw her when she was taken up and put into the Cart; and I saw her in *Newgate* after that.

Mr. *Nares.* Are you sure this is the same Person?—*S. Star.* Yes, Sir.

Cross-Examined.

Mr. *Willes.* How are you certain as to Time, so as to fix it to be the 18th or 19th of *January?*

S. Star. Upon this Account; my Husband was gone for a Load of Pease, and the Note was dated the 18th or 19th of *January.*

Mr. *Wiles.* Where is that Note?——*S. Star.* It was delivered into Mr. *Miles* the Attorney's Hands, and I have not seen it since.

Mr. *Willes.* How long is it ago since you delivered it to him?

S. Star. I believe it may be above a Twelvemonth ago.

Mr. *Willes.* What did you look upon him to be at that Time?

S. Star. I took him to be a Lawyer concerned for *Elizabeth Canning.*

Mr. *Willes.* Where was your Husband when you gave him that Note?

S. Star. I can't tell.

Mr. Just. *Clive.* When did you deliver this Note to Mr. *Miles?*

S. Star. Indeed I can't tell. I know my Husband took the Pease up one Day, and delivered them the next; that is the Reason I say the 18th or 19th of *January.*

Mr. *Nares.* We have not got the Paper to produce.

Baron *Legge.* Did you deliver that before or after the Trial of *Mary Squires?*

S. Star. After, a great while.

Mr. *Willes.* How came you not to appear here on *Squires*'s Trial?

S. Star. They did not require it.

Daniel Vass sworn.

D. Vass. I am a Day-labouring Man; and live in *Turkey-Street* in *Enfield* Parish, and have lived there almost fourteen Years.

Mr. *Nares.* How near is that to Mother *Wells*'s?

D. Vass. About a Quarter of a Mile, as near as I can guess.

Mr. *Nares.* Have you ever seen *Mary Squires?*

D. Vass. I have seen that Woman that was in *Newgate*; I don't know her Name.

Mr. *Nares.* Look about you, and see if you can see her.

D. Vass. There she is *(pointing to her)*: She is remarkable enough: She has now a red Cloak on.

Mr. *Nares.* Where did you see her first?

D. Vass. The first Time I saw her going along the Causeway behind my House; it was on Old *Christmas-Day*, by the New Stile the 5th of *January* 53. I was then in my own Yard.

Mr. *Nares.* How near was you to her?

D. Vass. Perhaps I might be four or five Yards from her.

Mr. *Nares.* Had you any Conversation with her?

D. Vass. I never said any thing to her, or she to me.

Mr. *Nares.* How came you to take such Notice of her?

D. Vass. By reason she stopped; and I thought she would have come into the Yard, but she did not; if she had, I should have told her there was Nobody in the House.

Mr. *Nares.* Was there any body in the House then?

D. Vass. No, Sir.

Mr. *Nares.* Had you a full Sight of her Face at that Time?

D. Vass. I had, certainly.

Mr. *Nares.* Was she alone?

D. Vass. She was, without she had got any body under her Cloak: I saw Nobody with her.

Mr. *Nares.* Did you see her any Time else?

D. Vass. Only in *Newgate.*

Mr. *Nares.* Did these Observations you made of her, furnish you with a sufficient Remembrance of her Person, to recollect she was the same?

D. Vass. I am sure she is the same; now I am sure of it, Sir. It is the same Person, but not the same Cloaths.

Mr. Just. *Clive.* What coloured Cloaths had she on then?

D. Vass. She had a brick-coloured Gown on, an old red Cloak, and a whitish-coloured one over that, and an old black Beaver Hat; it was not a black Hat as Women commonly wear.

Mr. *Nares.* What Reason have you to fix upon Old *Christmas-Day?*

D. Vass. By reason I went to work with a Master I have worked for almost eleven Years, and he did not chuse I should work on that Day.

Mr. *Nares.* Why did he not chuse you should work?

D. Vass. By reason he thought it was *Christmas-Day*, and ought to be kept.

Mr. *Nares.* Are you certain that was the same Day you saw this Woman?

D. Vass. I am, Sir; that was the same Day; my Door was locked when I came home, and I did not know where my Wife was gone with the Key, and at that Time the Woman came by.

Cross-Examined.

Mr. *Willes.* Did you ever see her before?

D. Vass. No, Sir; nor never saw her again, till I saw her in *Newgate.*

Mr. *Willes.* How long did she stop there?

D. Vass. Perhaps a Minute, or half a Minute.

Mr. *Willes.* When you went into *Newgate*, did you go by yourself, or with other Persons?

D. Vass. I did not go by myself; if I had, I should not have found her; but we went but one at a Time up to her.

Mr. *Willes.* Was she brought out among a Number of other Persons, or was she singled out?

D. Vass. She sat upon the Bed, but I knew her long before I came at her.

Mr. *Willes.* Were there any other Prisoners there?

D. Vass. I did not know who were the Prisoners.

Mr. *Willes.* Was she sitting by herself?

D. Vass. She sat by herself on one Side of the Bed.

Mr. *Willes.* Were there any other People shewed to you in that Corner of the Room, besides the Gypsey herself?

D. Vass. There was no other Person sitting on the Bed, nigh her, as I know of.

Mr. *Willes.* Were there any other People in the Room?

D. Vaſs. There were a great many; but I knew the Woman when I ſaw her, and ſhould from a thouſand.

Mr. Juſt. *Clive.* Who deſired you to go into the Room?

D. Vaſs. I don't know who it was; it was by the Gentlemen.

Mr. Juſt. *Clive.* Did any body come up from the Country with you?

D. Vaſs. Yes, there were nine or ten of us came up in a Coach together.

Mr. *Willes.* Did you all go into *Newgate* together?

D. Vaſs. I don't know how many did when I did, or how many went in together.

Mr. *Willes.* Was not the Purpoſe of your going up, to ſee if you could find out the Gypſey?

D. Vaſ. No, no; I was carried up to ſee if I could find out the ſame Woman that I had ſeen before.—A blind Man can't ſee her; but a Man, if he has but half an Eye, might know that Woman, if he ſees her again.

Mr. *Nares.* Upon your Oath, did any body point out to you that this was the Gypſey?

D. Vaſs. No, no; I did not want them to do that.

Mr. *Nares.* Did any body tell you how ſhe was dreſſed?

D. Vaſs. No, certainly.

Mr. *Nares.* Was there any other Woman there?

D. Vaſs. There were in the Room.

Mr. *Nares.* Did you, of your own Accord, ſay which was the Woman?

D. Vaſs. Certainly.

Mr. Juſt. *Clive.* How near do you live to Mother *Wells*'s?

D. Vaſs. As near as I can gueſs, about a Quarter of a Mile off.

Mr. Juſt. *Clive.* Have you ever been in her Houſe?

D. Vaſs. I have ſeveral Times.

Mr. Juſt. *Clive.* Was you there the Beginning of *January?*

D. Vaſs. No, nor I had not been in the Houſe above two Years, till they were taken up.

Mr. *Willes.* Had you uſed to go there at any Time?

D. Vaſs. I have been in the Houſe divers Times formerly; then ſhe ſold Beer; then a poor Man might take a Pint of Beer there, as well as at another Houſe.

Recorder. Who was the firſt Perſon that applied to you to go to *Newgate?*

D. Vaſs. I am ſure I don't know the Gentlemen's Names one from another.

Recorder. Have you heard their Names?

D. Vaſs. I have heard a good many of the Gentlemen's Names that are on the Girl's Behalf; if I were to hear their Names, perhaps I might know them.

Mr. Juſt. *Clive.* Do you know Farmer *Smith?*---*D. Vaſs.* I do, very well.

Mr. Juſt. *Clive.* Do you know his Cow-houſe?

D. Vaſs. I never was in his Yard.

Jane Dadwell ſworn.

J. Dadwell. I live in *Turkey-Street* at *Enfield-Waſh.*

Mr. *Nares.* How long have you lived there?

J. Dad. I have lived there two Years?

Mr. *Nares.* What is your Buſineſs?

J. Dad. I keep a Shop; I ſell Butter, Cheeſe, Coffee and Tea, and thoſe Sort of Things.

Mr. *Nares,* Do you know *Mary Squires?*

J. Dad. I do; this is the Woman *(pointing to her).*

Mr. *Nares.* When did you firſt ſee her?

J. Dad. The firſt Time was at our Shop; the Time I can't tell; but I can tell one Day in particular, that was the *Thurſday* in *Chriſtmas* Week.

Mr. *Nares.* Which *Chriſtmas?*---*J. Dad.* The New *Chriſtmas* Week.

Mr. *Nares.* Upon what Account did ſhe come to your Shop?

J. Dad. She came for Coffee, Tea, and Butter; but I can't tell what particular Weight ſhe had any one Day.

Mr. *Nares.* Had ſhe been at your Shop before that?

J. Dad. She had ſeveral Times before that.

Mr. *Nares.* Why do you fix upon that Day?

J. Dad. We dreſſed a Piece of Meat for our Cuſtomers, as I uſually do at *Chriſtmas:* This was dreſſed on *Chriſtmas-Day*; the Cuſtomers came on *Tueſday* Night and *Wedneſday* Night; and this of her coming was after my Cuſtomers had been there.

Mr. *Nares.* What Reaſon have you to think it was after they had been there?

J. Dad. I was in my back Houſe waſhing my Diſhes (that had been uſed when my Cuſtomers were there) when ſhe came in.

Mr. *Nares.* Did you ſee her any Time after that?

J. Dad. I can't ſay particularly whether ſhe was or not at my Houſe after that.

Mr *Nares.* From her coming ſo often to your Shop, can you be certain of her Face?---*J. Dad.* I know it very well.

Mr. *Nares.* Did you ſee her in *Newgate?*---*J. Dad.* I did.

Mr. *Nares.* Was ſhe ſhewn you there, or did you know her of yourſelf?

J. Dad. I knew her immediately, and then ſhe owned ſhe had been at my Shop.

Recorder. Did ſhe own ſhe had been at your Shop that *Thurſday?*

J. Dad. No: She knew me, and owned ſhe had been at my Shop, but did not fix upon any Time.

Mr. *Nares.* I need not aſk you any more as to your Certainty of the Perſon then: Are you ſure now this is the Perſon?

J. Dad. Yes, Sir, I am.

Croſs-Examined.

Mr. *Willes.* Was you ever examined before?---*J. Dad.* I was.

Mr. *Willes.* By what Perſon was you examined?

J. Dad. I don't know the Gentleman.

Mr. *Willes.* How long is it ago?

J. Dad. It is a Twelve-month ago laſt *Chriſtmas.*

Mr. *Willes.* How long is it ſince you was examined before the Grand Jury?

J. Dad. I don't know.

Mr. *Willes.* Was you ever examined upon Oath?

J. Dad. I was, but not upon ſuch Things as theſe.

Mr. *Willes.* Was it upon the *Abbotſbury* Men for Perjury?

J. Dad. I don't know what it was about; it was about this Affair.

Mr. *Willes.* When did you recollect any of theſe Circumſtances, about your waſhing your Diſhes?

J. Dad. I gave this Account to the Grand Jury, and told the ſame as I have now.

Mr. *Nares.* Is the Account you tell now true?

J. Dad. I am ſure it is.

Mr. *Willes.* When was it you firſt recollected it, to tell thoſe Circumſtances of her being there?

J. Dad. I can't recollect the Day of the Month; after they were taken up, the Lawyer came to me, and I told it him.

Mr. *Willes.* Don't you waſh your Diſhes every Day?

J. Dad. No, I do not; but I know in particular it was that Day: One of my Neighbours came in, and aſked me, what ſtrange Woman that was?

Mr. *Willes.* Did ſhe ſtay any Time in your Shop?

J. Dad. She ſat down and ſmoaked a Pipe there.

Mr. *Willes.* At the Time you ſaw her in *Newgate*, what Day did *Squires* ſay it was that ſhe was at your Shop?

J. Dad. She did not ſay what Day, but ſhe ſaid ſhe knew me: I aſked her whether ſhe knew me.

Mr. *Nares.* Then this Affair had made a great deal of Noiſe in the Country?

J. Dad. Yes, it had.

Mr. *Nares.* And the Lawyer deſired you to recollect the Time, did he not?---*J. Dad.* Yes, he did.

Mr. *Nares* You ſay ſhe ſmoaked a Pipe; where did ſhe ſit?

J. Dad. She ſat down by the Fire.

Mr. *Nares.* Who is that Neighbour that came in, and aſked about the ſtrange Woman?

J. Dad. She was one of the Witneſſes, but is ſince dead.

Mr. *Nares.* Was ſhe examined when you was before?

J. Dad. She was; her Name was *Anne Parſley.*

Mr. *Willes.* Was you by when ſhe was examined?

J. Dad. No, I was not; there was but one examined at a Time.

Recorder. How old are you?

J. Dad. I am threeſcore Years of Age.

Recorder. Are you no more?---*J. Dad.* I am not.

Recorder. Have you ſeen Gypſies at *Enfield-Waſh* before this?

J. Dad. I have, ſuch as are called Gypſies.

Recorder. Had any of them uſed to come to your Shop?

J. Dad. No, none of them.

Mr. *Willes.* Were they and this Woman alike that you had ſeen before?

J. Dad. No.

Recorder. What was her Errand the firſt Time ſhe came to your Shop?

J. Dad. She came and aſked if we had any China to mend.

Recorder. Had ſhe any body with her?

J. Dad. I never ſaw any body with her.

Recorder. Did ſhe tell you where ſhe lived?

J. Dad. She ſaid ſhe lived up yonder; and ſaid no more.

Tobias Kellog ſworn.

T. Kellog. I am a Huſbandman, and live at *Enfield* in a little Houſe of my own.

Mr. *Nares.* How long have you lived there?

T. Kel. Twenty-ſix Years, come *Michaelmas.*

Mr. *Nares.* Do you know *Mary Squires?*---*T. Kel.* I have ſeen her.

Mr. *Nares.* Look about, and ſee if you ſee her now.

T. Kel. I ſee her, Sir.

Mr. *Nares.* When was the firſt Time you ſaw her?

T. Kel. The firſt Time was in *January*, ſomething better than three Weeks in *January* was Twelve-month.

Mr. *Nares.* What Day in *January?*--*T. Kel.* I cannot ſay to the Day.

Mr. *Nares.* Have you any Reaſon to ſay you ſaw her before?

T. Kel. I have not.

Mr. *Nares.* Where did you ſee her?

T. Kel. She was on the other Side of the Way where I was at Work in Mr. *Fletcher*'s Barn, at *Bull's-croſs*; ſhe was walking up *Turkey-Street* Green, in the Foot-path.

Mr. *Nares.* What have you to charge your Memory with, as to the Day?

T. Kel. I can't ſay but it may be a Day or two before Old *Chriſtmas-Day.*

Mr. *Nares.* Was it before Old *Chriſtmas*, or after?

T. Kel. It was rather before Old *Chriſtmas.*

Mr. *Nares.* Are you certain of it?---*T. Kel.* Yes, I am.

Mr. *Nares,* What Day of the Month was Old *Chriſtmas-Day* on?

T. Kel. It was on a *Friday*, and I believe I ſaw her on the *Thurſday*; but I can't ſay to the Day of the Month.

Mr. *Nares.* Are you ſure it was three Weeks in *January?*

T. Kel. I mean ſo, and better.

Baron *Legge.* From what Period, or Time, do you reckon your three Weeks in *January?*

T. Kel. I ſay, near a Month.

Baron *Legge.* Was it the Beginning of *January?*

T. Kel. No, there were two or three Days paſt the Beginning.

Mr. *Nares.* What do you mean by three Weeks in *January?*

T. Kel. I ſaid three Weeks, very near a Month in *January.*

Baron *Legge.* How long was it before *Squires* was taken up?

T. Kel. I reckon it about a Month before the Time ſhe was taken up.

Mr. *Nares.* When you ſay better than three Weeks, or near a Month, do you mean before *Squires* was taken up?---*T. Kel.* I mean ſo.

Mr. *Nares.* Are you ſure you ſaw her then?---*T. Kel.* I am ſure.

Mr. *Nares.* How far is Mr. *Fletcher*'s Barn from Mother *Wells*'s?

T. Kel. His Houſe is very near a Mile from it; but the Barn is about a Quarter of a Mile.

Mr. *Nares.* Did you ſee her Face then?

T. Kel. I did.

Mr. *Nares*. Did you ſee her after that?

T. Kellog. I did, twice, walk by my Barn-door. She aſked me for a Bit of Tobacco; I ſaid, I uſed none, and away ſhe went: I ſaw her four Times in all, with the Time ſhe was taken up. She was at my Barn-door the Day before ſhe was taken up, about One o'Clock, and aſked the Man that was in the Barn with me, (whoſe Name is *John Rowley*) for a Bit of Tobacco: Then ſhe came into the Barn, and ſaid to him, Young Man, I'll tell you your Fortune; and told him, there is one young Man has a very great Enmity to him, and aſked him to croſs her Hand with four Half-pence to tell him his Fortune: He ſaid, If I do, I muſt go on the Highway for it: Then ſhe turned her Leg over the Board, and away ſhe went.

Mr. *Nares*. Is *John Rowley* here?——*T. Kel*. No, he is not

Mr. *Nares*. Where does he live?——*T. Kel*. At *Enfield* Highway.

Mr. *Nares*. Are you ſure this is the Woman that aſked you for Tobacco, and that afterwards offered to tell *Rowley* his Fortune?

T. Kel. It is the ſame.

Mr. *Nares*. Have you ſeen her ſince that Time?

T. Kel. No, I have not till now; but ſhe is a very remarkable Woman.

Mr. *Nares*. What makes you fix it to be the Day before Old *Chriſtmas-Day*?

T. Kel. I have no particular Reaſon.

Croſs-Examined.

Mr. *Willes*. Had you any Converſation with her the firſt Time?

T. Kel. No, I had none at all.

Mr. *Willes*. Had you ever in your Life ſeen her before?

T. Kel. No, Sir.

Mr. *Willes*. Did ſhe continue walking when you ſaw her?

T. Kel. She was walking along.

Mr. *Willes*. Did you ſee any Gang of Gypſies about the Town, beſides her?

T. Kel. No, I did not ſee any.

Mr. *Willes*. How long was the ſecond Time after the firſt?

T. Kel. It was about a Week after.

Mr. *Willes*. Had you ſeen any Gypſies with her at any Time?

T. Kel. No, Sir.

Mr. *Willes*. Should you have recollected the Perſon of that Gypſey, if it had not been for that of coming into the Barn, and aſking for Tobacco?

T. Kel. Yes; if I had not ſeen her a ſecond Time, I ſhould have remembered her Face.

Recorder. Was you in *Newgate* to ſee her?---*T. Kel*. I was not.

Mr. *Willes*. How long is New *Chriſtmas Day* before the Old?

T. Kel. Eleven Days.

John Frame ſworn.

J. Frame. I lived with 'Squire *Parſons*, and have a Year and Half; but I am out of Place at preſent.

Mr. *Nares*. Where does he live?

J. Frame. He lives in *James's-Street*, *Groſvenor-Square*, but he lived in *Turkey-Street*, *Enfield*, in the Country; and I lived with him there as a Footman and Gardener.

Mr. *Nares*. During the Time you was there, did you ſee *Mary Squires* there?---*J. Frame*. Yes, Sir.

Mr. *Nares*. Do you think you ſhould know her now?

J. Frame. There ſhe is, I am ſure *(pointing to her)*.

Mr. *Nares*. When did you firſt ſee her?

J. Frame. On the 11th of *January* was Twelve-month.

Mr. *Nares*. Where did you ſee her?

J. Frame. I was at Work in Maſter's Garden, and ſhe came and talked with me through the Paliſadoes, pretending to tell me my Fortune.

Mr. *Nares*. How came you to think it was the 11th of *January*?

J. Frame. Becauſe my Maſter and Miſtreſs went to Town on the 9th of *January*, and this was after they went.

Mr. *Nares*. Tell us the Converſation as well as you can.

J. Frame. She ſaid a great many Things to me. She told me, I little thought of coming into that Country once; and ſhe wanted me to give her Three-Pence: I gave her Three-Half-pence; but ſhe did not tell me what ſhe would have told me if I had given her more. When I gave her the Three-Half-pence, ſhe bid me put it in my Hand, and put it through the Pales. She took it out and went away.

Mr. *Nares*. How long might you converſe with her at this Time?

J. Frame. It might be four or five Minutes.

Mr. *Nares*. Was your Fortune good or bad?

J. Frame. She told me it would be good Fortune.

Mr. *Nares*. Are you ſure this is the Woman?

J. Frame. I am ſure it is.

Mr. *Nares*. Did you ever ſee her before?

J. Frame. I had ſeen her about a Year before: I lived then at one Mr. *Woodcock*'s at *Enfield Clay-Hill*; he is ſince dead: I had then but very little Talk with her; Maſter was at Dinner, and I could not ſtay.

Mr. *Nares*. Did you ever ſee her at any other Time?

J. Frame. Not to take much Notice of her: I ſaw her two or three Times between that and ſeeing her in *Newgate*.

Mr. *Nares*. Are you ſure the Woman you ſaw at Mr. *Woodcock*'s, is the ſame Woman that told you your Fortune at Mr. *Parſons*'s?

J. Frame. I am very ſure of it.

Mr. *Nares*. And are you ſure this is the ſame Woman, that is here?

J. Frame. I am very ſure of it: I ſaw her ſeveral Times after the Time I mentioned, but not to take Notice of her, any farther than ſeeing her walking in the Street: I knew ſhe was in that Part of the Country from that Time, to the Time ſhe was taken up.

Mr. *Nares*. You ſay you ſaw her in *Newgate*?—*J. Frame*. I did.

Mr. *Nares*. Was you certain of her then?

J. Frame. I was very certain, and I am ſure this is the ſame now.

Mr. *Nares*. Was you before the Grand Jury?——*J. Frame*. I was.

Mr. *Nares*. How long is that ago?

J. Frame. I can't tell; it was about this Time Twelve-month, I think.

Mr. *Nares*. Did you give the ſame Account before the Grand Jury, as you have now?——*J. Frame*. I did.

Mr. *Nares*. Was that true?——*J. Frame*. It was, and ſo is this.

Croſs-Examined.

Mr. *Willes*. Were there any other Gypſies with her?

J. Frame. No, Sir.

Mr. *Willes*. When you ſaw her about a Twelve-month before, were there any others with her?

J. Frame. No, none as I ſaw; ſhe then only juſt opened the Gate.

Mr. *Willes*. Was ſhe in Company with any others in *Newgate*, or ſhewed by herſelf?——*J. Frame*. By herſelf.

Mr. *Willes*. How long had your Maſter and Miſtreſs been down at that Time?

J. Frame. I cannot tell; they were up and down very often.

Mr. *Willes*. If they have been up and down very often, how can you fix upon their going up this Time, more than any other?

J. Frame. By reaſon my Maſter and Miſtreſs gave me and my Fellow-Servant leave to go out on the 1ſt of *January*.

Mr. *Willes*. Had not your Maſter and Miſtreſs been in Town between the 1ſt of *January* and the 9th?——*J. Frame*. Yes, they had.

Mr. *Nares*. Have you Reaſon to believe it, becauſe your Maſter and Miſtreſs were down at *Chriſtmas*?---*J. Frame*. Yes, Sir.

Mr. *Nares*. How long had they been there at that Time?

J. Frame. I believe a Month; and I am ſure they gave me leave to go out on the 1ſt of *January*.

Recorder. How was the Gypſey dreſſed?

J. Frame. She had a reddiſh Sort of a Gown on, I think, to the beſt of my Remembrance.

Mr. Juſt. *Clive*. What other Cloaths?

J. Frame. A lightiſh-coloured Cloak.

Mr. Juſt. *Clive*. Do you know *Mary Jewel*?

J. Frame. She ſaw her ſomething before me the ſame Day; her Fortune was told her; ſhe gave her ſome boiled Beef: ſhe is gone away from thence.

Joſeph Gould ſworn.

Mr. *Nares*. Where do you live?

J. Gould. I live in *Turkey-Street*, in the Pariſh of *Enfield*: I am a Day-labouring Man.

Mr. *Nares*. How long have you lived there?

J. Gould. Thirty-ſeven Years.

Mr. *Nares*. Tell me whether you know *Mary Squires*?

J. Gould. That is the Woman that ſits there.

Mr. *Nares*. Are you ſure of it?——*J. Gould*. I am.

Mr. *Nares*. When did you firſt ſee her?

J. Gould. To the beſt of my Knowledge, it was the 8th or 9th of *January* 1753, that is, a Year ago laſt *January*.

Mr. *Nares*. Where did you ſee her?

J. Gould. I ſaw her in a Walk we call *Trotts-Walk*, leading up to *Bulls-Croſs*, about a Quarter of a Mile from Mrs. *Wells*'s Houſe, or ſomething better.

Mr. *Nares*. Had you any Converſation with her?

J. Gould. No: I took Notice of her; I thought I never ſaw ſuch a Woman in my Life before for Features.

Mr. *Nares*. Had you heard Mother *Wells* had Gypſies lodged at her Houſe?---*J. Gould*. I had.

Mr. *Nares*. Did you ſee her after that?

J. Gould. Yes, I ſaw her twice afterwards.

Mr. *Nares*. About what Time?

J. Gould. As nigh as I can gueſs, about eight or nine Days before ſhe was taken up; and another Time, about four or five Days before ſhe was taken up.

Mr. *Nares*. Are you ſure the Priſoner is the ſame Perſon you ſaw on the 8th or 9th of *January*, and the other Times after that?

J. Gould. I am, Sir.

Mr. *Nares*. By what do you remember the Time?

J. Gould. Mr. *Parſons* and his Lady went to Town on the 9th, (I live next Door to him) and my Wife was at Work there on the *Monday*.

Mr. *Nares*. What Day of the Week was the 9th?

J. Gould. It was on a *Tueſday*; I knew of their going.

Mr. *Nares*. By what did you know of that?

J. Gould. It was the Time they went away after *Chriſtmas*.

Mr. *Nares*. Did you ſee the old Woman in *Newgate* after this?

J. Gould. I did.

Mr. *Nares*. Was ſhe ſhewed you, or did you find her out?

J. Gould. She was ſhewed me: There were a great many People in the Room; ſhe was by the Fire-ſide.

Mr. *Nares*. Do you mean any body pointed at her, and ſaid, that was the Woman?

J. Gould. No, Sir; on the firſt Sight, at coming into the Room, I knew her again, without being told.

Mr. *Nares*. Are you ſure the Woman you ſaw in *Newgate*, is the ſame you ſee now?---*J. Gould*. Yes, Sir.

Croſs-Examined.

Mr. *Willes*. How far was you off from her when you ſaw her on the 8th or 9th of *January*?---*J. Gould*. Cloſe by her.

Mr. *Willes*. Was it the ſame Day that Mr. and Mrs. *Parſons* went to Town?

J. Gould. I cannot tell whether it was the ſame Day or no.

Mr. *Willes*. Was any body with her at that Time?

J. Gould. No, Sir.

Mr. *Willes*. Had you any Converſation with her?---*J. Gould*. No, Sir.

Mr. *Willes*. When was you told that Mother *Wells* had got Gypſies lodged at her Houſe?

J. Gould. That was before I ſaw her the firſt Time.

Mr. *Willes*. Who told you ſo?

J. Gould. To the beſt of my Remembrance, *Virtue Hall* did: I heard her tell other People ſo.

Mr. *Willes*. What Day was this?

J. Gould. I cannot tell the very Day.

Mr. *Willes*. When did you firſt recollect this of Mr. *Parſons*'s going to Town, in order to aſſiſt your Memory?

J. Gould. After I had ſeen the Old Gypſey in *Newgate*.

Mr. *Willes.* When you ſaw her there, were there no other People in that Part of the Room but her?

J. Gould. Upon my Word, I don't remember there were any, beſides the People that went with me.

Mr. *Willes.* When you ſaw her, four or five Days before ſhe was taken up, were there any body with her then?

J. Gould. She came into a Public-Houſe where I was.

Mr. Juſt. *Clive.* Where did you ſee *Virtue Hall*, when ſhe was relating this?

J. Gould. At a Place called the *Two Bridges*; there were ſeveral People there then.

Mr. Juſt. *Clive.* Can you tell any of their Names?

J. Gould. I cannot: Then they told me that Perſon was *Virtue Hall*, and they called her by her Name: I did not know her before.

Mr. *Willes.* How long was this before the People were taken up?

J. Gould. It was ſome Time before.

Mr. Juſt. *Clive.* Did you uſe the Houſe of Mother *Wells?*

J. Gould. I never did uſe it; I have kept a Farm fifteen Years next Door to it.

Mr. *Nares.* What is the *Two Bridges?* A Houſe of that Name, or what?

J. Gould. No, it is in the Street.

Recorder. How was the Gypſey dreſſed?

J. Gould. Upon my Word, I cannot certainly tell: She had a Cloak, and a Hat tied over her Head, and ſmoaking a Pipe.

Mr. Juſt. *Clive.* Was ſhe briſk and nimble, or was ſhe feeble?

J. Gould. No, not briſk.

Mr. Juſt. *Clive.* Was your Wife with you when you ſaw *Virtue Hall?*

J. Gould. No.

Mary Gould ſworn.

Mary Gould. I am Wife to the laſt Evidence, and live in *Turkey-Street.*

Mr. *Nares.* Do you know *Mary Squires?*

M. Gould. I know the Gypſey-Woman. I did not know her Name when I ſaw her.

Mr. *Nares.* Look about, and ſee if you ſee her.

M. Gould. Yes, Sir, there ſhe ſits; I am ſure that is the Woman.

Mr. *Nares.* When did you ſee her at *Enfield?*

M. Gould. I ſaw her on the 11th or 12th of *January* 1753, at my Door in *Turkey-Street*: I am not certain which Day of the Two; it was either on a *Thurſday* or *Friday*, I am ſure.

Mr. *Nares.* In what Manner did ſhe come?

M. Gould. My Door was bolted: She called at it, and I opened it: She aſked me, If I had any China to mend? I ſaid, No. She ſaid directly, You will not live long. I ſaid, Miſtreſs, I ſhall not give any thing, for I don't want to hear my Fortune told. I ſhut the Door, and watched her out at the Window, and ſaw her go into Mr. *Harrington*'s Yard and out again. I was a little ſurprized at her, becauſe I thought ſhe was a very ordinary Woman. I ſaw her another Time before ſhe was taken up, and that was as I ſat at Work at my own Window; that was the Week before ſhe was taken up: She aſked me, If I had any China to mend then? and I told her, No.

Mr. *Nares.* Are you ſure it was the ſame Perſon that ſpoke to you thoſe two Times?---*M. Gould.* I am very ſure.

Mr. *Nares.* What Reaſon have you to think the firſt was the 11th or 12th of *January?*

M. Gould. By reaſon 'Squire *Parſons* went to Town on the *Tueſday* that Week. I uſed to be there almoſt every Day: I was there on the *Monday*, the Day before they went, which was the 9th.

Mr. *Nares.* Upon your Oath, was it in that Week Mr. *Parſons* went to Town?

M. Gould. I am ſure it was, and I am ſure this here is the ſame Woman.

Mr. *Nares.* Did you ever ſee her before that Time?

M. Gould. I don't particularly know that I have.

Croſs-Examined.

Mr. *Willes.* How do you know Mr. *Parſons* went to Town on the 9th?

M. Gould. Becauſe I was much there: I was there on New-year's Day; they were to have gone on that Day, but Madam was not very well, ſo it was put off till *Tueſday.*

Recorder. Did you know *Virtue Hall?*

M. Gould. I had ſeen her, but I had but little Knowledge of her.

Mr. *Willes.* Was you ever in Mother *Wells*'s Houſe?

M. Gould. I have.

Mr. *Willes.* Did you ever ſee the old Gypſey there?

M. Gould. No, I never did.

Mr. Juſt. *Clive.* Do you remember when your Huſband ſaw *Virtue Hall* near the *Two Bridges?*

M. Gould. I told him, I had been affrighted by a Gypſey; and he made Anſwer and ſaid, *Virtue Hall* told him, there were Gypſies at Mother *Wells*'s Houſe.

Mr. Juſt. *Clive.* How was ſhe dreſſed when you ſaw her?

M. Gould. She was dreſſed in the very ſame Dreſs as ſhe was when I ſaw her in *Newgate*, with a Clout about her Head, and a plain Cap under it; a brown Sort of a Gown, I cannot tell the Colour of it, but it was not a Snuff-Colour; it was a yellowiſh Sort of a Gown; ſhe was in a very tight Sort of a Dreſs, conſidering her Trade.

Humphrey Holding ſworn.

Mr. *Nares.* Where do you live?

H. Holding. I live in *Turkey-Street*, and have theſe eighteen Years: I am a Gardener.

Mr. *Nares.* Do you know *Mary Squires*, the Gypſey?----*H. Hold.* I do.

Mr. *Nares.* Look about, and ſee if you can ſee her.

H. Hold. There ſhe is.

Mr. *Nares.* When was the firſt Time you ſaw her?

H. Hold. It was on the 8th of *January* 1753.

Mr. *Nares.* Why do you think it was on that Day?

H. Hold. Becauſe a Gentleman, whom I work for, came Home on the 9th.

Mr. *Nares.* What Gentleman is that?

H. Hold. That is Mr. *Parſons:* the Gypſey came and aſked me, if the Family was at Home? I ſaid, Aye.

Mr. *Nares.* Had you any other Converſation with her?

H. Hold. No, I had not.

Mr. *Nares.* Did you ſee her any other Time after this?

H. Holding. I ſaw her on the 11th of *January*, that was on a *Thurſday*, in the ſame Week; then I was nailing up Vines for Dr. *Harrington.*

Mr. *Nares.* What Converſation paſſed?

H. Hold. She aſked me, if there was any China to mend? I told her to aſk at the Door. She aſked at the Door, and Somebody ſaid, No; I cannot ſay who, but I heard the Words very plain; I was then at the End of the Houſe.

Mr. *Nares.* By what do you remember this to be the Day?

H. Hold. I remember it, becauſe I was not paid for that Work, and it was ſet down in my Book.

Mr. *Nares.* Did you ſee her after this?

H. Hold. I ſaw her again, when ſhe was carried away to Juſtice *Taſſ-maker*'s.

Mr. *Nares.* Are you ſure this is the ſame Woman you ſaw before?

H. Hold. It is the very ſame Woman, I am certain of it; I could pick her out of a thouſand.

Croſs-Examined.

Mr. *Willes.* What did you ſet that Work down in?

H. Hold. In my Pocket-book.

Mr. *Willes.* How came you not to bring your Book here?

H. Hold. I had not Preſence of Mind to bring it with me.

Mr. *Willes.* Did you work for 'Squire *Parſons* then?

H. Hold. No, I did not, becauſe he had hired a Perſon in the Houſe.

Mr. *Willes.* Are you ſure Mr. *Parſons* went away on the 9th?

H. Hold. I live, as it were, on the Spot; I know he went away on the Morrow after I ſaw her.

Mr. *Willes.* How long might the Gypſey be in aſking thoſe Queſtions?

H. Hold. She was not long with me.

Mr. *Willes.* How near might you be to her, when you was nailing up the Vines, on the 11th?

H. Hold. About half the Length of this Court.

Mr. *Willes.* Was there any Fence parted you?

H. Hold. No, none but the Gate, and I believe that was open.

Mr. *Willes.* Before that Time had you heard of any other Gypſies being at Mother *Wells*'s?

H. Hold. As to that, I cannot ſay, for I never was at Mother *Wells*'s in my Life.

Mr. *Willes.* Were there any body with her then?

H. Hold. No, there were not.

Mr. *Willes.* How long had 'Squire *Parſons* been in the Country that *Chriſtmas?*

H. Hold. I don't know; but I know when he came out of the Country.

Mr. *Willes.* How come you to remember the Day of going out of the Country, better than when they went down?

H. Hold. By reaſon they are very good to the poor People when they are in the Country.

Mr. *Willes.* Are you uſed to work for Dr. *Harrington?* What is his Method of paying?

H. Hold. He pays ſometimes in a Quarter of a Year, and ſometimes in Half a Year.

Mr. *Willes.* Don't he pay you the Day you do his Work?

H. Hold. He very ſeldom does; and if I am not, I book it.

Mr. *Willes.* How came you to remember this particular Minute of the 11th, more than any other Minute? Was this any uncommon Thing?

H. Hold. No, it is what I did always, when I was not paid.

Mr. *Willes.* Was you ever examined upon Oath before?

H. Hold. Yes; but I could not fully give an Account, becauſe then I could not reſolve myſelf of the Time.

Mr. *Willes.* How long after this Time did you work for Dr. *Harrington?*

H. Hold. Not for a conſiderable Time.

Mr. *Willes.* Did you work there the next Day, or the Day before?

H. Hold. No, I did not.

Mr. *Willes.* How many Months after this Time was it that you was examined, and could not recollect yourſelf?

H. Hold. I cannot juſtly ſay how long it was after.

Mr. *Willes.* Cannot you tell the Day of the Month you was examined at the Manſion-Houſe?

H. Hold. I cannot tell the Month, if I was to die.

Mr. *Willes.* Was you ever examined upon Oath any where elſe?

H. Hold. I was at the *Fleece* in *Edmonton*, by the Juſtices.

Mr. *Willes.* Can you remember the Day you was examined there?

H. Hold. I cannot.

Mr. *Willes.* Had you any Friend with you, when you was at the Manſion-Houſe?

H. Hold. I had a Scrub-Lawyer with me, and, I believe, there are a great many of them in Town.

Mr. *Willes.* What was his Name?---*H. Hold.* The Man is dead.

Mr. *Willes.* In what Way do you make your Minutes in your Book?

H. Hold. I write ſo much *per* Day.

Mr. *Willes.* Tell us the little Line you made on the 11th of *January?*

H. Hold. I put down the Day of the Month, ſo much *per* Day; that is, my Wife puts it down, as ſoon as I come Home: I can read, but I cannot write.

Mr. *Willes.* Were there any other Perſons with you when you was examined at the Manſion-Houſe?

H. Hold. There were, may-be, Half a Dozen.

Mr. *Nares.* Upon your Oath, was it the 11th of *January* you worked for Dr. *Harrington?*

H. Hold. Upon my Oath, it was put down that very Night.

Mr. *Nares.* Does your Wife always ſet down your Work in the Book?

H. Hold. She always does.

Mr. *Nares.* When you was examined before my Lord-Mayor at the Manſion-Houſe, had you ſeen your Book to refreſh your Memory?

H. Hold. I told them there, I could not recollect it till I ſaw my Book.

Mr. *Nares.* Was you deſired to recollect, the Day you was examined before my Lord-Mayor?----*H. Hold.* No.

Mr. *Nares.* Nor before the Commiſſioners neither?

H. Hold. No, Sir.

Baron *Legge*. When you could not recollect that, for Want of your Book, at that Time, how came you not to bring it now?

H. Holding. Upon my Oath, I had no Preſence of Mind to bring it: I did not know it would be looked into.

Baron *Legge*. Do you remember how this Woman was dreſſed, when you ſaw her?

H. Hold. I cannot ſay as to Particulars; ſhe was dreſſed very poorly.

Baron *Legge*. Give the beſt Account you can.

H. Hold. She had a Hat on her Head, and a Sort of a darkiſh yelloviſh Gown; but, as to her Face, I know it from five thouſand.

Baron *Legge*. What ſort of a Hat?---*H. Hold*. A Straw Hat.

Mr. Juſt. *Clive*. Was it a Straw Hat or a Bonnet?

H. Hold. I cannot ſay which.

Baron *Legge*. Was it a black, or white one?

H. Hold. Blackiſh it looked to be.

Baron *Legge*. How near was you to her?

H. Hold. As near as I am to your Honour.

Baron *Legge*. Had ſhe a Cloak on?

H. Hold. She had a ſhort one, but I cannot tell the Colour.

Baron *Legge*. What Sort of Health did ſhe appear to be in? Did ſhe appear to be a ſtrong or weak Woman?

H. Hold. She did not appear to be very ſtrong.

Baron *Legge*. Did you ſee her in *Newgate* afterwards?

H. Hold. I did, and knew her again: She was ſitting on the Feet of the Bed.

Baron *Legge*. Were there any other Women with her?

H. Hold. I ſaw none, but us that went from *Enfield*, as I remember. We were admitted in by Order of Sir *Richard Glynn*.

Sarah Vaſs ſworn.

Sarah Vaſs. I am Wife to *Daniel Vaſs*: I live at *Enfield*, in *Turkey-Street*.

Mr. *Nares*. How long have you lived there?

S. Vaſs. Either thirteen or fourteen Years, come *Michaelmas*.

Mr. *Nares*. Do you know *Mary Squires*?

S. Vaſs. I do; that is the Woman *(pointing to her)*.

Mr. *Nares*. When did you ſee her?

S. Vaſs. I ſaw her on the 11th of *January* was Twelve-month.

Mr. *Nares*. Where did you ſee her?---*S. Vaſs*. At my own Houſe.

Mr. *Nares*. What was her Buſineſs there?

S. Vaſs. She came to tell me my Fortune at the Door.

Mr. *Nares*. Did ſhe tell you your Fortune?

S. Vaſs. No, I would not let her.

Mr. *Nares*. Did you ſee her at any other Time?

S. Vaſs. Yes, ſeveral Times.

Mr. *Nares*. How came you to think this was the 11th of *January*?

S. Vaſs. I can give you a good Reaſon for it: I chare at 'Squire *Parſons*'s, in waſhing and ironing: They took Coach and went to *London* on *Tueſday* the 9th of *January*, and I returned Home directly when they took Coach, and I ſaw the Gypſey two Days after that.

Mr. *Nares*. Are you ſure of it?

S. Vaſs. I am certainly ſure I did: After that I ſaw her ſeveral Times.

Mr. *Nares*. Did ſhe ever aſk you to tell you your Fortune after this?

S. Vaſs Yes, ſhe did the Day before ſhe was taken up: Then ſhe came into my Houſe; I was drinking a Diſh of Tea; ſhe came in and ſat down by me, and aſked me for a Pipe of Tobacco; I went to my Huſband's Mug in which he keeps his Tobacco; ſhe took hold of my Hand, and aſked me to tell me my Fortune, but I refuſed her: Then ſhe aſked me for a Diſh of Tea, and I gave her two Diſhes of Tea.

Mr. *Nares*. How long did ſhe ſtay?

S. Vaſs. I believe ſhe might ſtay about a Quarter of an Hour, She aſked me, What Gentleman's Houſe that was over the Way? I ſaid, Madam *Gibſon*'s. She aſked me, Whether they would admit her? I told her, I thought they would not.

Mr. *Nares*. Are you very certain that is the ſame Woman you ſaw before, on the 11th of *January*?

S. Vaſs. I am ſure ſhe is the ſame.

Mr. *Nares*. Did you ſee her when ſhe was taken up?

S. Vaſs. I did not, but I ſaw her in *Newgate*.

Mr. *Nares*. Are you certain this Woman, that ſits here, is that Woman?

S. Vaſs. I am certain that is the ſame Woman, I am poſitive of it.

Croſs-Examined.

Mr. *Davy*. Did you ever ſee any Gypſey at *Enfield-Waſh* like her?

S. Vaſs. No.

Mr. *Davy*. Do you think it poſſible for any Perſon, that has good Eyes in his Head, to miſtake her for another Woman?

S. Vaſs. No, indeed, I ſhould think not.

Mr. *Davy*. How often have you ſeen her?

S. Vaſs. Twice at my Houſe, and ſeveral other Times; I ſaw her twice ſitting in a Chandler's Shop.

Mr. *Davy*. By what Name was ſhe called?

S. Vaſs. She went by the Name of the Gypſey-Woman.

Mr. *Davy*. Where did they ſay ſhe lodged?

S. Vaſs. At Mother *Wells*'s.

Mr. *Davy*. Did you hear ſhe lodged there on the 11th of *January*?

S. Vaſs. No, not till afterwards.

Mr. *Davy*. How long afterwards?

S. Vaſs. As nigh as I can gueſs, it was three or four Days after.

Mr. *Davy*. Was you at Home when they were taken up? Before that Time did you hear ſhe lodged at Mother *Wells*'s?

S. Vaſs. Yes, before that.

Mr. *Davy*. Who told you where ſhe lodged?

S. Vaſs. I went to a Shop, and enquired of the Woman (her Name is Mrs. *Dadwell*) who ſhe was, and where ſhe lodged; they ſaid at Mother *Wells*'s.

Mr. *Davy*. When did you hear this?

S. Vaſs. As nigh as I can gueſs, it was three or four Days, or a Week, after the firſt Time I ever ſaw her.

Mr. *Davy*. What is 'Squire *Parſons*?

S. Vaſs. He is a Gentleman that took a Country-Houſe, and he was here all the Summer to and fro; now he lives in Town; he had Lodgings in Town, and uſed to be backwards and forwards pretty often in the Summer; in the Winter he was at *London* pretty much.

Mr. *Davy*. How long does he uſually ſtay in the Country?

S. Vaſs. He very ſeldom comes down in Winter; ſometimes, may-be, he'd ſtay a Month or ſix Weeks.

Mr. *Davy*. Who does your Huſband work for?

S. Vaſs. He works for Farmer *Yarrow*, and has a good many Years.

Mr. *Davy*. Does he work for him every Day of the Week?

S. Vaſs. He does, except it happens to be a Holiday.

Mr. *Davy*. Did you ever ſee the Gypſey go in or out of *Wells*'s Houſe?

S. Vaſs. No, I never did.

Mr. *Davy*. Did you ever ſee any body with her?---*S. Vaſs*. No, Sir.

Mr. *Davy*. Did you ever ſee that young Man or Woman (*meaning* George *and* Lucy Squires)?---*S. Vaſs*. I ſaw them once ſince this.

Mr. *Davy*. Do you know *Fortune Natus*?---*S. Vaſs*. Yes.

Mr. *Davy*. Do you know *Virtue Hall*?---*S. Vaſs*. I do.

Mr. *Davy*. Did you ever ſee them going into *Wells*'s Houſe?

S. Vaſs. No, never.

Mr. *Davy*. Nor coming out?---*S. Vaſs*. No, Sir.

Mr. *Davy*. Did *Natus* and his Wife lodge at Mother *Wells*'s?

S. Vaſs. I heard afterwards they did, but not before.

Mr. *Davy*. Did you ſee *Natus* and his Wife in *January*?

S. Vaſs. I don't know that I did.

Mr. *Davy*. Nor in the *December* before?---*S. Vaſs*. No, Sir.

Mr. *Davy*. Then, when did you ſee them?

S. Vaſs. Since the great Hurliburly.

Mr. *Davy*. Did you not ſay, you ſaw them often?

S. Vaſs. Yes, but never before that Time.

Mr. *Davy*. Did you ever ſee *Virtue Hall*, before ſhe was taken up?

S. Vaſs. No, I never did.

Mr. *Nares*. Did your Huſband work on Old *Chriſtmas-Day*?

S. Vaſs. No, Sir; he went to work, and his Maſter refuſed him, and would not let him work.

Baron *Legge*. How long have you known *Natus* and his Wife?

S. Vaſs. Now I know them, but I did not before this Thing happened.

Baron *Legge*. How was *Mary Squires* dreſſed?

S. Vaſs. She was in a light-coloured Cloak, a Beaver Hat, and a Brick-coloured Gown.

Anne Johnſon ſworn.

A. Johnſon. I live at *Enfield*.

Mr. *Nares*. How long have you lived there?

A. John. Going on to twenty-ſeven Years.

Mr. *Nares*. What do you do for your Living?

A. John. I ſpin for my Living, ſince my Huſband died.

Mr. *Nares*. What was his Buſineſs?----*A. John*. He uſed to ſell Fiſh.

Mr. *Nares*. Do you know *Mary Squires*?

A. John. I do; I ſaw her at my Door.

Mr. *Nares*. Look about, and ſee if you ſee her.

A. John. There ſhe ſits *(pointing to her)*: I am ſure that is ſhe.

Mr. *Nares*. When did you firſt ſee her?

A. John. It was at my Door, *January* was a Twelve-month.

Mr. *Nares*. How came you to think it that Time, more than any other Time?

A. John. I am ſure of it; it was the 18th of *January*.

Mr. *Nares*. How do you know it?

A. John. By carrying Home my Work; I carried it Home two Days before, which was the 16th.

Mr. *Nares*. Who do you work for?

A. John. Mr. *Smitheram*; I have worked for him many Pounds.

Mr. *Nares*. How do you know by carrying Home that Work in particular?

A. John. That was the firſt I carried Home in the New-Year, which is the Reaſon I remember when it was.

Mr. *Nares*. Where did you ſee *Mary Squires* on the 18th of *January*?

A. John. She came to my Door, and aſked me, If I had any China to mend? I told her, I had not. Then ſhe aſked me, If I had any blue and white Ware to mend? I ſaid, I had none but what I could mend myſelf. Then ſhe aſked me for ſome Victuals.

Mr. *Nares*. Was ſhe alone?

A. John. Yes, I ſaw Nobody with her.

Mr. *Nares*. Did you give her any Victuals?

A. John. No, I did not.

Mr. *Nares*. Did you ſee her any Time after this?

A. John. I ſaw her twice after; ſhe was four Times at my Door in all.

Mr. *Nares*. Did you ſee her all the four Times?

A. John. I ſaw her three of them; the next Time ſhe begged for ſome Victuals, and to light her Pipe; I gave her no Victuals.

Mr. *Nares*. What, the next Time?

A. John. She aſked me the next Time to let her light her Pipe.

Mr. *Nares*. Are you ſure this is the ſame Perſon?

A. John. I am ſure it is.

Mr. *Nares*. How ſoon was it you ſaw her after?

A. John. This was all in ten or eleven Days; I think, the laſt Time I ſaw her was two Days before ſhe was taken up to be brought away.

Mr. *Nares*. Did you ſee her when ſhe was taken up?

A. John. No, I did not.

Mr. *Nares*. Did you ſee her in her Confinement in *Newgate*?

A. John. I did.

Mr. *Nares*. Did you know her then?

A. John. I did, and I am ſure ſhe is the ſame Woman.

Croſs-Examined.

Mr. *Willes*. How many Years have you ſpun for Mr. *Smitheram*?

A. John. Two Years and a Half.

Mr. *Willes*. How often in a Year did you uſe to carry Home your Work?

A. John. I don't know; I ſpin for another Man; ſometimes him, and ſometimes the other.

Mr. *Willes*. Do you always ſet it down?

A. John. No, but they ſet us down.

Mr. *Willes*. Is Mr. *Smitheram* here?

A. Johnſon

A. Johnson. I do not know.

Mr. *Willes.* Did you ever see his Book?

A. John. Yes, I have: That Day I am sure to be the 16th of *January*; and he set it down.

Mr. *Willes.* What Day of the Week do you carry home your Work?

A. John. I don't know that; sometimes one Day, and sometimes another.

Mr. *Willes.* Can you tell what Day of the Week this 16th of *January* was?——*A. John.* I can't say whether it was *Tuesday* or *Wednesday*, but it was a snowy Day.

Mr. *Willes.* Have you ever heard there were Gypsies at Mother *Wells*'s?

A. John. I have several Times.

Mr. *Willes.* What Sort of a Dress was she in?

A. John. She had a light-coloured Cloak on, and a red one over that, and an old black Hat, and a Thing pinned close to her Face, (it was a Clout or Handkerchief) and an old brown Gown.

Mr. *Nares.* Had you heard of Gypsies being at *Enfield*, before she came to your House?

A. John. I had; I had been asked if she had been at my House, and told my Fortune.

Grace Kirby sworn.

Grace Kirby. I live at *Enfield.*

Mr. *Nares.* How long have you lived there?

G. Kirby. I have lived a Twelve-month last *Christmas*, or a little after, about a Week or a Fortnight.

Mr. *Nares.* Do you know *Mary Squires*?——*G. Kirby.* Yes, Sir.

Mr. *Nares.* Look about the Court, and see if you see her.

G. Kirby. That is she, Sir (*pointing to her*).

Mr. *Nares.* Do you remember seeing her there?

G. Kirby. Yes, she came to my Door about a Fortnight before she was taken up at Mrs. *Wells*'s.

Mr. *Nares.* Are you sure it is so long as a Fortnight?

G. Kirby. Thereabouts; it may be a Day over or under: I believe it was no more than that either way.

Mr. *Nares.* What did she come to your Door for?

G. Kirby. She asked me if I sold Potatoes? I told her, I had none, nor did not know where they were sold.

Mr. *Nares.* Did you take much Notice of her?

G. Kirby. I did; so much, that I knew her again when I saw her.

Mr. *Nares.* Where did you see her again?

G. Kirby. The next Time I saw her was in *Newgate.*

Mr. *Nares.* Did you know her then?

G. Kirby. Then I was certain sure she was the same Person.

Mr. *Nares.* And are you certain sure this is the same Person here?

G. Kirby. I am, Sir.

Mr. *Nares.* What Reason have you to think it was about the Time you have mentioned?

G. Kirby. Because I had been but a very little Time in my House: I had lived in the same Parish about half a Mile further.

Mr. *Nares.* What Time did you come to that House?

G. Kirby. It was some Time after *Christmas.*

Mr. *Nares.* Were there any body with her?

G. Kirby. No, there were none.

Mr. *Nares.* How was she dressed?——*G. Kirby.* I don't know that.

Cross-Examined.

Mr. *Davy.* How soon after your coming to that House did you see her?

G. Kirby. I can't say to any Time.

Mr. *Davy.* How soon after *Christmas* did you come to live there?

G. Kirby. I cannot say; it might be a Week, or it might be a Fortnight.

Mr. *Davy.* Why do you believe this?

G. Kirby. Because I have recollected my Memory.

Mr. *Davy.* How soon after did you recollect your Memory?

G. Kirby. The next Day.

Mr. *Davy.* Was you desired so to do?——*G. Kirby.* I was considering with myself when it was that I saw that Woman.

Mr. *Davy.* When did you consider?

G. Kirby. I don't know: I did consider it.

Mr. *Davy.* How far do you live from Mrs. *Wells*'s House?

G. Kirby. About half a Mile.

Mr. *Davy.* Are you sure it was eight Days before they were taken up, that you saw her?——*G. Kirby.* I cannot tell.

Mr. *Nares.* Tell as near as you can.

G. Kirby. As nigh as I can guess, it was a Fortnight, within a Day over or under.

Mr. *Nares.* How many Days is a Fortnight?

G. Kirby. There are fourteen.

Mr. *Nares.* Do you believe what you have said, that about a Fortnight was the Time?——*G. Kirby.* Yes, Sir.

Wife Bassett sworn.

Mr. *Nares.* What is your Husband's Name?

W. Bassett. It is *John*: We live in *Green-Street* at *Enfield*, and have lived there twenty-one Years.

Mr. *Nares.* Do you know *Mary Squires*?

W. Bassett. I do; I have seen her twice.

Mr. *Nares.* Look about the Court, and see if you see her.

W. Bassett. That is she.

Mr. *Nares.* When did you see her before?

W. Bassett. She came to my House, and asked me to let her light a Pipe, and I gave her a Breakfast.

Mr. *Nares.* When was this?——*W. Bassett.* It was either the 21st or 22d of *January* was Twelve-month.

Mr. *Nares.* What do you recollect the Day by?

W. Bassett. Because I killed a Hog on the *Thursday* before New *Christmas*, and that Day a young Woman that lived with me went to Service; and that Day Month I saw the Gypsey.

Mr. *Nares.* What do you compute your Time from?

W. Bassett. I take the Account Day by Day from the Killing the Hog.

Mr. *Nares.* What Day of the Week do you reckon it was?

W. Bassett. It was of a *Monday*, to be sure; that I am very certain of.

Mr. *Nares.* Had you any Conversation with *Mary Squires*?

W. Bassett. She came and opened the Door, then came in, and asked me to let her light her Pipe: I gave her a Penny for telling me my Fortune.

Mr. *Nares.* Did she offer to tell you your Fortune?

W. Bassett. She began to tell me.

Recorder. Are you a married Woman?——*W. Bassett.* I am; it was a little Foolishness that belongs to Woman-kind.

Mr. *Nares.* Then she offered to tell you; you did not offer it.

W. Bassett. I did not: She said, if I would cross her Hand with a Penny, she would tell me my Fortune.

Mr. *Nares.* Upon my Word, that is cheaper than she has done to any body else as we have heard of: Did she tell you your Fortune?

W. Bassett. I had a little of her Nonsense.

Mr. *Nares.* Was it good or bad?

W. Bassett. I don't know; I cannot say for that.

Mr. *Nares.* How long was she about telling your Fortune, and lighting her Pipe?——*W. Bassett.* I can't tell the exact Time: I gave her some Tea, and let her sit down and warm herself.

Mr. *Nares.* Did you take so much Notice of her as to know her again?

W. Bassett. I did; and this is the Woman.

Mr. *Nares.* Did you see her after this?

W. Bassett. I saw her in *Newgate*, and told her the same that I do now; and she said, What signifies that, did I wrong you of any Thing?

Mr. *Nares.* Did you say to her, what Time you saw her at your House?

W. Bassett. Yes, I did; and she said it was not the right Time: But I said it was, and I stood to that Time.

Mr. *Nares.* Are you sure it was that Day?

W. Bassett. It was that Day indeed.

Cross-Examined.

Mr. *Willes.* Is that the only Reason you have to remember it, because you killed a Hog on the Day you mention?

W. Bassett. That is the only Reason.

Mr. *Willes.* In what Manner was you introduced into her Presence in *Newgate*, and how was she sitting?

W. Bassett. She was sitting smoaking her Pipe by the Fire-side.

Recorder. Was it a Month before you saw her at your House, that you killed a Hog, or not?——*W. Bassett.* I killed my Hog on the *Thursday* before New *Christmas*, and that Day my Servant went to her Place; and I saw the Gypsey, a Month after I killed my Hog, at my House.

Mr. *Willes.* Was she alone, or in Company, when you saw her in *Newgate*?——*W. Bassett.* There were a great many People with her, her two Daughters, and several People that were carried up to see if they knew her or not.

Recorder. Are you sure she told you it was not right, when you mentioned the Day?——*W. Bassett.* I am.

James Pratt sworn.

J. Pratt. I live at *Cheshunt*, about two Miles from *Enfield*; but I did live at *Enfield.*

Mr. *Nares.* What are you?——*J. Pratt.* I am a Day-labouring Man.

Mr. *Nares.* Have you seen *Mary Squires*?——*J. Pratt.* Yes, Sir.

Mr. *Nares.* Look about, and see if you can see her.

J. Pratt. Yes, that is she (*pointing to her*).

Mr. *Nares.* When was the first Time you saw her?

J. Pratt. The first Time I saw her was in *William Smith*'s Cow-house, on a *Thursday.* When she came there, she asked me Leave to lie there (I work there as a Day-man); I told her to go to the House, and ask Leave there; she went up to the Door.

Mr. *Nares.* Did you hear her ask Leave?

J. Pratt. No, I did not hear her, but she lay there.

Mr. *Nares.* How long did she continue there?

J. Pratt. Three Days; she went away on the *Sunday.*

Mr. *Nares.* Did you see her in the Time?

J. Pratt. I did several Times.

Mr. *Nares.* What Day of the Month did she come there?

J. Pratt. To the best of my Remembrance (I cannot be positive no longer than as to the House I lived in; I went out of it three Days before New *Christmas*), it was before I went out of the House to go to *Cheshunt*, where I now live; but I cannot recollect any Day of the Month.

Mr. *Nares* Are you sure it was before you went to your new House?

J. Pratt. I am sensible it was.

Mr. *Nares.* Had you ever any Conversation with her?

J. Pratt. I can't say but I had.

Mr. *Nares.* Were there any other Persons with her?

J. Pratt. There were a Man and two Woman-kind, one a young Girl-like, and the other may be thirty, and better.

Recorder. Were there any Children?——*J. Pratt.* I can't tell.

Mr. *Nares.* Can you tell the Time of the Day you had this Conversation?

J. Pratt. It was on a *Friday*, some time of the Day, but can't tell the Hour: She complained that she lost a Horse, a little Poney, and asked me, whether I saw it? but I had not seen him.

Mr. *Nares.* Did she any otherwise describe the Horse but by a little one?

J. Pratt. Yes, she did; but I have forgot: I remember she said, he had a Clog on, and that her Name was on the Clog.

Mr. *Nares.* Did she tell you, upon your Oath, what her Name was?

J. Pratt. Yes, she did; but I did not take much Notice of it.

Mr. *Nares.* Should you know it when you hear it?

J. Pratt. I believe I should; I think she said her Name was *Mary Squires*, and that *that* Name was on the Clog.

Mr. *Nares.* Had you any other Conversation with her?

J. Pratt. Yes; on the same Day she told me it was her Belief I was the Man that had the Horse.

Mr. *Nares.* Why did she say so?

J. Pratt. Because I worked in the Yard, and the Horse was missing, and I happened to speak a Word to the Man that was with her: I asked him, what he would give me to help him to his Horse again? so he went and told her directly.

Mr. *Nares.* Do you think you ſhould know that Man?
J. Pratt. I can't be poſitive.
Mr. *Nares.* Look about, and ſee if you ſee any body like him.

(*He looks round; and as his Eye paſſed over* George Squires *backwards and forwards,* George *held down his Head.*)

A Juryman. I ſee *George* hold his Face down, as the Witneſs looks towards him.

Mr. *Davy.* *George,* when Witneſſes are ordered to look for you, hold up your Head; I myſelf ſaw you this Time; it does not look well.

J. Pratt. It is hard ſaying, I will not ſwear in that.

Mr. *Nares.* Had you any other Talk with her?

J. Pratt. Yes, Sir: After ſhe told me about having the Horſe, ſhe ſaid, ſhe had got a very good Friend not far off, and ſhe would go to him, and if ſhe wanted a Guinea or Two, ſhe could have it; and ſhe would go to the Cunning Man, and would have the Horſe, if he was above Ground.

Mr. *Nares.* How came ſhe to talk of going to a Cunning Man, when ſhe would be looked upon to be a Cunning Woman herſelf?

J. Pratt. I don't know that.

Mr. *Nares.* Did ſhe ever undertake to tell you your Fortune?

J. Pratt. No, ſhe did not.

Mr. *Nares.* Upon your Oath, is this the Woman you ſaw at that Time?

J. Pratt. Upon my Oath, that is the Woman, that is the Woman.

Mr. *Nares.* Did you ever ſee her after that, before you ſaw her in *Newgate?*

J. Pratt. No: When I ſaw her in *Newgate,* I was turned up Stairs; the Door was opened; there were ſeveral People at the Door; they bade me look in; I knew her immediately, the very ſame Moment; I ſaid, That is the Woman that I came after.

Croſs-Examined.

Mr. *Davy.* Was there any other Woman in *Newgate* but her?

J. Pratt. Not that I ſaw: I ſaid, That is the Woman, and ſo it was, certainly.

Mr. *Davy.* Were there other People at *Enfield* with her, when you ſaw her there?---*J. Pratt.* There were.

Mr. *Davy.* Were any of them like her in the Face?

J. Pratt. No, none of them.

Mr. *Davy.* Something like her?---*J. Pratt.* No.

Mr. *Davy.* Was you ever in a Court of Juſtice before?

J. Pratt. No.

Mr. *Davy.* Was you ever upon your Oath before?

J. Pratt. No, Sir.

Mr. *Davy.* Will you venture to ſay, as you are upon your Oath, that this is the Woman, and no other, and you are not miſtaken?

J. Pratt. Upon my Oath, this is the Woman, I am poſitive in my Conſcience, and I am ſure that was no other Woman; this is the Woman I ſaw at that bleſſed Time.

Mr. *Davy.* Did you ever ſee a Woman like her in your Life?

J. Pratt. No, never in my Days.

Mr. *Davy.* How came ſhe to tell you her Name was upon the Clog?

J. Pratt. Becauſe ſhe had loſt the Horſe; and ſhe deſired me, if I ſhould ſee the Horſe, or find the Clog, to let her know; and told me, her name was *Mary Squires,* and that it was upon the Clog.

Mr. *Davy.* Do you know how large the Clog was?

J. Pratt. No, I never ſaw it.

Mr. *Davy.* Do you remember ſhe told you the Name was *Mary Squires?*

J. Pratt. I am certain of it.

Mr. *Davy.* Was it not *Sarah?*---*J. Pratt.* I am ſure it was *Mary Squires.*

Lydia Farroway ſworn.

Mr. *Nares.* Where do you live?

L. Farroway. I live at *Enfield-Waſh,* with Mr. *Howard.*

Mr. *Nares.* How long have you lived there?

L. Far. I came there on the 1ſt of *Auguſt* was Twelve-month, and lived with them a Year and a Quarter, and upwards.

Mr. *Nares.* Was you there on *Chriſtmas* was Twelve-month?

L. Far. I was.

Mr. *Nares.* Tell us, as near as you can, when you firſt ſaw the Gypſey.

L. Far. I ſaw her more than once or twice.

Mr. *Nares.* Tell us the firſt Time.

L. Far. I will, as near as I can; but I muſt begin with another Time, not the firſt: As I was going with my young Maſter to School about the latter Part of *January* was Twelve-month, I ſaw her at a Gentleman's Houſe, talking to the Maid; to ſay to the Day of the Month, I cannot.

Mr. *Nares.* Do you know when the Gypſey-Woman was taken up?

L. Far. That was on a *Thurſday,* to the beſt of my Remembrance; and the *Tueſday* was Se'nnight before I ſaw her.

Mr. *Nares.* Name the Gentleman's Name that belongs to that Houſe.

L. Far. It was Mr. *Mackhouſe*'s, a Quaker, juſt on this Side the *Bell.*

Mr. *Nares.* Did you ſee her before that?

L. Far. I ſaw her once or twice before; but how long before, I can't ſay.

Mr. *Nares,* Are you poſitive you ſaw her once or twice before?

L. Far. Upon my Oath, I am poſitive I ſaw her once or twice before.

Mr. *Nares.* Look about the Court; and tell me if you ſee her any where here.

L. Far. That is the Woman, I am poſitive to her (*pointing to her*).

Mr. *Nares.* Did you ſee her after that?

L. Far. I did; I ſaw her get into the Cart when ſhe was carried away, and I ſaw her after that in *Newgate.*

Mr. *Nares.* Did you think that was the ſame Woman, when you ſaw her get into the Cart?

L. Far. I did; ſhe was the firſt Woman that got into the Cart.

Mr. *Nares.* Are you ſure the Time you mention you ſaw her talking to a Maid-ſervant, was in *January?*—*L. Far.* It was, I am ſure.

Mr. *Nares.* Are you ſure that Woman is the ſame which you ſaw in the Cart?—*L. Far.* I am ſure of it.

Mr. *Nares.* Was that the ſame Perſon which you ſaw in *Newgate?*

L. Far. It was; and this is the Woman ſitting here.

Mr. *Nares.* How came you to fix upon the *Tueſday* was Se'nnight before ſhe was taken up?

L. Far. Becauſe I had been making ſome Pyes againſt my young Maſter's Birth-day, which was the 29th of *January*; and we made them before the Time, that they might be cold, to be heated again.

Mr. *Nares.* Did they come to your Maſter's Pump at all?

L. Far. One of the Daughters did; I ſaw her there two or three Times.

Mr. *Nares.* About what Time?

L. Far. About the Time I ſaw her Mother.

Mr. *Nares.* Are you the Perſon that went and told your Miſtreſs, that the Gypſey-Girl was in the Yard?

L. Far. I am, Sir; and my Miſtreſs went to the Parlour-Window to ſee her.

Mr. *Nares.* What Day of the Month was this?

L. Far. I can't tell that, nor I can't tell the Week.

Croſs Examined.

Mr. *Willes.* Are you ſure your young Maſter's Birth-day is on the 29th of *January?*—*L. Far.* I am ſure it is.

Mr. *Willes.* What Pyes were you making?---*L. Far.* Mince-pyes.

Mr. *Willes.* Why did you make them ſo long before-hand?

L. Far. I made them ſo long before-hand, that we might warm them by the Fire on his Birth-day?

Mr. *Nares.* Had you ever ſeen *Mary Squires* in any body's Shop at any Time?---*L. Far.* I can't ſay I had.

Mr. *Willes.* When was the firſt Time you ſaw her?

L. Far. To ſay the firſt Time, I can't; but the Time I can be poſitive of, was the 23d of *January.*

Mr. *Willes.* Is the Birth-day the 29th by Old Stile or New?

L. Far. It was on a *Monday,* and by the New Stile.

Mr. *Willes.* Did you ſee the Gypſey firſt, or her Daughter come for Water firſt?

L. Far. To the beſt of my Memory, I ſaw the Gypſey firſt.

Mr. *Willes.* Which of her Daughters was it that came to the Pump?

L. Far. I can't ſay which.

Mr. *Nares.* You ſay you ſaw the Gypſey before you ſaw the Daughter, but can't fix upon that Time?---*L. Far.* No, I can't indeed.

Margaret Richardſon ſworn.

Mr. *Nares.* Where do you live?---*M. Rich.* I live in *Green-Street* now, but did live in *Turkey-Street, Enfield.*

Mr. *Nares.* How long have you lived in *Green-Street?*

M. Rich. Ever ſince laſt *Michaelmas*; I lived in the other thirteen Years.

Mr. *Nares.* Do you know *Mary Squires?*

M. Rich. I know this Woman (*pointing to* Mary Squires).

Mr. *Nares.* Where did you ſee her?

M. Rich. I ſaw her at Mrs. *Waterhouſe*'s in *Turkey-Street,* in the New *Chriſtmas* Week, as near as I can gueſs.

Mr. *Nares.* What is her Buſineſs?

M. Rich. She ſells Butter, Cheeſe, Flour, and all Manner of Things for poor Folks.

Mr. *Nares.* What did ſhe go to buy there?

M. Rich. I can't ſay nothing to what ſhe came to buy; ſhe was ſmoaking a Pipe when I went in there.

Mr. *Nares.* Are you ſure this is the ſame Woman?

M. Rich. I am ſenſible and certain ſure this is the ſame Woman.

Mr. *Nares.* Was you long in that Shop?

M. Rich. I ſat down there, I believe, a Quarter of an Hour; and I took particular Notice of her, becauſe I never ſaw the like before, and I was ſurprized.

Mr. *Nares.* Was you in the ſame Room with her?

M. Rich. The Shop and Houſe is all one Room; the Fire-place is there; I left her there when I went away.

Mr. *Nares.* Did you ever ſee her at any other Time?

M. Rich. I ſaw her come by my Door in *Turkey-Street* on Old *Chriſtmas-Day:* My Dog had like to have fell upon her; but my Huſband was in the Yard, and he prevented him.

Mr. *Nares.* Are you ſure that was the ſame Woman you ſaw in the Shop?—*M. Rich.* I am poſitive it was.

Mr. *Nares.* Are you ſure this was on Old *Chriſtmas-Day?*

M. Rich. I am.

Mr. *Nares.* Did your Huſband work on Old *Chriſtmas-Day?*

M. Rich. No; as he played the New *Chriſtmas-Day,* he was reſolved to make Holiday on that; ſo he was at Home.

Mr. *Nares.* Did you ever ſee her after?

M. Rich. Not till ſhe was out of *Wells*'s Houſe, and put into the Cart; then I ſhook Hands with Mother *Wells,* and told her ſhe had done for herſelf: My Huſband was the Man that drove the Cart: The Gypſey was the firſt that got into it, and *Wells* the next, and *Virtue Hall* the next. I ſaw them all go off.

Mr. *Nares.* Did you ever ſee her in Cuſtody?

M. Rich. No, I did not.

Croſs-Examined.

Mr. *Willes.* So you told Mother *Wells* ſhe had done for herſelf; what was her Reply?

M. Rich. She ſaid, ſhe ſhould return again.

Mr. *Willes.* Then ſhe and you are very good Friends?

M. Rich. No.

Mr. *Willes.* How came you to inſult her?

M. Rich. I never had a Quarrel with her, upon my Oath.

Mr. *Willes.* Then how came you to ſay ſo?

M. Richardſon. Becauſe ſhe had been in a great many Broils and Troubles, and Nobody thought ſhe would have got out of them.

Mr. *Willes.* Do you know which is Old *Chriſtmas-Day*, and which is New *Chriſtmas-Day*?

M. Rich. You muſt tell me, my Memory cannot be ſo good.

Mr. *Willes.* Which comes firſt?

M. Rich. Why, the New *Chriſtmas-Day.*

Mr. *Willes.* How many Days Difference?

M. Rich. Some call it nine, but there may be more.

Mr. *Willes.* How old are you, good Woman?

M. Rich. I don't know juſtly.

Mr. *Willes.* What Day of the Week was Old *Chriſtmas-Day?*

M. Rich. It was of a *Tueſday* or *Wedneſday*, I can't remember which.

Mr. *Willes.* Is *Chriſtmas-Day Holy Thurſday* or *Good Friday?*

M. Rich. I can't reſolve no ſuch Thing; I am no Scholar; I can't pretend to know ſuch Things.

Mr. *Willes.* What Month is *Chriſtmas-Day* in?

M. Rich. I can't ſay that neither, becauſe you put me to a Stop.

Mr. *Willes.* Is it the 25th of *February?*

M. Rich. I don't know juſtly, indeed.

Mr. *Nares.* You put the poor old Woman in a Hurry.

Recorder. Don't be affrighted: Can you tell what Month *Chriſtmas* is in?

M. Rich. I cannot.

Recorder. In what Seaſon of the Year is it?

M. Rich. To be ſure I can tell that; it is in Winter.

Recorder. Don't be terrified; you are come here to tell the whole Truth, and nothing but the Truth, and not to tell a particular Story, but to anſwer all ſuch Queſtions that the Court ſhall think proper to aſk you.

Mr. *Willes.* Pray, why do you keep *Chriſtmas* Holidays?——*No Anſwer.*

George Clements ſworn.

Mr. *Nares.* Where do you live?

George Clements. I live at *Enfield* Highway with Mr. *Hamilton*; I entered Yeſterday after I went Home.

Mr. *Nares.* Did you live with Mr. *Star* any Time?

G. Clements. Yes, Sir; I came away laſt *Michaelmas*; he lives down the *Marſh-Lane* by Mrs. *Wells*'s.

Mr. *Nares.* How long did you live with him?

G. Clements. About a Year and a Quarter.

Mr. *Nares.* Do you know *Mary Squires?*

G. Clements. I do; that is the Woman that ſits there in a red Cloak.

Mr. *Nares.* Are you very ſure of it?——*G. Clements.* I am ſure.

Mr. *Nares.* Do you know Mrs. *Wells?*——*G. Clements.* I do; my Maſter lives but about a hundred Yards from her Houſe.

Mr. *Nares.* Do you remember the Time ſhe was taken up?

G. Clements. I do.

Mr. *Nares.* How long had you ſeen *Mary Squires*, before Mrs. *Wells* was taken up?

G. Clements. I had ſeen her about a Fortnight before that.

Mr. *Nares.* Where did you ſee her?——*G. Clements.* She came into my Maſter's Houſe, and wanted to tell my Miſtreſs her Fortune.

Mr. *Nares.* Did ſhe come in of her own Accord?

G. Clements. She opened the Door, and came in, as I was ſitting at Dinner. My Miſtreſs would not let her tell her Fortune; ſhe was afraid of her, and gave her a Bit of black Pudding to get rid of her. She aſked my Miſtreſs to let her have a Pound of pickled Pork.

Mr. *Nares.* Did ſhe want any thing elſe?

G. Clements. I don't remember any thing elſe.

Mr. *Nares.* How long did ſhe ſtay in the Kitchen?

G. Clements. I can't tell how long.

Mr. *Nares.* Did you ſee her after this?

G Clements. I did, about two or three Days after, as ſhe was going up into the Walk to *Turkey-Street*; it was a very cold Day.

Mr. *Nares.* Was any body with her?——*G. Clements.* No, Nobody.

Mr. *Nares.* What do you call that Walk?

G. Clements. There is no Name to it, as I know of. I ſaid to her, It is a very cold Day. I remembered that was the Woman I had ſeen at my Miſtreſs's.

Mr. *Nares.* Did you ever ſee her afterwards?——*G. Clements.* No, only when I ſaw her in *Newgate*, and then ſhe knowed me.

Mr. *Nares.* How do you know that?

G. Clements. I aſked her whether ſhe knew me? She ſaid, ſhe did.

Mr. *Nares.* Did you aſk her that of your own Accord?

G. Clements. I did; and ſhe ſaid to me, I aſked your Miſtreſs to let me have a Pound of pickled Pork, and what Harm did I do you if I was there?

Mr. *Nares.* Was you before the Grand Jury?

G. Clements. No, I was not.

Croſs-Examined.

Mr. *Willes.* Why do you know it was a Fortnight before they were taken up?——*G. Clements.* She came to our Houſe on a *Thurſday*: My Maſter was gone to *Hertford* to fetch a Load of Peaſe, and he carried them to *London* on the *Friday*.

Mr. *Willes.* What Day of the Month?

G. Clements. I can't tell the Day of the Month. This *Thurſday* Fortnight before ſhe was taken up, then I was ſpreading Dung in the Marſh.

Mr. *Willes.* Do you ever ſlide on the Ice?

G. Clements. No, I never could ſlide in my Life.

Mr. *Willes.* Have you ſeen Boys ſlide on the Ice?—*G. Clements.* I have.

Mr. *Willes.* Do you remember a Pond near Mrs. *Wells*'s Houſe?

G. Clements. Yes, I uſed to water my Horſes there.

Mr. *Willes.* Morning and Night?——*G. Clements.* Yes.

Mr. *Willes.* Do you know the Window that they ſuppoſe *Canning* made her Eſcape from?——*G. Clements.* I do.

Mr. *Willes.* Could you, by looking out of that Window, ſee that Pond?

G. Clements. I could, very plainly.

Mr. *Willes.* How many Yards might it be from the Window?

G. Clements. It may be about eight Yards.

Mr. *Willes.* Do you recollect whether there was froſty Weather that *January?*

G. Clements. Yes, there was.

Mr. *Willes.* Was that Pond froze over then?

G. Clements. It was; we were forced to break the Ice for the Horſes to drink.

Mr. *Willes.* Have you ever ſeen the Boys ſlide on the Ice on that Pond?

G. Clements. I have.

Mr. *Willes.* How many have you ſeen there ſliding together?

G. Clements. Two or three at a Time.

Mr. *Willes.* What Day of the Year is New *Chriſtmas Day* of?

G. Clements. I can't ſay that.

Mr. *Willes.* What Month is it in?——*G. Clements. December.*

Mr. *Willes.* The Beginning or latter End?——*G. Clements.* The 25th.

Mr. *Willes.* What Day is Old *Chriſtmas-Day* of?

G. Clements. It is eleven Days after.

Mr. *Nares.* Are you ſure it was on the *Thurſday* Fortnight before *Wells* was taken up, that you ſaw *Mary Squires?*

G. Clements. I am ſure it was; and that ſame Day my Maſter went to *Hertford.*

Mr. *Willes.* Do you know *William Headland?*——*G. Clements.* I do.

Mr. *Willes.* Is he a ſober Youth, or not?

G. Clements. I know no Harm of the Boy.

Mr. *Willes.* Whether, amongſt the Boys of the ſame Age, is his Character a good or bad one? If he has a good Character, upon your Oath ſay ſo; if not, upon your Oath ſay it.

G. Clements. I am ſure I never heard any body give him a bad Character.

Hannah Fenſham ſworn.

Mr. *Williams.* Where do you live?

H. Fenſham. I live at *Enfield.*

Mr. *Wil.* Are you a married Woman?

H. Fenſham. I am; my Huſband's Name is *John Fenſham*; he is a Gardener.

Mr. *Wil.* How long have you lived at *Enfield?*

H. Fenſham. Fifteen or ſixteen Years.

Mr. *Wil.* Look at that old Woman, take a full View of her.

H. Fenſham. I know her; I have ſeen her before.

Mr. *Wil.* When?——*H. Fenſham.* On the 16th of *January* 1753, I mean after New *Chriſtmas-Day*, I ſaw her in *Trotts-Walk*, on the Side of Madam *Crow*'s Garden, in *Enfield*, pretty near the Highway.

Mr. *Wil.* What was ſhe doing?

H. Fenſham. I met her in the Walk.

Mr. *Wil.* What Time of the Day?

H. Fenſham. In the fore Part of the Day.

Mr. *Wil.* What Day of the Week?

F. Fenſham. I can't recollect what Day of the Week.

Mr. *Wil.* Have you ever ſeen her ſince the 16th?

H. Fenſham. I have ſeveral Times ſeen her paſs and repaſs.

Mr. *Wil.* What was her Buſineſs?

H. Fenſham. I don't know that, except it was going to the Chandler's Shop.

Mr. *Wil.* Do you know the Time ſhe was taken up?

H. Fenſham I was not there then.

Mr. *Wil.* Did you ſee her often between the 16th of *January* and 1ſt of *February?*——*H. Fenſham.* I did divers Times.

Mr. *Wil.* Did you ſee her after ſhe was taken up?

H. Fenſham. I did in *Newgate*, and I recollected her then.

Mr. *Wil.* Look at her again; are you certain this is the ſame Perſon?

H. Fenſham. Yes, Sir, I am certain of that.

Mr. *Wil.* What may be your Reaſon for recollecting the 16th of *January?*

H. Fenſham. There was a Snow on the 15th at Night, and the 16th it was wet; and walking along, I had like to have fell, as my Pattens were on: She ſtopped and looked at me, and I at her: When I came Home, my Neighbours ſaid, This Snow is come in the right Seaſon, Yeſterday was the 15th; then I ſaid, This muſt be the 16th; and not only that, but I went to the Almanack, and looked that very Day.

Mr. *Wil.* Did ſhe ſpeak to you?

H. Fenſham. No, nor I to her; but her Perſon is ſo particular, that I can ſwear ſhe is the ſame.

Mr. *Wil.* What did ſhe appear to be?

H. Fenſham. A Gypſey, which I had heard of before: I was aſked, if I had ſeen the Gypſey, becauſe ſhe went up and down telling Fortunes.

Mr. *Wil.* Was you aſked before or after this?

H. Fenſham. It was two or three Days after, and then I knew her.

Croſs-Examined.

Mr. *Willes.* What is the Reaſon you know it to be the 16th?

H. Fenſham. Becauſe it was a great Snow on the 15th at Night.

Recorder. Did you ſee any Company with her at any Time?

H. Fenſham. No, I did not.

Mr. *Willes.* Did you look directly to the Almanack?

H. Fenſham. No, Sir, not till the 16th at Night.

Mr. *Willes.* Are you very well ſkilled in Almanacks?

H. Fenſham. Why not? I can read and write a little.

Mr. *Willes.* Do you know what Day of the Week it is by the Almanack?

H. Fenſham. I can, I think ſo; my Head is good enough for that.

Mr. *Willes.* Look in this Almanack, and tell me what Day of the Week it is?

H. Fenſham. (*She takes it in her Hand, which was a common Sheet Almanack, folded up into a Book.*) I can't ſee by this, it is ſo ſmall.

Mr. *Willes.* Look at it again, and take your Time.

H. Fenſham. I cannot ſee without my Spectacles (*ſhe puts them on*); you ſhall not fool me ſo.

Mr. *Willes.* Tell me by this the Day of the Week for the 14th of *December.*

H. Fenſham. This is not ſuch an Almanack as I look in; I look in a Sheet Almanack; I cannot tell by this.

Mr. *Willes.* Give it me again, if you cannot tell. All the Reaſon you have to fix it is, that the Snow fell on that Day upon which you refer to your Almanack; and now you have ſhewn your Skill in Almanacks.

Mr.

Mr. *Williams*. How long was it after New *Chriſtmas*? Was it a Fortnight, or three Weeks, or a Month?

H. Fenſham. It was not much above a Fortnight after.

Mr. *Will*. Do you know which is *Sunday* in the Almanack? (*She takes it again.*)

Mr. *Will*. Look in the Month of *January*. (*She tells down from the 1ſt to the 7th Day, and ſaid that was* Sunday, *which happened to be* Tueſday.)

Elizabeth Sherrard ſworn.

Mr. *Williams*. Where do you live?

E. Sherrard. At *Ponder's-End*; that is about a Mile and Half from *Enfield*. I keep a Room, and pay my Rent myſelf.

Mr. *Will*. Do you remember ſeeing the Gypſey about *Enfield*?

E. Sher. I do; I ſaw her Three Days running before New *Chriſtmas*, *Thurſday*, *Friday*, and *Saturday*.

Mr. *Will*. Look about, and ſee if you ſee her here. (*She could not ſee her; ſhe went down and looked about, and up again twice; the laſt Time ſhe pointed to her.*)

E. Sher. Why, this is the Woman.

Mr. *Will*. What *Thurſday*, *Friday*, and *Saturday* do you mean?

E. Sher. I mean immediately before New *Chriſtmas*.

Mr. *Will*. Where did you ſee her?

E. Sher. In Mother *Wells*'s Houſe. I went there, and went into her Parlour, and when I came out again, I ſaw the Gypſey ſtand at the Kitchen Door. I turned back again, and aſked Mrs. *Wells*, who ſhe had got in her Houſe? She ſaid, Lodgers. On the *Friday* I went into the *Marſh-Lane*, and ſaw her ſtanding at the Window; and on *Saturday* I went down to *Cheſhunt*, and ſhe was ſtanding then at the Door.

Mr. *Will*. How did you come to go to Mrs. *Wells*'s?

E. Sher. She aſked me to come in, that is, my Neighbour *Wills* did; ſhe wanted to ſee me, becauſe I had not been well.

Mr. *Will*. Had you any Acquaintance with her?

E. Sher. No, nor never went near her Houſe.

Mr. *Will*. Have you ever ſeen the Gypſey ſince that Time, before To-day?

E. Sher. No, Sir, I never ſaw her but them Times, and this Time.

Mr. *Will*. Did you ſee any body there that belonged to her?

E. Sher. There were two young Wenches in the Parlour, and a young Man in the Kitchen; but whether they were her Son and two Daughters, I cannot tell.

Mr. *Will*. Had you any Converſation with her?

E. Sher. No, I never changed a Word with her; I don't like to have to do with them, I don't like them ſo well.

Croſs-Examined.

Mr. *Davy*. Look at that Man (*meaning* George Squires): Is that the Man?——*E. Sher*. I did not ſee his Face.

Mr. *Davy*. Did you ſee the two young Women's Faces?

E. Sher. I did; but whether I know them or not, I don't know; for they have changed their Habits, to be ſure; that is one of them (*pointing to* Mary *the Daughter*).

Mr. *Davy*. *Lucy*, ſhew your Face.

E. Sher. Yes, this is the other; I think I can ſwear to them.

Mr. *Davy*. Do you ſwear they are the ſame?

E. Sher. They are very much like them.

Mr. *Davy*. You went down twice to look at the old Woman; did you ſee her Face the firſt Time?

E. Sher. Yes, I did, but did not mind her till afterwards.

Mr. *Davy*. I hope you mind what you ſay; you know the Conſequence of Perjury: You are before God, and a Court of Juſtice; therefore attend to me: Did you ſee that old Woman upon your going down the firſt Time from off the Place you now ſtand?

E. Sher. I did not know her, becauſe ſhe is clean; ſhe is not ſo naſty and dirty as ſhe was before.

Mr. *Davy*. Then the ſecond Time you did recollect her: You ſay ſhe is the ſame Woman?

E. Sher. Yes, I do.

Mr. *Davy*. Did you ſee her Face the firſt Time going down?

E. Sher. No, I did not ſee her Face, becauſe I did not take ſo much Notice.

Mr. *Davy*. Did not you ſee her Face, or did not you know her Face?

E. Sher. I did ſee her Face; but being clean, ſhe is quite altered.

Mr. *Davy*. The Man that ſwore you ſaid, you were to ſwear to the whole Truth, and nothing but the Truth: You have one Foot in the Grave, and the other out, be careful what you ſay: Was ſhe cleaner the firſt Time than ſhe was the ſecond?

E. Sher. She is all the ſame, but I did not take ſo much Notice; and being cleaner, ſhe is altered.

Mr. *Davy*. Do you ſwear to her by her Complexion, or Features?

E. Sher. By her Complexion and Features both.

Mr. *Davy*. Did you ever ſee ſuch another Woman in your Life?

E. Sher. No, I never did.

Mr. *Davy*. What Day of the Month is New *Chriſtmas-Day*?

E. Sher. I cannot tell indeed, becauſe I can neither write nor read.

Mr. *Davy*. What Month is it in?---*E. Sher*. I cannot tell.

Mr. *Davy*. Was it in *June*, or *July*?---*E. Sher*. I cannot tell.

Mr. *Davy*. Was it in *June*?---*E. Sher*. I cannot tell.

Mr. *Davy*. Was it in *April*?---*E. Sher*. No, no, it was not in *April*.

Mr. *Davy*. What Month then?

E. Sher. It might be in *June*, for whatever I know: I know that is the Woman, to be ſure.

Alderman *Scott*. Was it in Winter, or in Summer?

E. Sher. It was in Winter.

Mr. *Davy*. Is New *Chriſtmas* before Old *Chriſtmas*, or after?

E. Sher. Nay, New *Chriſtmas* is before Old *Chriſtmas*, I am ſure.

Mr. *Davy*. Did you keep New *Chriſtmas*, where you live? do you go to Church?

E. Sher. Yes, I know it by going to Church, and every thing.

Mr. *Davy*. Did you go to Church on Old *Chriſtmas-Day*?

E. Sher. Yes.

Recorder. What Day of the Week was New *Chriſtmas-Day*?

E. Sher. It was on the *Tueſday*, was it not? It was *Monday* or *Tueſday* howſoever.

Mr. *Davy*. Do you go to Church every *Sunday*?

E. Sher. I very ſeldom miſs, when it is fair Weather.

Mr. *Davy*. Did you go to Church the *Sunday* before New *Chriſtmas-Day*?

E. Sher. I did on *Chriſtmas-Day*, and the *Sunday* before.

Mr. *Davy*. How many Days were there between?

E. Sher. You can make it but two Days, be it how it will.

Mr. *Davy*. Are you ſure?

E. Sher. It was about three Days; it was no more, nor could be any more.

Mr. *Davy*. How came you to know it was before New *Chriſtmas*?

E. Sher. Why, I'll tell you how I came to know: Mrs. *Wells* bid me come, and ſaid ſhe would give me ſomething for a *Chriſtmas*-Box: When I came there, ſhe aſked me to come in; I did, but did not ſtay but a very little Time: When I came to the Parlour Door, I ſaw the Old Gentlewoman ſtanding at the Kitchen Door.

Mr. *Davy*. What did ſhe give you for a *Chriſtmas*-Box?

E. Sher. She did not give me no great Matter.

Mr. *Davy*. There is no Harm in ſaying what it was.

E. Sher. It was a ſmall Matter; I had but a Penny.

Mr. *Davy*. Then ſhe gave you a Penny for your *Chriſtmas*-Box?

E. Sher. Yes, Sir.

Mr. *Davy*. Had you ever a *Chriſtmas*-Box of her before?

E. Sher. No.

Mr. *Davy*. Did ſhe give it you before or after *Chriſtmas-Day*?

E. Sher. It was three Days before.

Mr. *Davy*. Did any body elſe give you a *Chriſtmas*-Box?

E. Sher. Yes, Sir.

Mr. *Davy*. Had you ever a Farthing given you before *Chriſtmas-Day*?

E. Sher. Yes, Sir.

Mr. *Davy*. From whom? tell me that.

E. Sher. At Mr. *Picket*'s, and all the People that are able; they always give me ſomething at *Chriſtmas*, and to all their poor Neighbours.

Mr. *Davy*. What Buſineſs are you?

E. Sher. I work for my Living, as other People do.

Mr. *Davy*. Is it uſual to give before *Chriſtmas* or after?

E. Sher. We always go before *Chriſtmas*.

Mr. *Davy*. Do all give before *Chriſtmas*?

E. Sher. No, ſome give after *Chriſtmas*.

Mr. *Davy*. Who are they?

E. Sher. The Gentlemen at *Buſhy-Hill* do.

Mr. *Davy*. Where do the People live that give before *Chriſtmas*?

E. Sher. All the People at *Enfield* do.

Mr. *Williams*. Then you have *Chriſtmas*-Boxes given you before *Chriſtmas*? Then, I believe, you know pretty well when *Chriſtmas* comes.

E. Sher. Yes, Sir.

Mr. *Will*. What, you are a poor Woman? Thoſe People give it you before *Chriſtmas*, in order to ſpend at *Chriſtmas*?

E. Sher. Yes, Sir; only the Quakers, at *Buſhy-Hill*, give it after *Chriſtmas*.

Mr. *Will*. When *Chriſtmas* comes, you know it, don't you?

E. Sher. Yes, I do, Sir.

Recorder. Do you know New-year's Day?——*E. Sher*. I do.

Recorder. When does that happen?

E. Sher. That is the Week after *Chriſtmas-Day*.

Recorder. How many Days are there after New *Chriſtmas-Day* to New-year's Day?——*E. Sher*. A Week.

Recorder. Was you ever in the Workſhop at Mrs. *Wells*'s?

E. Sher. No, never in my Life; I never heard of it before.

Mr. *Will*. Did you never hear there was ſuch a Place as the Workſhop at Mrs. *Wells*'s?——*E. Sher*. No, indeed I did not.

Mr. *Nares*. On *Saturday* Night, Mr. *Moreton* received a Letter in Court, giving an Account that there was one Mrs. *Edwards*, who could give ſome Light into this Affair: Upon that he deſired ſhe might be ſubpœna'd. She was not in our original Briefs, and, I declare, I have ſtuck to that very ſtrictly, not to admit any Witneſſes that are not in the Brief. We are totally in the Judgment of the Court, whether ſhe ſhall be called or not. The Letter is anonymous.

Mr. *Davy*. The Gentlemen have been ſo candid as to ſhew me this Letter: I have not, to this Moment, attempted to oppoſe any thing, or the asking any Queſtions. What has been done in this Caſe, I have not done it. I have been in the Search of Truth: But after your Lordſhip has tied us down very ſtrictly, without any Poſſibility of Releaſe, I hope the Rule extends general without Exceptance. I ſubmit it as an Objection, with regard to the general Rule of Practice; but, I imagine, the Court will not think it proper, conſidering what has been done.

Mr. *Nares*. Mr. *Davy* mentions he has not objected to any Evidence; I don't know any Evidence that has been called he could object to, on our Side. We have not objected, or ſtopped them, in any Inſtance: But here is a poor Girl on her Trial; I would ſubmit it, how far the Court thinks this Agreement binds.

Baron *Legge*. I will tell you my Opinion as to this Matter: I thought it a right Propoſal, when made, on both Sides, that you ſhould go on, according to your Briefs, ſtated at that Time, in regard to the Trial; and as it has come to an unuſual Length, there was an abſolute Neceſſity for ſuch an Agreement, and to depart from it is an unprecedented Thing; therefore we muſt ward againſt all the Miſchiefs that can ariſe from it; the worſt that can ariſe is a growing Evidence upon an anonymous Letter; there is no Foundation on either Side for it, and we are not to admit of it.

Mr. Juſt. *Clive.* I am entirely of the ſame Opinion with my Brother: Upon this Evidence it will be left with the Jury, upon which Side the Evidence is moſt concluſive.

Mr. *Nares.* It was my Duty to mention it, as Mr. *Moreton* deſired ſhe might be ſubpœna'd; therefore I hope the Court will excuſe me. We will call Mr. *Salt* to prove the Examination of *Elizabeth Canning* before Juſtice *Fielding*.

Mr. *Davy.* Mr. *Salt* cannot explain away a written Evidence taken before a Magiſtrate: I object to his Evidence.

Mr. *Nares.* Then we will call to the Confeſſion of Mother *Wells*.

Mr. *Davy.* My Lord, I object to that; She is a very proper Evidence herſelf, ſhe has been branded in the Hand; if they will produce her, ſhe is within a few Yards of the Court.

Mr. *Nares.* This Girl is indicted for what ſhe gave in Evidence againſt *Suſannah Wells* and *Mary Squires*; ſhe is now called upon for a Perjury in ſwearing upon that particular Trial. Now theſe two Perſons were convicted; therefore, I take it for granted, we are at Liberty to give in a Circumſtance to prove what ſhe ſaid, in Evidence on the Indictment. All that *Wells* had ſaid at that Time was Evidence againſt *Wells*, and all that *Squires* had ſaid was Evidence againſt herſelf. We are now come to eſtabliſh her Evidence, ſtanding at the Time ſhe was examined; and, if we can prove from their own Declarations that *Canning* and *Squires* were there, we have a proper Right to call in ſuch Evidence, in order to corroborate that Girl's Teſtimony; for it is that Teſtimony that ſhe gave upon the Trial that is to be admitted.

Mr. *Davy* I will beg leave, in order to give Light to this Objection, to put the Caſe more familiarly: Suppoſe a Perſon had ſworn on a particular Day that I was at *York*, and that I ſaid I was at *York*; now my ſaying I was at *York*, is no Reaſon at all for their ſwearing I was there. I can only give them Authority to ſay, I ſaid I was at *York*; but I am the proper Perſon to be examined to the real Fact. Mrs. *Wells* is here to ſwear whether ſhe was or was not in her Houſe, and ſhe is a competent Witneſs to that Fact.

Mr. Juſt. *Clive.* This is an Indictment for Perjury, for a Teſtimony ſhe gave at a Trial betwixt the Crown and the two Priſoners *Squires* and *Wells*; and in Strictneſs the Teſtimony, to wit, *Suſannah Wells*'s, would not in the Courſe of the Trial have affected *Squires*, or *Squires*'s have affected *Suſannah Wells*; but this is an Indictment for Perjury, in the Teſtimony that this Girl *Canning* gave of them both; therefore, I think, either are proper Witneſſes of what ſhe ſaid.

Baron *Legge.* To be ſure, what they ſaid is Evidence againſt the Perſon that did ſay it: When you have made uſe of thoſe which were not produced in Evidence at the Time, that could not have been Evidence againſt the Acceſſary and not the Principal; how will you produce that?

Mr. *Nares.* In the firſt Place, their not being called as Witneſſes can be no Objection in not calling them now, becauſe it has been done ſeveral Times: I do not call every Witneſs in my Brief; if I have fifty in my Brief, and fifty ſwear to the Fact, I would call them: When that Perſon which is a Witneſs is called upon, ſhould not ſhe have the Benefit of every Circumſtance that will confirm the Teſtimony? Or, will the Court exclude her, becauſe the Perſons concerned in the Proſecution did not think proper to call the other Witneſſes that they might have called?

Baron *Legge.* The Indictment was laid jointly againſt *Mary Squires* and *Suſannah Wells*; was it not, Mr. *Ford?*

Mr. *Ford, Clerk of the Arraigns.* They were both tried together, and the Indictment on the ſame Piece of Parchment.

Mr. *Davy.* This only ſets forth the Indictment of *Mary Squires*, not a Word of *Suſannah Wells*; ſhe is not mentioned in it.

Baron *Legge.* Would you produce that which originally had been Evidence againſt *Squires?*

Mr. *Nares.* The ſame Witneſſes were examined on the whole Trial all through, and they were found both guilty at the ſame Time, and the Jury were charged with both at the ſame Time; the Aſſignment of the Perjury is, that ſhe was in *Suſannah Wells*'s Houſe, and robbed in her Houſe.

Baron *Legge.* Then the Evidence of *Suſannah Wells* is Evidence to that Account.

Mr. Juſt. *Clive.* This is an Indictment againſt Principal and Acceſſary, whereby they are complicated in the ſame Indictment: it is againſt *Squires* as Principal, and *Wells* as Acceſſary after the Fact: So far is extremely clear, that ſhe never could have been convicted as Acceſſary, unleſs there had been a Robbery; and ſhe knowing of that Robbery, therefore ſhe was intereſted at this Trial, as it was one and the ſame Indictment, and their Caſe ſubmitted to the Conſideration of the ſame Jury. I think, that if *Suſannah Wells* has given in any Teſtimony that there was a Robbery, conſidering the Nature of the Trial, as it comes before the Jury, it is the ſame as if *Squires* had declared it herſelf.

John Ward ſworn.

J. Ward. I have known *Suſannah Wells*, I believe, twenty Years.

Mr. *Williams.* When did you ſee her lately?

J. Ward. I ſeeing in a News-paper an Account of her being taken up, and put into *Clerkenwell* Bridewell, and living in *Southwark*, the firſt Time I came croſs the Water, I thought I would go and ſee her. (I had had a Notion that ſhe was dead, for I had not ſeen her for above twelve Years.) I went to ſee her in Bridewell. The firſt Word ſhe ſaid to me was, Who thought of ſeeing you here? My Reply was, by ſeeing your Name in the News-papers.

Mr. *Williams.* How long was this after ſhe was taken up?

J. Ward. It was juſt after ſhe was taken up; I cannot ſay to the Day of the Month; it was before the Trial of *Squires* and her. I aſked her, how ſhe came to keep the Girl there a Fortnight?

Mr. *Williams.* What did you mean by *there?*

J. Ward. I underſtood by the Paper, the Girl was kept at her Houſe.

Mr. *Williams.* What was her Anſwer?

J. Ward. She ſaid, ſhe was there twenty-eight Days. I aſked her, what Room ſhe kept her in? She ſaid, You know the Room very well.

Alderman *Dickinſon.* Had you been acquainted with her, and did you know the Rooms in her Houſe?

J. Ward. I had been acquainted there twelve or thirteen Years ago, (but not ſince I have been in Buſineſs for myſelf) and have been all over the Houſe.

Mr. *Williams.* Did you underſtand what Room ſhe meant?

J. Ward. No, Sir.

Mr. *Williams.* Did you ſee her after this?

J. Ward. I did, on the *Sunday* following; then I met her in the Bridewell-Yard. We never drank together the firſt or ſecond Time. I aſked her, how ſhe thought to get off of this Affair? She ſaid, ſhe muſt take her Trial.

Baron *Legge.* How came you to go a ſecond Time?

J. Ward Becauſe my Wife had a mind to ſee her: We both lived at *Waltham-Abbey* before I married. Mr. *Jones* went with me the firſt Time.

Mr. *Williams.* Where do you live now?

J. Ward. I live in *Maid-Lane, St. Mary Overy*'s Pariſh, *Surrey*. I am a Breeches-maker.

Mr. *Williams.* Are you a Houſe-keeper?

J. Ward. Yes, Sir; I have lived there near the Spot thirteen Years, and have carried on Buſineſs fourteen Years.

Baron *Legge.* So you aſked her, how ſhe kept the Girl a Fortnight there, without knowing in what Room?---*J. Ward.* Yes, my Lord.

Baron *Legge.* Did ſhe form her Anſwer out of the News-paper?

J. Ward. Not as I know of.

Croſs-Examined.

Mr. *Davy.* What Buſineſs carried you there?

J. Ward. By ſeeing her Name in the Paper, I went to ſee if it was the ſame Woman, out of Curioſity, not having ſeen her above twelve Years.

Mr. *Davy.* How far did you live from *Enfield-Waſh?*

J. Ward. I lived at *Waltham-Abbey*.

Mr. *Davy.* Had you had a great Deſire to know whether ſhe had been dead or alive, you might have gone to *Enfield-Waſh*, and have known that.

J. Ward. I wiſh I had never gone to have ſeen her.

Mr. *Davy.* Had you any other Buſineſs there?

J. Ward. No, none at all; only I had ſome at *Saffron-Hill*, with a Man that works with me; and I had alſo ſome Buſineſs in *Shoe-Lane*, and Mr. *Jones* went with me.

Mr. *Davy.* What Buſineſs had he there?

J. Ward. He went with me as a Friend and Acquaintance; he had never ſeen her in his Life before.

Mr. *Davy.* Did not you aſk her, what ſhe was there for?

J. Ward. No, I did not.

Mr. *Davy.* Did not you aſk her more Queſtions than that you juſt mentioned?——*J. Ward.* No.

Mr. *Davy.* Do not you, upon your Oath, believe ſhe meant to let you know, ſhe was charged for keeping the Girl in her Houſe twenty-eight Days?---*J. Ward.* No, I did not underſtand her ſo.

Mr. *Davy.* Did not ſhe tell you ſhe was innocent of the Charge?

J. Ward. No, Sir.

Mr. *Davy.* Did not ſhe, before the Trial, ſay ſhe was innocent of it?

J. Ward. No, Sir; what I told you is all Truth.

Mr. *Davy.* How long did you take the Confinement to be, when you read the News-paper?---*J. Ward.* I took it to be a Fortnight.

Mr. *Davy.* What are the Words you made uſe of?

J. Ward. I ſaid, How came you to keep the Girl there a Fortnight?

Mr. *Davy.* Where did you mean?

J. Ward. I meant in her own Houſe; and ſhe ſaid, twenty-eight Days.

Mr. *Davy.* How came you not to give Evidence of this when ſhe was tried?

J. Ward. I did not know I ſhould be wanted: The Reaſon I came now was, I was with my Friend drinking a Tankard of Beer, and he threw his Skits, and ſaid, Mother *Wells* had been an old Procurer of mine; and the People in the Houſe heard this Affair talked over, and they went and brought ſome People from *Aldermanbury*, who came to me, to whom I related it again.

Mr. *Davy.* I inſiſt upon Mrs. *Wells*'s being produced to know if he knows her.

Mr. *Nares.* That you never intend.

Baron *Legge.* You ſay you ſaw it in the News-paper, and you aſked her, how ſhe came to keep the Girl a Fortnight? She ſaid, Why, ſhe was there twenty-eight Days. Suppoſe it was to be ſaid, I ſaw in the News-papers you ſat five Days in the *Old-Bailey:* The Anſwer would be, We ſat ten, if the News-papers were ten.

Mr. *Nares.* Did you aſk this with any Apprehenſion of becoming a Witneſs againſt her?---*J. Ward.* No, not in the leaſt.

Mr. *Davy.* Did you ever make Affidavit of this before?

J. Ward. It was juſt when they were going to file a Bill againſt the *Abbotſbury* Men.

Mr. *Davy.* How long is it ago?

J. Ward. Before the Trial of the *Abbotsbury* Men; the Gentlemen aſked me to make it, which I did before Sir *Robert Ladbroke.*

Mr. *Davy.* Was you examined then before the Grand Jury?

J. Ward. I was.

Richard Jones ſworn.

Mr. *Nares.* Did you go with *John Ward* to *Clerkenwell* Bridewell?

R. Jones. Yes, Sir, he aſked me to go with him to ſee Mother *Wells*, and ſaid, he knew her in the Country.

Mr. *Nares.* When did you go with him?

R. Jones. I think it was about the Beginning of *February* was Twelvemonth.

Mr. *Nares.* What Converſation paſſed between *Ward* and Mother *Wells* there?

R. Jones. He aſked her, how ſhe came to be ſo vile as to ſhut up the Girl a Fortnight? A Fortnight, ſaid ſhe, ſhe was there eight-and-twenty Days.

Mr. *Nares.* What did he ſay to her upon that?---*R. Jones.* I cannot tell.

Mr. *Nares.* Did he aſk her any thing more?

R. Jones. No, nothing more, as I know of.

Croſs-Examined.

Mr. *Davy.* Was any thing ſaid about a News-paper?

R. Jones. No, he told me, he had read it in a News-paper of Mother *Wells*'s being in Bridewell.

Mr. *Davy.* How came you to go with him?

R. Jones. I went with him to keep him Company.

Mr. *Davy.* Did he say any thing to her about seeing it before in the News-paper?---*R. Jones.* Not as I know of.

Mr. *Davy.* Not a Word?---*R. Jones.* No, not as I know of.

Mr. *Davy.* Did not she say she was innocent?

R. Jones. No, nothing at all about it.

Mr. *Davy.* Did not she say she had never seen the Girl in her Life?

R. Jones. No, she did not say she had, or had not.

Mr. *Nares.* Where do you live?

R. Jones. I live in *Shoe-Lane*; I am a Brass-founder; I have a Wife and Family there.

Mr. *Nares.* How long have you lived there?

R. Jones. About ten Years.

Mr. *Nares.* Are you a House-keeper?

R. Jones. I keep a House of 20*l. per* Year.

Mr. *Nares.* I have in my Brief some Witnesses of Credit and Character that were near the Gypsey when she was tried, and heard some Confessions which she made at that Time. How far your Lordship thinks these Witnesses are proper, I leave to your Lordship.

Mr. *Davy.* I wave that, I have no Objection to that.

Baron *Legge.* Whether any thing said in Court is any Evidence, unless said to the Court. There is here a manifest Difference between what is said in Court, and to the Court; for what is not said to the Court, is the same as said any where else.

Mr. *Nares.* It is no Part of the Evidence given, but Observations she made upon the Evidence given against her.

Mr. Just. *Clive.* That is giving Evidence of that which is no Evidence.

Mr. *Nares.* We are now going, my Lord, to impeach the Credit of some of the Witnesses: We begin with *Judith Natus.*

Nathaniel Crumphorne sworn.

N. Crumphorne. I live at *Waltham-Cross* in *Hertfordshire*; I have been a House-keeper there above seven Years.

Mr. *Williams.* What is your Business?—*N. Crump.* I am a Cordwainer.

Mr. *Wil.* Do you know *Judith Natus?*

N. Crump. I do, she is Wife to *Fortune Natus*; they live at *Waltham-Cross.*

Mr. *Wil.* Did you know them when they lived at *Enfield-Wash?*

N. Crump. No, I did not.

Mr. *Wil.* When did you see *Judith Natus?*

N. Crump. I saw her at my House on the 21st of *April* last. She came to know if one *Thomas Pain* wanted a Person to pick up Stones. I said to her, Mrs. *Natus*, how can you have the Conscience, knowing this innocent Creature *Betty Canning* was at Mrs. *Wells*'s House, that you should go and be an Evidence against her? The Answer she made me was, *Indeed, Mr.* Crumphorne, *I cannot say but she really was there, when we lodged there.*

Mr. *Wil.* Did she come to your House accidentally?

N. Crump. She came to ask if Mr. *Pain* wanted a Person to pick up Stones.

Mr. *Wil.* Who was by at the Time?

N. Crump. My Neighbour and my Wife were.

Cross-Examined.

Mr *Davy.* Then they did lodge at *Wells*'s, did they?

N. Crump. She said so.

Mr. *Davy.* When did you understand by her that she and her Husband lodged there?

N. Crump. She told me so on the 21st of *April*; but I cannot tell when they lodged there.

Mr. *Davy.* Did she tell you they all three lodged in one Room?

N. Crump. I can say nothing at all about that.

Mr. *Davy.* There is the little Word *but*, are you sure that was mentioned? I will read it without that Word—*Mr.* Crumphorne, *I cannot say she really was there, when we lodged there.*

N. Crump. She said the Word *but.*

Mr. *Davy.* Are you sure she said that Word?

N. Crump. She said it indeed.

Mr. *Davy.* What did you understand by it?

N. Crump. What I understood by it was, that she really was there, when she lodged there.

Baron *Legge.* When was it you had this Conversation?

N. Crump. It was on the 21st of *April* last.

Mr. *Nares.* Then what you charged her with was, how could she in her Conscience swear so, knowing the Innocency of *Canning?*

N. Crump. Yes, and the Words she said were, *Indeed Mr.* Crumphorne, *I cannot say but she really was there, when we lodged there.*

Baron *Legge.* How many Days before this Trial began was it that she said so?

N. Crump. It was a Fortnight ago Yesterday.

Elizabeth Crumphorne sworn.

E. Crump. *Nathaniel Crumphorne* is my Husband. *Judith Natus* came to our House on the 21st of *April* last.

Mr. *Nares.* Did you send for her?

E. Crump. No, I did not, nor I did not want to see her. She came to ask for a Person about picking up Stones. My Husband said to her, How could you be so cruel; knowing *Elizabeth Canning* was confined when you was there, to go to swear as you did? Her Answer was, *Indeed, Mr.* Crumphorne, *really she was there, when we lodged there.*

Mr. *Nares.* Tell the Words as near as you can.

E. Crump. She said, *Indeed, Mr.* Crumphorne, *she actually was there, when we lodged there.*

Mr. *Nares.* Did she say she was confined there?---*E. Crump.* No, Sir.

John Jackson sworn.

J. Jackson. I have lived at *Edmonton* fourteen or fifteen Years. I saw *Fortune Natus* lay a Wager at the *Four Swans* at *Waltham-Cross*, that he was at *Wells*'s House all the Time of *January* 1753, and it was proved he lay at another House one Night.

Paul Stevens sworn.

P. Stevens. I live in *New-Prison-Walk, Clerkenwell:* I am a Publican, and have lived there between twelve and thirteen Years.

Mr. *Nares.* Do you know *Susannah Wells?*

P. Stevens. I do; I have seen her in *Bridewell*, and at her own House.

Mr. *Nares.* Do you know *Mary Squires?*---*P. Stev.* I do.

Mr. *Nares.* See if you see her here.

P. Stev. That is the Woman *(pointing to her).* I saw her in *New-Prison*, about three or four Days after she was taken up and carried there. There was a Gentleman or two and I went down to see the People on the Common Side in the Prison. She was sitting by the Fire-side in the Kitchen, in the Master's Side. We had a Bottle of Wine there. She began to speak and resolve some Questions. She acknowledged she was at Mrs. *Wells*'s House, but said, For what I am here for, I am innocent of, that is, Cutting off her Stays; but to be sure the Person was there, I believe. She said, she never was guilty of robbing the Girl.

Mr. *Nares.* How long did she say she had been there herself?

P. Stev. She said she had been there a Fortnight and three Days, I think.

Mr. *Nares.* What Girl do you mean?

P. Stev. I mean *Elizabeth Canning.*

Cross-Examined.

Mr. *Davy.* Then she said, she did not cut her Stays off?

P. Stev. She put her Hands up, and said, As God is my Saviour, what I am sent here for, I am innocent of; but she said, she believed the Person was there.

Mr. *Davy.* Did she say she saw the Person there?

P. Stev. No, she did not. She said, she herself was there a Fortnight and three Days, and the Girl was there in the Time.

Mr. *Davy.* Answer my Question, Did she say she ever saw *Elizabeth Canning* at *Wells*'s in her Life?---*P. Stev.* No, she did not.

Mr. *Davy.* Did she make use of the Word *believe?*

P. Stev. She said, she was sure she was there.

Mr. *Davy.* Did she acknowledge she was there?

P. Stev. She did; she came into a free Way of speaking at last, more than at first.

Mr. *Davy.* Did she say she was there not above a Fortnight and three Days in the whole?

P. Stev. She did not say she was there more.

Mr. *Nares.* Did she acknowledge she was there a Fortnight and three Days?---*P. Stev.* She did.

Mr. Just. *Clive.* Did she say she saw her there?

P. Stev. She said, she was in the House sure enough; she believed she was, and positively, almost, sure of it.

Mr. Just. *Clive.* What did you go to the Gaol for? Was it to get this Confession from her?---*P. Stev.* No.

Mr. Just. *Clive.* Who were those Gentlemen that you went with?

P. Stev. Mr. *Martin* and Mr. *Dudley.*

Mr. Just. *Clive.* Did you give Evidence here upon the Trial?

P. Stev. No.

Joseph Haines sworn.

Mr. *Williams.* Are you a House-keeper?

J. Haines. I live at *Ware* in *Hertfordshire.* I have been a House-keeper above forty Years there.

Mr. *Wil.* Do you know *Fortune Natus?*

J. Haines. I do. I have known him six or seven Years, or more.

Mr. *Wil.* Do you know his Wife?

J. Haines. I do, she was bred and born in the Town.

Mr. *Wil.* What Kind of a Character does he bear? Do you look upon him to be an honest Man?---*J. Haines.* No.

Mr. *Wil.* Do you believe his Oath is to be taken?

J. Haines. I believe it is not. I know it is not fit to be taken. He is a very dishonest Man.

Cross-Examined.

Mr. *Davy.* What is your Business?

J. Haines. I am a Barge-master. I am an Owner of Part of two Barges.

Mr. *Davy.* Did you ever hear any body speak well of him in your Life?

J. Haines. No, not lately. When he came to our Town, he turned a bad Man; when he worked at *Fatham's-Hall*, he went on better; but when he came to our Town, he deceived a great many People.

Mr. *Davy.* How long is that ago?

J. Haines. That is ten or twelve Years ago.

Mr. *Davy.* How long is it since you heard a good Character of him?

J. Haines. I have not heard a good one of him for almost three Years.

Mr. *Davy.* Do you think, if he was to come into a Court of Justice, and not to get a Farthing by it, that he would perjure himself?

J. Haines. I think he would say any thing to get a Shilling.

Mr. *Davy.* Suppose he could not get a Shilling by it?

J. Haines. He would try for it.

Mr. *Davy.* Do you think he would rather swear false than Truth, tho' he did not get a Shilling by it?

J. Haines. I think he would, he hates Truth.

Mr. *Davy.* You say you believe he hates Truth. I do not know what you mean. Is he a sad Rogue?

J. Haines. Nobody will give him a good Character about us.

Mr. *Davy.* Do you know his Wife? Is she a sad Wretch too?

J. Haines. She is a sad Body.

Mr. *Davy.* A drunken Beast?---*J. Haines.* You have guessed right as any Man in *England.* You give a very good Guess.

Mr. *Davy.* What, have you not made it up with him?---*J. Haines.* He once brought me a forged Note.

Mr. *Davy.* Are you at Law?---*J. Haines.* No, Sir.

Paul Chapman sworn.

P. Chapman. I live at *Ware*, and have done these twenty Years.

Mr. *Williams.* What are you?---*P. Chapman.* I am a Bricklayer.

Mr. *Wil.* Do you know *Fortune Natus?*

P. Chap. I do.

Mr. *Wil.* What is his Character?

P. Chap. He has a very bad Character.

Mr. *Williams*. Do you think he is to be credited upon Oath?

P. Chapman. I believe he is not to be believed upon Oath.

Croſs-Examined.

Mr. *Willes*. How long has he left *Ware?*

P. Chapman. I believe he has left *Ware* three or four Years.

Mr. *Willes*. Have you ſeen him ſince he left *Ware?*

P. Chapman. No, I have not till now; he behaved very ill there.

Thomas Green ſworn.

T. Green. I live at *Ware* in *Hertfordſhire*. I am a Farmer. I have lived there thirty Years, and have been a Houſe-keeper almoſt as long.

Mr. *Nares*. What do you rent *per* Year?

T. Green. I rent 600 *l. per* Year.

Mr. *Will*. Do you know *Fortune Natus?*——*T. Green*. I do.

Mr. *Williams*. What is his general Character?

T. Green. Really, in my Conſcience, he has a very indifferent one.

Mr. *Will*. Is he to be believed upon Oath?

T. Green. I make a Query whether he is—I believe not.

Mr. Juſt. *Clive*. Did you ever hear him forſwear himſelf?

T. Green. No, I never did.

Croſs-Examined.

Mr. *Davy*. One Queſtion, Yes, or no: Do you believe, that in a Caſe where he was not intereſted a ſingle Shilling, he would perjure himſelf?

T. Green. I have Reaſon to think he would ſay any thing for Hire.

Recorder. Give a Reaſon why he would ſay any thing for Hire.

T. Green. He has never injured me, nor robbed me; but he was a Pariſhioner of *Ware*, and he eloped, and left a Child to the Work-houſe.

Baron *Legge*. Is his Character ſo bad, he would wantonly perjure himſelf?

T. Green. That I cannot anſwer for.

Mr. *Nares*. My Lord, I will now call Juſtice *Taſhmaker* to ſhew, that *Virtue Hall*'s Confeſſion was taken, not in the Hearing of *Canning*. Mr. *White* ſays, they were taken in the Hearing of one another.

Mr. *Davy*. This is applying to the Jury Matter foreign to the Caſe. With your Lordſhip's Leave, I will ſay, the Jury are not to know that ſuch a Perſon ever exiſted as *Virtue Hall*.

Mr. *Moreton*. The Jury are not to take Notice there is ſuch a Perſon as *Virtue Hall* in being; but we have a Right to call what Evidence ſhe gave in the Court here. You have heard *Canning*'s Evidence, and called the Minuter here to prove it. If your Lordſhip thinks I have no Right to call the Juſtice of the Peace to prove ſhe gave her Teſtimony when the Parties accuſed were not by, that is, when *Wells* and *Squires* were not by; I would call Juſtice *Taſhmaker* to prove what ſhe ſaid, who was in the Room when ſhe was examined.

Mr. *Willes*. I think it would have been extremely right, if *Canning*'s Evidence was not taken down in Writing.

Baron *Legge*. The Perjury is aſſigned upon the Evidence ſhe gave at the *Old-Bailey*. The Queſtion is not, Who was by when the Depoſition was made before a Juſtice of Peace? That is no-way in Iſſue in the Caſe.

Mr. Juſt. *Clive*. We are of Opinion it can be no Evidence to call Juſtice *Taſhmaker*.

Mr. *Nares*. My Lord, *Ezra Whiffin* ſwears, that on the 18th of *January* he was in the Room where *Canning* was confined, to buy ſome Sign-Irons. We will call the Man who painted the Sign, to ſhew that he was not there at the Time.

William Metcalf ſworn.

W. Metcalf. I am a Glazier, Painter, and Plumber, and live at *Enfield* Highway.

Mr. *Nares*. Do you know *Ezra Whiffin?*

W. Met. I do. I remember I carried a Sign Home to his Houſe, on the 8th of *January* 1753, Old Stile, and ſet it down directly in my Book.

Mr. *Nares*. Where is that Book?

W. Met. It is at Home. I could eaſily have brought it, had I had an Order ſo to have done. But I can ſatisfy you another Way. I have a Pocket-book in my Pocket, and I took it from this Pocket-book, and put it in my Day-book. *(He produces the Pocket-book.)*

Mr. *Nares*. Tell me, by looking into that Book, the Day you brought the Sign Home?

W. Met. It was on the 8th of *January*, O. S. I wrote this myſelf in his own Houſe, with his Pen and Ink.

Mr. *Nares*. Upon your Oath, is it your own Hand-writing?

W. Met. Upon my Oath, it is.

Mr. *Nares*. What Day was it, New Stile?

W. Met. It was on the 19th, N. S. He told me he had ſpoke to one Mr. *John Garret*, a Blackſmith, to make the Irons to hang it upon. I went directly to the Blackſmith, and aſked him, whether he had done them? He told me, he would not do them at all, till ſuch Time as *Whiffin* had paid what was due already.

Mr. *Nares*. Did you go back again then to *Whiffin?*

W. Met. No. About ten or fourteen Days after I ſaw *Whiffin*, and aſked him, if he had got the Irons? He ſaid, he had got none. Then I ſaid, You are very much to blame you did not go down to Mother *Wells*'s, to ſee for her Hooks, becauſe they were the ſame that the Sign hung upon; and I thought they might be in the ſame Piece of Wood, which was ſawed off when the Sign was taken down.

Mr. *Nares*. Did he ſay he had been for them?

W. Met. No, he did not; but he ſaid he would go.

Mr. *Nares*. Had he the Hooks when you ſpoke to him?

W. Met. That I do not know. He did not ſay he had been at Mother *Wells*'s, or that he had got them.

Mr. *Nares*. When was it hung up?

W. Met. I do not know.

Croſs-Examined.

Mr. *Willes*. The 1753, which is in black Figures, when was it wrote in this Book? I obſerve it to be in a different Ink.

W. Met. That was wrote on *Saturday* was Se'nnight, I believe; that was taken from the other Book. I took that Date out of my other Book; for I ſet it down in my Pocket-book without the Date at firſt.

Mr. *Moreton*. I obſerve in this, here is *October* 17, do you mean Old Stile or New Stile?

W. Met. I mean Old Stile. All that is ſet down, is ſet down by my Clock.

Mr. *Moreton*. When you made that Entry, did you mean it according to Old Stile or New?

W. Met. To the Old.

Recorder. Why did not you bring your Book here?

W. Met. I did not know it would be wanted.

To her Character.

Mr. *Marſhall* ſworn.

Mr. *Marſhall*. I have known *Elizabeth Canning* the younger almoſt ever ſince ſhe could go alone; ſince ſhe has grown up, ſhe has come to my Shop almoſt every Day. She bears a very good Character. I never knew a Girl behave more modeſtly in my Life. I am one of her Bail; and if I had not believed her to have been entirely honeſt, I would not have been Bail for her.

Croſs-Examined.

Mr. *Davy*. Look at this Paper; it has your Name to it; was it done with your Conſent?

Mr. *Marſhall*. It was not; but when it was done, I did not contradict it.

Mr. *Davy*. Here is an Atteſtation of all the Facts ſhe had ſworn, why did you ſuffer it to be printed?

Mr. *Marſhall*. I did not contradict it.

Mr. *Davy*. Did you ever declare that you was ignorant of the Things that you here atteſt?

Mr. *Marſhall*. As to the Facts, they put my Name in to atteſt her being a harmleſs Girl; the Contents I never ſaw, till I ſaw them in Print.

Mr. *Davy*. You have ſaid here, *The Truth of the above-mentioned Facts, we, whoſe Names are under-written, being alſo ready to atteſt*—Did you ever take any Pains to ſatisfy the World that you were not able to atteſt theſe Facts?

Mr. *Marſhall*. I had nothing to do with the printing the Papers. My Atteſtation was only to tell of the Girl's Abſence.

Mr. *Davy*. Did you give any of theſe Papers away?

Mr. *Marſhall*. I believe I did.

Mr. *Davy*. Do you know of their being ſcattered about at the Time of the Trial of *Wells* and *Squires?*

Mr. *Marſhall*. I have heard they were delivered about, but I did not do it. I ſaid, it was a bad Thing to diſtribute them about then.

Mr. *Davy*. Upon your Oath, did you conſent to the Publication of it?

Mr. *Marſhall*. Upon my Oath, I did not.

Mr. *Davy*. Was your Name put to it without your Conſent?

Mr. *Marſhall*. It was.

Recorder. Did you ſee your Name to them, before you diſtributed them about?——Mr. *Marſhall*. Yes, I did.

Mr. *Davy*. Whether the Intent of publiſhing theſe Papers was not to inflame the World againſt the Gypſey?

Mr. *Marſhall*. No, I believe not.

Mr. *Nares*. Did you believe the Truth of theſe Papers that you diſtributed?

Mr. *Marſhall*. My Belief was, that the Girl had been ſo long miſſing from her Friends.

Mr. *Davy*. I am to tell the Jury from the Proſecutor, I have nothing againſt the Girl's Character, excluſive of this Fact.

Mr. *Nares*. Then we need call no more to her Character.

Mr. *Davy*. I have only to call Witneſſes to the Support of *Natus*'s and *Whiffin*'s Characters.

TUESDAY the 7th of *May*.

Mr. *Moreton*. We laſt Night finiſhed this long Trial in Behalf of the Defendant. I am very ſenſible, that, perhaps, there never was a Caſe came before a Court of Juſtice, in which it was more proper, I hope I need not ſay more neceſſary, for ſome of the Counſel concerned to have made Obſervations from the material Part of the Evidence given on both Sides.

That is what is the Province of a Counſel, to obſerve how far our Evidence anſwered the Evidence given on the Behalf of the Proſecution.

It has been among the many Misfortunes of the Defendant, that it has been impoſſible for any one of her Counſel to have attended thro' this whole Trial. Mr. *Williams*, whoſe proper Province it was to have replied, has neceſſarily been abſent, during great Part of the Evidence; therefore it is impoſſible for him to diſcharge his Duty in that.

It has likewiſe been my Misfortune to be abſent, and it has alſo been Mr. *Nares*'s Misfortune to be abſent, ſo that we could not attend upon that Part of the Evidence. I mention this, that I may lay in my Claim with your Lordſhip, who has been ſo very acute and attentive, that whatever Obſervations are proper to be made, the Jury may carry the Facts along with them, as well as the Proſecutor's Charge; and that your Lordſhip will be ſo kind to ſupply what we have been obliged to omit. I make no Doubt but you will do ſo, becauſe no greater Accuracy, and no greater Attention can be ſhewn, than has appeared in your Lordſhip through the Courſe of this Trial; therefore my Client will not ſuffer thro' this Abſence.

Recorder. You may aſſure yourſelves I ſhall, and I hope you will be preſent, when I ſum up to the Jury; and I ſhall not take it in the leaſt amiſs to be inſtructed, if I make any Miſtake whatſoever.

Mr. *Moreton*. When once the Caſe is in your Hands, I am very ſure it is in ſafe Hands.

Mr. *Davy*. I deſire it may be proved to the Jury, that the Days of the Arrival of the Letters from *Baſingſtoke*, are *Mondays*, *Wedneſdays*, and *Fridays*.

Thomas Ravenhill again.

Mr. *Willes*. As you are an Officer in the Poſt-Office, you can tell what Days of the Week the Poſt comes into Town from *Baſingſtoke* in *Hampſhire*.

T. Ravenhill. It comes in on *Mondays*, *Wedneſdays*, and *Fridays*, and no other Days.

Croſs-Examined.

Mr. *Moreton*. What Poſt-road does it lie in?

T. Ravenhill. It comes in the *Portſmouth* Mail; it is in the Weſtern Road.

Mr. *Moreton*. Does the *Portſmouth* Bag come through *Baſingſtoke?*

T. Ravenhill.

T. Ravenhill. I cannot tell that.

Mr. *Davy.* Whether the *Portſmouth* Bag does not come through *Baſing-ſtoke?* Or, Whether there is not ſome every Day's Poſt comes thro' *Baſing-ſtoke?*

T. Ravenhill. Upon my Word I cannot tell. *Baſing-ſtoke* Bag comes in three Days a-Week.

Mr. *Moreton.* That Letter is not proved ever to have been in *Baſing-ſtoke* Poſt-Office; it remains ſtill to be proved, that there is an every Day's Poſt comes through *Baſing-ſtoke.*

Mr. *Davy.* Do the *Baſing-ſtoke* Letters ever come in on any other Days beſides *Mondays*, *Wedneſdays*, and *Fridays?*

T. Ravenhill. No, they come in only on thoſe three Days.

Mr. *Davy.* When does the *Salisbury* Poſt come in?

T. Ravenhill. That comes in the ſame Days.

[*Mr.* Davy *produced the Almanacks back to* 1749, *which proved the* 19*th of* January *was never on a* Monday, Wedneſday, *or* Friday, *ſince* January 1749, *till the Year* 1753.)

Mr. *Willes.* There is one *Anne Johnſon*, who ſwears ſhe ſaw *Mary Squires* at *Enfield-Woſh* on the 18th of *January*; and ſhe has ſworn, that ſhe works for Mr. *Smitheram*; and that ſhe carried Home her firſt Work for that Year on the 16th of *January*; and that her Maſter conſtantly put the Work carried Home down in a Book; and we have that Book to prove it was carried Home on the 23d of *January.*

Thomas Smitheram ſworn.

Mr. *Willes.* What is your Buſineſs?

T. Smitheram. I keep a Boarding-School at *Enfield* Highway, and I keep a Shop likewiſe.

Mr. *Willes.* Did you employ one *Anne Johnſon* to ſpin Yarn for you?

T Smitheram. I did.

Mr. *Willes.* Have you a Book in which you ſet down the Work as it is brought Home?

T. Smitheram. I have; but it is ſeldom under my Management; I leave it to my Family.

Mr. *Willes.* Do you, or ſome of your Family, put down the Time when you deliver out Work to be done?

T. Smitheram. Yes, Sir.

Mr. *Willes.* Do you always put down the Time when you have it brought Home?

T. Smitheram. Yes, Sir; one Column is to put down the Delivery, and the other when brought Home ſpun.

Mr. *Willes.* Look in it to the Year 1753, and tell whoſe Hand-Writing that firſt Article is.

T. Smitheram. It is my Daughter's Hand-Writing; her Name is *Anne Hudgel.*

Mr. *Willes.* I ſee in it, here is *January* 16, *one Pound S. fine, delivered.*

T. Smitheram. That is the Work delivered out.

Mr. *Willes.* Is there a Mark upon the firſt Column that ſignifies it was the Time of the Delivery of it to be ſpun?

T. Smitheram. Yes, here is *Anne Johnſon*'s Name on the Top.

Mr. *Willes.* Here is *January* 23, *one P. S. fine, returned.*

T. Smitheram. That is my Hand-Writing, the delivering out, but the receiving is not mine.

Mr. *Willes.* Was that the ſame Yarn that is returned?

T. Smitheram. I take it ſo to be. I did not receive it myſelf.

Croſs-Examined.

Mr. *Moreton.* In this laſt Entry, is the Word *returned* your Writing?

T. Smitheram. It is.

Mr. *Moreton.* When was that Word wrote?

T. Smitheram. The very ſame Day. The Reaſon of it is this, I had heard ſhe had ſworn what ſhe did, and I looked in my Book, and I ſaid, You are miſtaken; and the old Woman was ſo angry, ſhe brought Home my Work, and would ſpin no more for me; then I clapped that Mark upon it, *Returned.* She returned it unfiniſhed.

Recorder. When you heard what ſhe ſwore---Where did ſhe ſwear?

T. Smitheram. Before the Grand Jury. She came to our Houſe, and I looked in the Book after ſhe had ſworn. I ſaid, You brought your Work Home on the 23d, and you are miſtaken, or to that Effect.

Recorder. Was that Yarn you delivered to her on the 16th, the ſame ſhe returned on the 23d?

T. Smitheram. I cannot tell that; it is poſſible ſometimes they may change it.

Alderman *Dickinſon.* Did ſhe return the ſame Weight?

T. Smitheram. She did, for aught I know; I did not take it in.

Anne Hudgel ſworn.

Mr. *Willes.* What are you?

A. Hudgel. I am Daughter to Mr. *Smitheram.* I generally keep this Book; it is a Day-Book; I make Marks when delivered out, and when brought Home.

Mr. *Willes.* Look for *Anne Johnſon*'s Account.

A. Hudgel. The firſt Entrance is my Father's, and that of being brought Home ſpun is mine, on the 23d of *January.* After we heard ſhe was concerned in this Affair, and had ſworn to the 18th Day of the Month, we told her it was the 23d.

Mr. *Willes.* Can you recollect what Time it was that you told her ſhe was miſtaken?

A. Hudgel. I cannot tell.

Mr. *Willes.* Did you ever tell her ſhe was wrong?

A. Hudgel. No, Sir; but I heard my Father tell her ſo, though I was not in the ſame Room.

Mr. *Willes.* Had you no Converſation with her about it?

A. Hudgel. No, Sir.

Croſs-Examined.

Mr. *Moreton.* Did not this Woman apply to you to ſee the Book?

A. Hudgel. When ſhe brought the Work Home undone, ſhe would ſee the Book to ſee me croſs it out, though ſhe could not read.

Mr. *Moreton.* Did ſhe ever apply to you to ſee the Time when ſhe brought the Work Home?

A. Hudgel. I do not remember ſhe ever did.

Mr. *Moreton.* She has ſworn ſhe did.

A. Hudgel. Very likely ſhe might, but I do not remember it, nor that ſhe did till after the Time ſhe ſwore before the Grand Jury.

Mr. *Moreton.* Do you think ſhe would forſwear herſelf?

A. Hudgel. I do not know that ſhe would.

Mr. *Willes.* Did not your Father tell her the Wool was not brought Home till the 23d?

A. Hudgel. Yes, Sir.

Mr. *Davy.* My Lord, we now call Witneſſes to the Support of the Characters of theſe two People which they have impeached; that is, *Ezra Whiffin* and *Fortune Natus.*

Thomas Smitheram again.

T. Smitheram. I have known *Ezra Whiffin* a Year and a Half.

Mr. *Willes.* What is his general Character?

T. Smitheram. I never heard but he was a very honeſt Man.

Croſs-Examined.

Mr. *Moreton.* Have you not known many honeſt Men miſtaken in point of Time, at a Year's Diſtance?

T. Smitheram. I do not know but I have.

John Barnes ſworn.

J. Barnes. I am High Conſtable of *Edmonton* Hundred. I know *Ezra Whiffin* very well, and have theſe three Years and a Half; he was two Years a Neighbour of mine. I believe him a very honeſt Man.

John Smart ſworn.

J. Smart. I am an Attorney. I knew *Ezra Whiffin* all the Time I lived at the Coffee-Houſe at *Enfield.*

Mr. *Whiffin.* How long is that?

J. Smart. I have known him about three Years. I never heard any Harm of his Character.

Thomas Bell ſworn.

T. Bell. I live at *Waltham-Croſs* at the *Four Swans.*

Mr. *Willes.* How long have you known *Fortune Natus?*

T. Bell. I have known him about fifteen Months; he has been a Servant to me about thirteen Months.

Mr. *Willes.* Did you ever know him before that?

T. Bell. No, Sir.

Mr. *Willes.* How has he behaved ſince he worked for you?

T. Bell. Very honeſtly, very civilly, and very induſtriouſly.

Mr. *Willes.* Do you look upon him to be an honeſt Man?

T. Bell. Indeed I do. He aſſiſts to brew, and goes out with a Load of Hay. He always behaved very honeſtly. When I go out, if I bid him do ſuch Things, I am ſure to have them done.

Mr. *Davy.* Do you think he would forſwear himſelf?

T. Bell. I do not think he would.

Mr. *Willes.* During the thirteen Months he has been with you, has he been faithful and honeſt?

T. Bell. During the whole Time I do not know he has told me a Lye. I have eight Servants about my Houſe, and I ſhould be glad to find the Fellow of him.

Mr. *Moreton.* The Gentlemen have called ſome freſh Evidence in. I do not think to give it any Anſwer; therefore it muſt reſt upon theſe People's given Teſtimony.

Here the material Things are, to ſupport the Letter ſuppoſed to be wrote at *Baſing-ſtoke*, and to contradict *Anne Johnſon.*

They endeavour to ſupport the Letter by producing the Man again from the Poſt-Office, who tells you, the Poſt comes in only on *Mondays*, *Wedneſdays*, and *Fridays*, from *Baſing-ſtoke.* Then they have produced ſome old Almanacks to ſhew the 19th of *January* was never on a *Monday*, *Wedneſday*, or *Friday*, ſince *January* 1749, to the Date 1753. But they have not proved the Letter was put in at *Baſing-ſtoke* yet: That remains to the Jury; and the Poſt-Mark, I own, my Eyes are not good enough to diſtinguiſh. This might have been made clear, if the Man that received it had been called; and if he had ſhewed he had received that Letter at the Time mentioned, that would have carried up this Evidence, that I could have had nothing to ſay againſt it; but whether it was ever put into the Office at *Baſing-ſtoke* or not, that muſt be left to the Jury; it is a very eaſy Thing to have a Letter dated, and it might be the 9th, or the 29th, ſtill there is no Concluſion.

Now, as to contradicting *Anne Johnſon*, a poor old Woman. What does ſhe ſwear? She ſwears ſhe did apply to theſe People to be ſet right, and ſhe was informed by their Book; therefore ſhe would have never referred to that Piece of Evidence, if ſhe had not been miſtaken in what ſhe ſwore; it is only a Miſtake.

Now, after we are done, I do think it is a great Misfortune for my Client, that the other Gentleman, who ſhould have made a proper Reply, was obliged to attend elſewhere; and was I to do it, I muſt do it very imperfectly; and ſo I reſt it in your Hands.

Mr. Davy.

May it pleaſe your Lordſhip, and you Gentlemen of the Jury;

After ſo unuſual a Time taken up in this Trial, I wiſh I could diſpenſe with giving you any farther Trouble.

But, Gentlemen, it is my Duty to recall your Attention to the Evidence, which was produced to maintain this Indictment---to reply to what has been urged by way of Defence---and to make ſuch Obſervations upon the Whole, as may convince you, that the Evidence for the Proſecution ſtands unanſwered, and is the moſt indubitable Proof of the Defendant's Guilt.

Before I enter upon this Undertaking, which, I am afraid, will engage more of your Time than would be found neceſſary, if the Conduct of this Proſecution was in abler Hands than mine, I cannot avoid taking Notice of the great Indulgence with which this Cauſe has been already favoured. For, although five long Days have been employed in this Inquiry, yet hath not the leaſt Hint of Impatience dropped, either from the Court, or the Jury.

To the Honour of this Country be it remembered, its Judges always adminiſter impartial Juſtice upon the moſt deliberate and careful Examination; and never think any Time miſpent, which may conduce to the Diſcovery of Truth. There was indeed a particular Neceſſity for a very ſolemn Examination in the preſent Caſe, becauſe this was become an Affair, not only of great Importance and public Expectation, but alſo of no

leſs

leſs Intricacy and Difficulty,—ariſing, not ſo much from the Nature of the Queſtion, as from the Clouds of Darkneſs in which it was inveloped by thoſe, who, merely in Oppoſition to the Proſecutor, adopted the Crime of Perjury, and formed a Faction to ſupport it.

But ſuch is the Force of Truth, and ſo ſtrongly does it ſhine forth in this Proſecution, that its Oppoſers muſt now hide their Faces, and reflect with Shame, that they have contaminated themſelves with the Guilt which they are no longer able to conceal.

Gentlemen, as in the Outſet of this Cauſe I deſired you to diveſt yourſelves of all Prejudices, which you might have received in the Defendant's Favour; ſo now, out of Humanity, I would caution you againſt falling into the like Error on the other Side, on Account of ſome Accidents which have happened during the Courſe of this Trial.

The Inſolence of Mobs about this Court, attempting to over-awe and intimidate Juſtice, you all have obſerved, and ſome of you have felt. Although the Deſign of theſe Outrages was eaſily diſcovered, yet it would be very hard that ſuch Miſbehaviour, however occaſioned, ſhould affect the unhappy Perſon at the Bar. She has enough to depreſs her, without the additional Load of others Guilt; and God forbid we ſhould attempt to call in the Aid of Prejudice againſt her! We deſire this Cauſe may be tried ſingly upon its own Merits, and that there may be no Ingredient in your Conſideration, but what fairly reſults from the Evidence on both Sides.

You will take Care, for your own Sakes, to diſcharge your Duty as Jurymen, conſidering the Obligation upon your Conſcience, the Notoriety of this Cauſe, and the Freedom with which Men will hereafter deliver their Sentiments concerning it. You will conſider, the Eyes of the World are now upon you; and the Circumſtances of this Cauſe are ſo peculiar, and have been ſo much the Subject of Controverſy, that the Hiſtory of this Tranſaction hath travelled wherever the *Engliſh* Language is underſtood. And, I doubt not, your ſerious and ſolemn Determination, upon this important Occaſion, will anſwer the Ends of Juſtice, will gratify the univerſal Curioſity, and will prove a laſting Honour to yourſelves.

Gentlemen, when you reflect upon the Nature and Circumſtances of the Offence this Woman ſtands accuſed of,—together with the Purpoſes it was intended to ſerve,—the Fullneſs of the Evidence produced to prove it,—and the weak, if not the wicked, Defence attempted in Anſwer to it; you will be fully ſatisfied, how much it concerns the *Public* to bring this *Delinquent* to Juſtice.

Of all the Crimes the human Heart can conceive, PERJURY is the moſt impious and deteſtable. But the Guilt of this Perſon is ſo tranſcendent, that it ſeems even to defy Aggravation.

To call upon the GOD OF TRUTH in the moſt ſolemn Manner, and upon the moſt awful Occaſion, to atteſt a FALSHOOD—to imprecate the Vengeance of Heaven upon her guilty Head—to proſtitute the Law of the Land to the vileſt Purpoſe—to triumph in the Ruin of an innocent Fellow Creature—to commit a MURDER WITH THE SWORD OF JUSTICE;—and then, having ſtripped her own Heart of Humanity, by all the Arts of Hypocriſy to inſinuate herſelf into the Compaſſion of others, is the peculiar SIN of this Perſon, not yet Twenty Years of Age!

One would wonder, indeed, at the FOLLY of an Attempt to impoſe ſo groſs, ſo abſurd a Falſhood upon the World, if we did not live in an Age wherein nothing is too incredible and fantaſtical to be well received.—— Let it be but a *Novelty*, and a Subject of Admiration, and it cannot fail to make its Way with the Bulk, *the moſt ignorant Part*, of Mankind.

How this ſtrange Story obtained Credit ſo far as to prevail with a Jury to convict two innocent Women, you have ſeen in the Courſe of this Trial. For that there was falſe Evidence given in that Cauſe by *one* Witneſs at leaſt, appears now confeſſed *even by his own Teſtimony*. *SCARRAT* (of whom I ſhall have Occaſion to ſpeak more hereafter) ſwore upon the Trial of *Squires*, that *Canning*'s Information before Alderman *Chitty* thoroughly correſponded with her then Evidence: But he now owns, he does not know what Account ſhe gave before the Alderman; and, upon his beſt Recollection, he admits, in effect, that her Information to Mr. *Chitty* was, in many Reſpects, *different* from her Evidence upon the Trial. And yet this was one of the moſt *material* Queſtions in the whole Cauſe.

It is no Wonder, therefore, that this Story, with all its Abſurdities, ſo ſupported by *Prejudice* and *Perjury*, obtained Belief. And, that it was not fatal to the poor Wretch deſtined for a Sacrifice, was entirely owing to the Interpoſition of a MAGISTRATE, whoſe only *Motive* to it was Compaſſion, whoſe only *Reward* the bittereſt Invectives.

Gentlemen, in this Indictment there are as many Aſſignments of Perjury, as there are Circumſtances in the Defendant's Evidence, from the Time of the pretended Robbery in *Moorfields*; ſo that, if any Part of her Relation is falſe, ſhe is guilty of Perjury within this Indictment. However, we do not mean to cavil, and catch at little Circumſtances; for the Proofs we have offered are ſufficient to ſatisfy all Mankind, that the Whole of this Story is a Fiction from the Beginning to the End.

Gentlemen, as this was a Caſe of univerſal Inquiry, the Proſecutor was deſirous of giving all the Satisfaction in his Power: For though the indubitable Evidence of the GYPSEY's Innocence, without any farther Proof, would have been ſufficient to juſtify his own Conduct, and to convict the Defendant, yet his Regard for the Public called upon him to detect the whole Impoſture; and, if poſſible, to put an End to all the Diſputes and Troubles, to which this myſterious Tranſaction hath given Riſe.

To anſwer theſe Purpoſes effectually, there hath been a great Variety of Proof laid before you, under ſeveral Heads of Evidence; of which I will beg Leave to remind you, in the Order they were given.

Our firſt Head of Proof was to the ALIBI of *Mary Squires*.

With regard to this, and the Anſwer attempted to be given to it by the Defendant's Witneſſes, you will be pleaſed to recollect the Certainty or Incertainty of the Evidence on both Sides, as to the Identity of the *Perſons* ſworn to, and the Exactneſs of the *Times* in which the Witneſſes ſwear to have ſeen them. For a Miſtake in either of theſe Matters will account for a Variance in the Teſtimony, without impeaching the Credit of the Witneſſes, which I am always willing, as far as I can, to avoid.

In the firſt Place, as to the *Identity* of MARY SQUIRES.

She is not only ſo extremely remarkable, that it is almoſt impoſſible to miſtake her for another, but ſeveral of the Witneſſes for the Proſecution have known her a conſiderable Time, from two to thirty Years paſt, and have often ſeen her: It is impoſſible, therefore, for theſe People to miſtake with regard to this *Perſon*; and if they did not ſee this *very* Woman, they are certainly guilty of Perjury.—Beſides, the Witneſſes for the Crown ſwear *not only* to the *old Woman*, but likewiſe to her *Son* and *Daughter*, for they were ſeen *all together* through the whole Journey; by which Means they are leſs liable to Miſtake, than the Witneſſes for the Defendant.

Are all the Witneſſes to this Head of Proof, *forty-one* in Number, wilfully and corruptly forſworn?

Through the Whole of this Cauſe, hath the leaſt Reflection been thrown upon the Character of any one of them?

Has it been even ſuggeſted, that they have any Intereſt to ſerve, or any Paſſion to gratify, which could lead them to ſo much Wickedneſs and Danger?

Are they not Strangers to the Defendant, and moſt of them to one another, living at remote Diſtances?

They have all been ſeparately examined; and I refer to your own Obſervation, whether effectual Care has not been taken to prevent any Communication between them, ſo as that no one Witneſs could poſſibly know another's Teſtimony.

And yet what an amazing Congruity is there in the Whole of their Evidence!—Not a material Circumſtance varied from!—But the Teſtimony of each Witneſs correſponds ſo exactly with what went before it, that it demands Credit, and authenticates the Evidence of the former.

Conſider too the Variety and Weight of the Circumſtances ſworn to, and the Correſpondency of Events happening in Conſequence of them.—The Dancing at *Abbotſbury*,—the Fiddler there,—who and who were Partners,—the wet Night at *Porterſham*,—the heavy Rains that fell the next Day,—and the Waters being out at *Dorcheſter*, two Days after.——

How notorious are theſe Facts, and how eaſily diſproved, if falſe!

Was it ever known, that any Number of falſe Witneſſes pre-concerted Circumſtances, which ten thouſand People were capable of contradicting?

Is it conceivable, that there ſhould be a perfect Harmony in the Evidence of ſuch a Number of perjured Witneſſes, concurring in Circumſtances of public Notoriety?

Then the parting with *Clarke* at *Ridgway*,—the Piece of Nankeen pawned with the Landlord for a Reckoning, and produced in Evidence with the Man's Name upon it,—the ſkinning the dead Horſe, mentioned by ſeveral Witneſſes,——the Letter from *Lucy Squires* at *Baſingſtoke*, alluding to the Particulars of the Journey with *Clarke*, and to the Weather, "*hoping he received no Illneſs from it*,"——

Were theſe Circumſtances all pre-concerted, or did they really happen at ſome other Time, than that to which they have been applied by the Witneſſes?

Examine then into the Certainty of the Evidence with regard to *Time*.

Beſides the Impoſſibility, that all the Witneſſes, ſpeaking with ſuch abſolute Certainty, and referring to collateral Matters incapable of miſleading them, ſhould miſtake in this Reſpect; there are two Facts before you, which prove the Times of the Gypſies being at *Abbotſbury* and *Baſingſtoke* to Demonſtration.

The Time, referred to by the *Abbotſbury* Witneſſes, is aſcertained by the Books belonging to the EXCISE-OFFICE. Every one knows with what Preciſeneſs theſe Books are kept,---that not only the Days, but the very Hours of each Officer's Viſits, are regularly entered in his Accounts;—that all his Acts and Entries are ſcrutinized and chequed by a Superviſor,——and the Books tranſmitted to the *General Exciſe-Office* in LONDON.

Now the Book of *January* 1753, belonging to the *Exciſe* at ABBOTSBURY, has been produced in Evidence from the *General Exciſe-Office*; by which it appears, that *Andrew Wake* was placed at *Abbotſbury* in the room of *Ward*, the Officer ſtationed there, who was ill and incapable of Duty; and that *Wake* began to officiate in the *Exciſe-Office* at *Abbotſbury* on the 1ſt of *January*, and continued to the 14th.

Wake ſwears, and is confirmed in it by all the Witneſſes from *Abbotſbury*, that he came to *Gibbons*'s Houſe, to officiate as Exciſeman in the room of *Ward*, on the *very Day* the GYPSIES came there.

Here then is no Poſſibility of *Miſtake*; and if the *Abbotſbury* Witneſſes are perjured, all the reſt of the Witneſſes muſt be ſo too; for the whole Evidence refers to the Journey from *South-Parrot* to *Abbotſbury*, and from *Abbotſbury* to *Enfield-Waſh*; and all the Facts ſworn to are like ſo many Links of a Chain, depending one upon another.

It is alſo remarkable, that this very *John Gibbons*, who has *now* given Evidence of this Fact, was produced as a Witneſs upon the Trial of *Mary Squires* in *February* 53; and he *then* gave the *ſame Evidence* he has given now, and *with the ſame Circumſtance relating to the Exciſeman*. For being aſked on that Trial, by what Circumſtance he recollected the Day of the GYPSIES coming to *Abbotsbury*, this was his Anſwer; "There "came an Exciſeman, one *Andrew Wicks* or *Weeks*, to officiate there for "one *John Ward*, who was ſick, and I put the Day of the Month down "when he came there; for the Exciſe-Office is kept at my Houſe."

It is alſo obſervable, that *Gibbons* was indicted for Perjury in that Evidence. What but the Conſciouſneſs of Truth could now encourage him to repeat the ſame Evidence, and run the Hazard of a ſecond Proſecution?

Another Circumſtance equally demonſtrates the Time of the Gypſies being at *Baſingſtoke*.

The Letter wrote there by the Witneſs, Mrs. *Morris*, for *Lucy Squires* to *Clarke*, bears Date the 18th of *January*, and ſhe ſwears *that* was the Day on which it was written.

On

On the *Outside* there appears the *Mark* of the *General Post-Office*, in LONDON; and if this Letter went from *Baſingſtoke* on the 18*th*, it muſt come to *London* on the 19*th*, for there is no Poſt-Road from *Baſingſtoke* to *Abbotſbury*, but by way of *London*. But the Poſt-Mark not being very legible, the Clerk of the Weſtern Mail, belonging to the General Poſt-Office, is called to clear up this Matter.

He tells you, that the Poſt comes in from *Baſingſtoke* on no other Days, but *Monday*, *Wedneſday*, and *Friday*;—that by the niceſt Obſervation he is able to make (and he produces ſome Stamps belonging to the Poſt-Office to verify his Obſervation), this Letter came into *London* on the 19*th* or 29*th* of *January*, and he gives you his Reaſons for ſaying ſo.—The only remaining Doubt then is, as to the Year; for the laſt Figure being torn off, there being only three Figures 175-, the Counſel for the Defendant have thought fit to rely upon it as a capital Objection, inſinuating as if it had been torn off on Purpoſe to miſlead you; but at the ſame Time they admit, that if the *whole Date* had appeared perfectly, the Fact intended to be proved by it would have concluded irreſiſtibly upon them.

Now it happens very fortunately, that this Defect can be ſupplied by another Evidence, which proves itſelf; and that is the *Almanack*.

I have all the *Almanacks* ſince 1749 now in my Hand, which I deſire you will examine yourſelves; and by them it appears, that no 19*th* of *January*, ſince *January* 49, has happened upon a *Monday*, *Wedneſday*, or *Friday*, except in 1753, when it happened on a *Friday*; and by the three Figures, which remain in this Letter, the Year's Date muſt be either 1750, 51, 52, 53, or 54.

To this Circumſtance you will be pleaſed to add another,---that all the Witneſſes mention the Days of the Week, as well as the Days of the Month; and if you trace them in all their Teſtimony, from *Friday* the 29*th* of *December*, at *South-Parrot*, to *Wednesday* the 24*th* of *January*, at *Enfield-Waſh*, you will find the whole Evidence refers to the Gypſies being at *Baſingſtoke* on *Thurſday* the 18*th* of *January*.

This Obſervation will entirely remove the only Doubt of the Poſt-Officer, whether the Poſt-Mark is the 19*th* or 29*th* of *January*. For the Days of the Week, ſworn to by all the Witneſſes, correſpond exactly to their being at *Baſingſtoke* on a *Thurſday*; and the *Almanacks* will inform you, that the 29*th* of *January* *has not happened* on a FRIDAY for ſeveral *Years paſt*.

From all which it appears, that the Witneſſes are as little liable to Miſtake in point of *Time*, as in reſpect of the *Perſon* of *Mary Squires*. And therefore, upon the whole of this Evidence, I will venture to ſay, no Man living can doubt that theſe Gypſies were at *Abbotſbury* on the *firſt* of *January*.

For, through the whole Chain of Evidence to prove it, I appeal to your own Obſervation, whether all the Circumſtances have not been ſupported by the beſt Teſtimony and the cleareſt Proofs, in their Nature they are capable of receiving? And whether it would not be as unreaſonable for one to doubt the Fact they conduce to prove, as it would be to believe the Story they are intended to contradict?

Surely there never was ſuch a Variety of Circumſtances ſo clearly and completely proved in any Caſe,—ſurely there never was a Caſe ſtanding ſo little in need of it!

But, ſufficient as it may be thought for the Defendant's Conviction, this is far from being the beſt Part of the Caſe. For though this fully proves the Defendant was not robbed by *Mary Squires*, yet it goes no farther. But the reſt of the Evidence for the Crown entirely overthrows the Defendant's whole Story, and evinces, to the utmoſt Degree of Certainty, that ſhe is an Impoſtreſs.

To the Evidence of Mr. Alderman *Chitty*, Mr. *Naſh*, Mr. *Aldridge*, and Mr. *Hague*, you'll be pleaſed to apply an Obſervation, I took the Liberty to mention in the Opening, and which I apprehend to be very reaſonable, That, if the Defendant was *really confined* in this Room at *Wells*'s twenty-eight days, there being Light enough to ſee every Part of it, ſhe could not poſſibly *fail* of giving an exact *Deſcription* of it; much leſs could ſhe mention Things that were not there.

Now the Account ſhe gave, before ſhe was carried down to *Enfield* on the 1*ſt* of *February*, is liable to Objection both in reſpect to its *Defectiveneſs*, and its *Falſity*.

To try the Truth of any Relation, when its Authenticity muſt depend upon the Credit of the Relator, we ſhould inquire, whether at all Times, in all Places, and upon all Occaſions, he tells the ſame Story, with all its Circumſtances, in the ſame uniform, invariable Manner.

The Gentlemen of Counſel for the Defendant, aware of the Force of this Obſervation, have, with great Judgment, endeavoured to apply it in their Client's Favour, in reſpect to ſome few Particulars pretended (but far from being ſufficiently proved) to have been deſcribed by her, upon the 29*th* of *January* at her Mother's, and upon the 1*ſt* of *February*, with regard to the Proſpect from the Window.

In the firſt Place, her Deſcription is extremely *defective*.

When ſhe was aſked by Mr. Alderman *Chitty* to enumerate all the *Particulars* in the Room, by which her Veracity was to be tried, and when it ſo much concerned her to recollect the whole, ſhe *omitted* ſeveral material Things, which could not poſſibly eſcape her Obſervation for a *whole Month* together.—The *Jack-line* and *Pulley*, and the *broken Caſement* over the Chimney, entirely forgot.---The *three Saddles* are not one of them mentioned,---nor the *Cheſt of Drawers*. And, inſtead of mentioning half a *Load of Hay*, ſhe in Effect *denied* there was *any*; for Part of her Complaint, which melted the Hearts of her Friends, as they themſelves have ſworn, was the Want of any Thing, but the cold, bare Floor to lie upon.

Can it be pretended, that any Alteration had been made, between the Time of her pretended Eſcape, and her going there again in three Days after? On the contrary, is it not fully proved, that all theſe Things had been there, unmoleſted, for a very long Time? Had they not Marks of Antiquity,---Marks which could not be made, but by PROVIDENCE ITSELF, or by the *Creatures* he formed for the Purpoſe? When the *Cheſt of Drawers* was removed, in order to ſee if it had been newly put there, it rended from the Wall a thouſand Cobwebs, covered with Duſt.

The ſame Obſervation occurred, upon removing the broken Caſement from off the Chimney Ledge;---*that* alſo appeared to have been fixed there by many Generations of *Spiders*.

And it is remarkable, that the Defendant herſelf was ſo ſtruck with the Force of theſe Objections, and found herſelf ſo much in Danger of immediate Detection, that ſhe *then* pretended to recollect ſome of the Things,---particularly *one* of the Saddles, which you are to ſuppoſe ſhe had forgot.

This proves, at leaſt, that the Things had not been put there to deceive her. And to ſatisfy you that her not having mentioned them in her Information did not proceed from Hurry or Surprize, Mr. Alderman *Chitty* ſwears, ſhe was under Examination *above an Hour*, with all her Friends, and none elſe, about her;---and that, after recounting all the Particulars ſhe thought fit to mention, ſhe, apprized of the Danger of omitting any Thing, was again aſked, "Whether there was any Thing "elſe in the Room?" To which ſhe coolly and deliberately anſwered, "NOTHING BUT THE THINGS IN THE PAPER."

But, what Excuſe ſoever may be invented for the *Defectiveneſs* of her Deſcription, who can account for its *Falſity*? How came ſhe to ſwear to an *old Stool* or two, an *old Table*, *old Pictures* over the *Chimney*, and a *Grate* in the Chimney?

Is it not moſt certain, none of theſe Things were, or had been, in the Room? The Proofs, that ſome of them had not, are ſo ſtrong, and of ſuch a Nature, that one is tempted to ſay, The Finger of God points out the Diſcovery of this Impoſture.

Had this Woman been *once* in this Room, even five Minutes together, could ſhe poſſibly have miſtaken it for a *little*, *ſquare*, *dark Room*? She might as well have called it an Amphitheatre, or a Ship; for no Deſcription could be more unlike. And yet, you muſt either think ſhe was actually there with her Eyes open, Light ſhining thro' two Windows and a thouſand Holes, and a Month's Leiſure for Obſervation, or elſe that ſhe is guilty of Perjury. For no Charity can impute *all this* to Miſtake.

Gentlemen, the pretended *Manner* of her *Eſcape* is another Proof of her Guilt.

At firſt ſhe ſwore ſhe eſcaped, "by making a Hole, and removing a "Pane of Glaſs, and ſo *ſliding* down over a *Pent-houſe*." But when ſhe afterwards went down to make Obſervations, ſeeing the *Wall perpendicular* from both Windows, and that there was no *Pent-houſe* or *Shed* near it, ſhe cut the Knot ſhe could not untie, and *boldly ſwore*, "SHE "JUMPED OUT OF THE WINDOW.

Was there no other Evidence in the Cauſe, *this alone* would be ſufficient to falſify her whole Story.

But ſhe was ſo unlucky, as to give ſtill further Proofs of her own Guilt; and not only contradicted herſelf, but aided the Detection of her Mother's Evidence.

Her Account of being carried between two Men, one at each Arm, thro' *Biſhopſgate-Street*, is totally *irreconcileable* with her being *ſtunned* by a *Blow* in MOORFIELDS, *which* "*threw her into a Fit*, *wherein ſhe remain-*"*ed inſenſible for Four Hours after.*"

The *Mother* had *adverti ſed* her being heard to *ſcream* in *Biſhopſgate-Street*.

Is it not marvellous that *Biſhopſgate-Street* ſhould be mentioned by both Mother and Daughter upon the ſame Occaſion, when they had *not* ſeen each other, and this too merely by the Force of Imagination! For the *Daughter*, you ſee, had no Foundation for ſaying it; and *what* led the *Mother* to it, I ſhall ſpeak of, when I come to obſerve upon her Evidence.

The multiplying *four*, *five*, *or ſix Pieces of Bread* into *four-and-twenty*, will not be thought a trifling Miſtake, when we are tracing the ſeveral Marks of Falſhood, to detect ſo ſtrange a Tale.

When ſhe applied for a Warrant againſt the Woman who had taken her Stays, did ſhe give any Deſcription of *Mary Squires*, who, you ſee, is marked ſo, as to diſtinguiſh her from all the reſt of the Creation? The Defendant had told her whole Story in the Hearing of *honeſt* Mr. SCARRAT, who had been acquainted with Mrs. *Wells*, but did not diſcover, by any Deſcription of the Defendant's, that *Wells* was not the Woman who had robbed her. For *Scarrat* was preſent, when a Warrant was granted againſt *Wells* for the Felony.

By what Name will you call him, if he knew this to be a Miſtake, without attempting to rectify it?

One of her own Witneſſes proves, that when ſhe was going up the *great Stair-Caſe*, ſhe ſaid, "THESE ARE THE STAIRS UP WHICH I WAS "CARRIED."

This was *after* ſhe had been in the *Kitchen*; for they all agree ſhe was firſt carried into the Kitchen, but took no Notice there, that it was the Place wherein ſhe had been robbed of her Stays, or that it was contiguous to the Room in which ſhe had been confined.---They all agree likewiſe, that ſhe went up the great Stair-caſe into all the Rooms of the Houſe to which it led, without the leaſt Intimation, that the Room ſought for was upon a *lower* Floor, and but *ſix* or *ſeven* Steps from the *Ground*.

Her Behaviour upon this Occaſion ſtaggered the Faith of her Friend ADAMSON. Even *He* thought it a ſtrange Miſtake.

Gentlemen, the next Evidence we troubled you with, was out of her *own Mouth*. That Witneſs, though unfit to be believed in any Thing elſe, may fairly enough be admitted to give Teſtimony againſt *herſelf*; for the beſt Kind of Evidence is Confeſſion.

Before Mr. Alderman *Chitty* ſhe ſwore, ſhe had not drank up all the *Water*, even at her coming away, but left ſome of it behind her.

Before Mr. *Fielding* ſhe ſwore, ſhe drank it all up on the *Friday*.

In this Court ſhe ſwore, that ſhe drank up the laſt Drop about *Half an Hour* before her *Eſcape*.

Let Faction, in the Maſk of Charity, ſuggeſt Miſtake and Inadvertency, to palliate theſe Self-contradictions as much as the Defendant can wiſh; yet what Regard is due to *her* Oath, who can be drawn in to ſwear ſo raſhly?

Shall one, detected of ſo groſs Prevarication, be believed, upon her ſingle Teſtimony, in the moſt marvellous Tale which was ever heard?

Shall *that Tale*, patched up with irrelative Circumſtances, ſtand a Moment in Competition with the indubitable Proof of its Falſity?

Our next Evidence was the poſitive Teſtimony of *eleven* Witneſſes, in abſolute Contradiction to the whole Story of the Defendant's Confinement.

It was proved by moſt of thoſe Witneſſes, each Witneſs referring to ſeveral Circumſtances, and each Circumſtance ſupported by other Teſtimony, that *Natus* and his Wife lay in this very Room every Night of the Month of *January* 53.

Is it even attempted in the Defence to deny this? No other Anſwer is given to it than by attacking the Characters of *Natus* and *Whiffin*, which I ſhall obſerve upon hereafter, though it does not depend merely upon their Credit.

White, the Officer, ſwears he ſaw *Natus*'s Wife coming out of this Room, as if juſt out of Bed, in the Morning, when he went down with Mr. Alderman *Chitty*'s Warrant to apprehend the People of the Houſe. The Bed of Straw, with a Sack of Wool for the Bolſter, was particularly deſcribed by him, and many others.

Is there any Anſwer given, or even attempted, to any Part of the Evidence which relates to the cutting the *Trees*? and yet that Evidence is totally incompatible with the Truth of the Defendant's Story. So is the Evidence with regard to the Sign-Irons bought by *Whiffin*, and taken out of this very Room while *Natus*'s Wife lay in the Hay-Bed; which alſo ſtands clear of Contradiction.

Permit me now, Gentlemen, to make a general Obſervation, which goes to all the Witneſſes for the Crown;---*that their Behaviour*, and the *Manner* of their giving Teſtimony, from firſt to laſt, carries with it the Air of Sincerity and Candour.

Was there a ſingle Witneſs produced, who ſeemed in the leaſt inclined to ſuppreſs the Truth, or who heſitated, prevaricated, or was pinched at any Queſtion? Did they not, every one of them, ſpeak out fully, clearly, and openly, ſo as even to force your Aſſent to the Evidence? But to how few of the Defendant's Witneſſes may the like Obſervation be applied? I appeal to your *Senſes*, whether Truth is not viſibly marked in this Proſecution.

This, Gentlemen, I think, is in general the Subſtance of the Evidence for the Crown.

I have recollected it as well as I could, without troubling you with every minute Circumſtance, which might poſſibly loſe its Force by a tedious Repetition. And when I reflect that all this Weight of Evidence is to prove *that* falſe, which in itſelf is impoſſible to be true, I have more Need to apologize for having already taken up ſo much of your Time.

But, Gentlemen, how well ſupported ſoever this Charge againſt the Priſoner is, ſhe had yet a Right to give the beſt Anſwer to it in her Power; to which you have attended with unwearied Patience. And this Defence, if what has been attempted deſerves to be ſo called, I muſt now beg Leave to conſider and reply to.

In order to beſpeak your Approbation of what was to follow, the Gentlemen, who are of Counſel for the Defendant, were pleaſed to make their firſt Addreſs to your Paſſions; they hope, that if this Caſe ſhould appear doubtful, if you can impute the Defendant's Evidence to a *Miſtake* with regard to the Perſon of *Mary Squires*, your Compaſſion will incline you to acquit her.

In this I agree with them moſt heartily; and ſo far as your Humanity, under the Regulation of Reaſon, can afford her any Aſſiſtance, I wiſh her the full Enjoyment of it. If it ſhould lead you to acquit her, I ſhall for my own Part, and I hope every body elſe will, chearfully acquieſce under your Verdict.

But you will remember, that when Men ſuffer their Compaſſion to ſilence the Calls of Reaſon and Juſtice, they proſtitute the brighteſt Ornament of human Nature;---that the moſt *deſerving* Object of our tendereſt Concern is the Commonwealth;---and that whenever we extend Compaſſion to any one, at the Expence of the PUBLIC, we are guilty of the higheſt Injuſtice, and anſwerable for it to Society.

I could wiſh indeed, for her own Sake, that the Defendant's Title to Humanity from others, had received no Interruption from the Want of it in herſelf.

When a poor, friendleſs Wretch, the Object of no one's Pity, ſtood at this Bar upon Trial for her Life; the leaſt Remains of Humanity would have ſuggeſted to this Defendant to relax a little of her Severity towards her---If there was a *Poſſibility of Miſtake*, Compaſſion would have inclined her to doubt at leaſt; but if there was no Poſſibility of it at that Time, why ſhould it be ſuggeſted *now?*

Surely, the Defendant can have no Pretence to this Plea, having diſowned it herſelf, upon the moſt ſolemn Occaſion.--She ſwore *poſitively* to take away an innocent Woman's Life; and being now called upon to anſwer for it in a criminal Proſecution, *'tis too late to pretend ſhe was miſtaken.*

It is objected, with an Air of great Seriouſneſs, that the Evidence for the Proſecution is inſufficient, becauſe there is no Proof *where the Defendant really was* during the Month of *January*.---An Objection which has been ſounded in the Ears of the Multitude, who have been fooled into a Concluſion, that if the Proſecutor could not prove this, ſhe muſt have been confined at *Wells*'s.

I am ſorry the Defendant's Counſel have no better Opinion of this Jury, than to imagine that *they* are to be captivated by ſuch an Objection.

It was incumbent on the Proſecution to prove ſhe was *not* at *Wells*'s; and if ſhe was *not* there, it is of no Conſequence where ſhe was.

However, if it could be fully proved, tho' it be merely a Queſtion of Curioſity, I ſhould be glad of it, for the Sake of ſilencing every Clamour. But her Friends, to do them Juſtice, have been ſo faithful to her, that this Secret is yet impenetrable.

I am ſtrongly inclined to include Mr. *Scarrat* in this Compliment; though I cannot conceive ſo highly of him, as to ſuppoſe he would retain this Secret at the Expence of his Intereſt; and therefore, when he finds the divulging it conſiſtent with his own Safety, he may, perhaps, chuſe to oblige the Public with this Diſcovery, rather than ſatisfy Juſtice in a *Way* that may be more inconvenient to him.

This Man's Behaviour, throughout the whole of this Affair, according to his own Account of it, will ſave me from the Imputation of a raſh Suggeſtion. He, who thought fit, at firſt, to help her to a Deſcription, by which her Evidence was afterwards to be authenticated, and to perjure himſelf in order to corroborate *that* Evidence, may fairly be preſumed a *principal Agent* in the whole Contrivance.

Where was ſhe? is a Queſtion we are not concerned to reſolve: But if you deſire to be further ſatisfied in it, aſk *Scarrat*: If he refuſes to inform you---aſk the *Mother*: If ſhe too refuſes it---I would refer you to her *Conjurer*: And if he would reveal ſo much of his Art, as to inform you what led him to tell Mrs. *Canning*, that her Daughter was *in the Hands of an old Woman, and would ſoon return*, you would not be far from unravelling this Myſtery.

But, in all Likelihood, the Time is not far off for an ample Diſcovery.

The Defendant has been hitherto very *well* ſupported by her *Managers* (that being the Name by which her Friends have thought fit to call themſelves in their late Advertiſement). But when ſhe ſhall be delivered up to Juſtice, and find that thoſe People can no longer protect her; when ſhe ſhall ſeriouſly reflect upon the Diſtreſs to which her Guilt has reduced her; Conſcience, perhaps, may prompt her to atone in ſome Meaſure for the Miſchiefs ſhe has occaſioned, and ſhe may, at the ſame Time, hope to obtain ſome Remiſſion of Puniſhment, by the Gratification of an univerſal Curioſity.

But, ſay the Gentlemen, why not call *Lucy Squires* to confirm her Brother's Evidence? She was a Fellow-Traveller with him and her Mother through the whole Journey; and therefore they inſiſt, that our not producing her, which they call a *Concealment*, is the ſtrongeſt Proof in the World that the Evidence of her Brother was falſe.

Was ſhe concealed? You ſaw her every Day during the whole Trial; ſhe is yet in Court; and if you think it would be material, in a Caſe of ſo much Conſequence, you have a Right even now to her Evidence.

But the true and only Reaſon of our not calling her, is her groſs Stupidity: Before her Brother was examined, I confeſs it was our Intention to have called her to the ſame Facts; but finding that, in the Courſe of his very long Croſs-Examination, he had fallen into many Blunders, and being told that *Lucy* was, if poſſible, ſtill more ſtupid than him, we did not think it prudent to riſque the Credit of any Part of our Caſe upon the Evidence of ſuch a ſilly Creature.

The Objection to the Brother's Evidence, from his being ſo much more exact in the Particulars of his Journey from *South-Parrot* towards *London*, than from *London* downwards, will have no Weight, when you conſider that his Memory, as to the former, has been refreſhed by his having ſince travelled that Road with Mr. *Willis*, and others, *five Times*, in order to aſcertain the Places particularly; and that his not having re-travelled any Part of the Road through which he had gone before he reached *South-Parrot*, is the probable and natural Reaſon of his Incapacity to deſcribe the other Part of his Journey.

You may eaſily conceive, in what an irregular Manner *Gypſies* dealing in ſmuggled Goods traverſe the Country. They avoid Market-Towns as much as poſſible; for, being Vagabonds, they are aware of the Danger of falling into the Hands of the Civil Magiſtrate.

But why not call Virtue Hall, in order to ſupport her Recantation from her Evidence againſt *Squires?* The learned Gentleman, who made that Objection, ſuppoſes the Omiſſion to ariſe from our Apprehenſion ſhe would have *relapſed*. If that be really his Opinion, I ſhould be glad to know, why ſhe was not called for the Defendant? For, they know, ſhe has attended the Trial every Day.

There are two Reaſons why *we* did not produce her as a Witneſs; one of which has been mentioned by the learned Recorder; that by Law ſhe was not admiſſible as a Witneſs to retract her own Evidence on the Trial of *Squires*.

Upon the Trial of *Titus Oates*, in the firſt Year of King *James* the Second, (I mean his firſt Trial, *Vide* Vol. IV. p. 47.) the Counſel for the Crown would have produced one *William Smith*, in order to prove, that what he had ſworn at a former Trial was falſe, and that he was perſuaded to it by *Oates* the Defendant. My Lord Chief-Juſtice *Jefferys* (who would have been glad to have hanged *Titus Oates*, and who of all Men living could leaſt be ſuſpected of Partiality towards him) rejected the Evidence; and being told by Sir *Robert Sawyer*, the then Attorney-General, that the like Evidence had been admitted in former Trials, the Chief-Juſtice (who, with all his Faults, has been ever eſteemed a great Lawyer, and, I am ſure, in this Inſtance did no Diſhonour to his moral Character) ſaid, "*he hated ſuch Precedents in all Times*;---*that he could* "*not believe a Villain in one Word he ſaid, when he owned that he foreſwore* "*himſelf*; *and that he ought never to be received as a Witneſs.*" And in his Opinion all the Judges of the King's-Bench concurred.

But I had another Reaſon for not calling *Virtue Hall*.---As an honeſt Man, I dared not; nor could I reconcile it to the Hopes of ſupporting my own Character an Hour longer. For how immoral and treacherous would it have been to produce a Witneſs, to prove ſhe had been perjured in a former Trial; when by that very Evidence ſhe would have expoſed herſelf to Puniſhment!

Beſides, what Degree of Credit could be given to a Witneſs offering ſuch Teſtimony?

Gentlemen, there is a Reflection thrown upon Mr. *Naſh*, Mr. *Hague*, and Mr. *Aldridge*, for their not appearing on the Trial of *Mary Squires*; as their Teſtimony would have been extremely material upon that Occaſion, and, in all Probability, would have prevented her Conviction.

I muſt confeſs, that their Conduct, in this Reſpect, is not ſtrictly juſtifiable; nor are the Reaſons aſſigned for their Abſence ſufficient. *This* ſeems to be their own Judgment afterwards, when, ſenſible of their Neglect, they made the beſt Atonement in their Power. Mr. *Naſh* was ſo affected when he found the Woman was convicted, contrary to his Expectation, that he declares he was very uneaſy, and ſhould never have forgiven himſelf, if ſhe had been executed.

Finding ſhe was convicted, what was the Behaviour of theſe Gentlemen? They readily aſſiſted in an Application to the Throne for Mercy; and, in all Likelihood, the Facts diſcloſed in their Affidavits materially contributed to the ſaving the Convict's Life.

The Counſel for the Defendant have thrown another Reflection on Mr. *Naſh*, on account of the Letter which he wrote on the 10th of *February* to Mr. *Lyon*. Theſe are the Words of that Letter:---"Mr. *Lyon*, I am "informed by Mr. *Aldridge*, who has been at *Enfield*, that if a Perſon "be appointed there to receive Contributions, ſome Money may be "raiſed

"raiſed in that Place for the unhappy poor Girl. I wiſh you Succeſs, "and am yours."

The Gentlemen, by Miſtake, (for I dare ſay they would not miſrepreſent it knowingly) have taken Notice of this, as propoſing Contributions to carry on a Proſecution. But you ſee there is not a Word about a Proſecution, for it is only to raiſe Money for the unhappy poor Girl.---What does this prove, beſides Mr. *Naſh*'s Compaſſion and Friendſhip to the Defendant, in diſtreſſed Circumſtances, whether her Story were true or falſe? She was poor, and under Affliction; and whether that Affliction was the Conſequence of Guilt or Innocence, his Humanity felt for her.

But there is a wide Difference between aſſiſting the Girl, and aſſiſting to carry on a Proſecution. This Letter ſhews, at leaſt, that Mr. *Naſh* did not then bear the leaſt Ill-will either to her, or her Mother: And ſeeing there is no Evidence, that he has ſince had any Reaſon to alter his Sentiments; What, but his Duty to the Public, brings him here? What ſhould induce him to appear in a Court of Juſtice, and perjure himſelf, to ruin a poor, unhappy, innocent Creature, who never offended him?

It is not pretended, that he can propoſe any Sort of Intereſt to himſelf, or the Gratification of any Paſſion whatever, by ſo foul a Villainy. And I defy Malice itſelf to ſuggeſt any thing to the Prejudice of his Character. He, as well as Mr. *Hague*, and Mr. *Aldridge*, being Citizens of extenſive Acquaintance, it is very likely their Characters are not unknown to you---and if ſo, their Credit muſt remain unſhaken.

Gentlemen, having now gone through the ſeveral Objections which were made by the Defendant's Counſel, I muſt intreat your Patience while I obſerve upon the Evidence which hath been offered on her Behalf.

Through the whole Defence, they have not attempted to prove a ſingle Fact in expreſs Contradiction to any Part of our Evidence, except to the *Alibi* of the Gypſey.

Neither have they attempted to impeach the Character of any one of our Witneſſes, except *Natus* and his Wife, and alſo *Ezra Whiffin*, by a little Side-reflection, which is now wiped away.---All the other Witneſſes for the Crown ſtand clear of Imputation.

It is alſo obſervable, upon conſidering every Part of the Defence, that the Defendant may be guilty of the Perjury charged in this Indictment, if all her own Witneſſes ſpeak Truth; but that ſhe cannot be innocent, unleſs fifty of ours are perjured.

For, is there one Circumſtance in the whole Defence, which neceſſarily infers a Belief of her Story? Or, is there one in the Charge, which does not clearly infer the contrary? So that, if you convict this Woman, you find a Perjury upon the fulleſt Proof that ever came before a Court of Juſtice; but if you acquit her, you muſt diſbelieve Facts uncontradicted, yet ſworn to by Witneſſes of irreproachable Characters.

If theſe general Obſervations are not juſtified by the Evidence you have heard on both Sides, I ſhall be very ready to retract them; for nothing is more remote from my Intention, than to miſlead you.

All the Evidence for the Defendant tends to prove,—That ſhe was miſſing from the 1ſt to the 29th of *January*:---That ſhe was in good Health on the 1ſt, and very ill on the 29th:---That ſhe was ſeen upon the Road between *London* and *Enfield-Waſh*, on the 1ſt of *January* at Night, between two Men:---That ſhe was ſeen in the ſame Road upon her Return Home:---That on the Night of her Return, and three Days afterwards, when ſhe went down to *Enfield* with her Friends, ſhe told her Story with ſuch Clearneſs and Conſiſtency, as ought to induce a Belief of it:---That *Mary Squires* was really at *Enfield-Waſh* on the 1ſt of *January*:---That *Squires* and *Wells* have confeſſed both the Robbery and Confinement: --That *Natus* and his Wife, and *Ezra Whiffin*, are a Sett of Wretches not fit to be believed:---And laſtly, That the Defendant herſelf bears an exceeding good Character.

What of all this is material, namely, the Defendant's being met upon the *Enfield* Road,---the *Contra-alibi* (if I may be allowed the Expreſſion) of *Mary Squires*,---the Confeſſion of *Squires* and *Wells*,---and the Defendant's Account of herſelf, I ſhall take Notice of, when I apply myſelf to the Witneſſes produced to prove theſe ſeveral Matters. And you will find, upon Conſideration, that it was not the Defendant, but other Perſons, who were met upon the Road the 1ſt and 29th of *January*, ſuppoſing their own Witneſſes ſwear truly;--- that the Evidence to encounter our Proof of the *Alibi* is extremely weak, uncertain, and improbable;---that the pretended Confeſſion of *Squires* and *Wells* was neither more nor leſs than a Declaration of their Innocence;---and that the Defendant's Behaviour upon her ſuppoſed Return, and afterwards at *Enfield*, is a further Confirmation of the Charge againſt her.

As to the reſt of the Evidence;

Whether the Defendant was miſſing from the 1ſt to the 29th of *January*, concludes nothing to the Purpoſe, unleſs it be proved ſhe was at *Wells*'s. Nor is it material to this Cauſe, that the Defendant was in an ill State of Health on the 29th of *January* and afterwards, unleſs it were alſo ſhewn, that her Diſorder was the Effect of ſuch ill Uſage, as ſhe pretends to have endured.---But you obſerve, by the very Witneſs, the Phyſician, produced for that Purpoſe, that her Illneſs might proceed from other Cauſes.

The Characters of *Natus* and *Whiffin* I ſhall take Notice of, when I come to that Part of the Caſe.

The only remaining Evidence for the Defendant, was to her own good Character, to which ſeveral Witneſſes appeared;---but, thinking it immaterial, and for the ſaving Time and Trouble, I was ready to admit it. And becauſe ſuch Admiſſion ſhould be taken in the ſtrongeſt Terms againſt us, I am willing this young Woman at the Bar ſhould be conſidered (*excluſive of the preſent Charge*) as a modeſt, virtuous, honeſt, creditable Girl, fit to be believed in any thing, *as far as* any body ſhould be believed upon the like Occaſion.

But there is a Time, Gentlemen, wherein People begin to be wicked; With ſome it happens early, with others late: Some are miſled by ill Example and bad Education, and others by various Accidents.

What was the Cauſe of this unfortunate young Creature's deviating from the Path of Virtue ſo far, as at laſt to plunge herſelf into all this Guilt and Miſery, does not clearly appear: She was meanly, though not wickedly brought up, and had lately, you ſee, been a Servant in an *Alehouſe*, where we may ſuppoſe, at leaſt, that ſhe was not much ſtrengthened in Virtue. I do not pretend to ſay, there is any direct Proof of her Want of Chaſtity; but I think it may fairly enough be conjectured as the Incentive of her preſent Guilt; but whatever has been the Cauſe of it, ſhe has been proved guilty of Perjury, and as ſhe once bore a fair Character, it is probable that ſhe did not fall into this Sin at once. Which, I think, is all that can be inferred from her good Character.

I have no Objection to the Evidence of Mr. and Mrs. *Colley*, the Uncle and Aunt: For the Defendant might have parted with them at *Houndſditch* in good Health on the 1ſt of *January*, and they not ſee her again till the 29th.

But Mrs. *Canning*, the Defendant's Mother, who is called to prove ſeveral Circumſtances, has ſaid enough to create a Jealouſy, at leaſt, that neither her Daughter's Perjury, nor the *Motives* to it, are *unknown* to her.

Firſt, With regard to the Papers that were ſent to the Office, in order to be printed in Advertiſements; in one of which it was ſaid, that the Defendant had in her Pocket *Twelve Shillings and Nine-pence Half-penny*. She tells you, that in the Morning her Daughter had Half a Guinea, three Shillings, and a Farthing:---That ſhe lent her a Box to put the Half-Guinea in, and that the Girl took her Money out, and ſhewed it her. Why then did the Mother propoſe to advertiſe, as if her Daughter had juſt twelve Shillings and Nine-pence Half-penny? Why not inſert Half a Guinea, three Shillings, and a Farthing? Becauſe the little Brother had told her, ſhe had changed ſome Money, and had given to each of the Children a Penny; and ſo computing what remained of the thirteen Shillings and Six-pence Farthing, ſhe reckoned that the Girl muſt have twelve Shillings and Nine-pence Half-penny in her Pocket when ſhe parted with her Uncle at *Houndſditch*. Now, if this be true, the Defendant's Account of the Money is falſe: She ſwore, that the Men robbed her of Half a Guinea and three Shillings. The Farthing, you obſerve, was not taken from her; for ſhe brought it Home, and gave it, the ſame Night, to one of her Brothers. The Mother, being pinched at this obvious Objection, endeavoured to remove it by leſſening the Force of the Evidence ſhe had given before; and by way of Recollection ſays, ſhe is not poſitive whether the thirteen Shillings and Six-pence Farthing were not ſhewn to her *after* the Half-pence had been given to the Children. And if it was *after*, then the Mother is in Hopes ſhe has entirely removed the Objection, and left the whole Sum of thirteen Shillings and Six-pence in the Daughter's Pocket, which was the Sum ſhe ſwore to have been robbed of. But with all the Mother's Cunning and ſudden Recollection, Truth is too hard for her; for by forgetting a little Circumſtance, (Mr. *Fielding*'s "pretty Incident of the Penny Mince-pye,") ſhe is in the ſame Dilemma as before. For, ſuppoſing the Half-pence had been given to the Children before ſhe had ſhewn the Half-Guinea, three Shillings, and a Farthing, yet the Mince-pye was bought after ſhe parted with her Uncle, as was ſworn by the Defendant: Now, out of what Money was the Pye paid for? And if ſhe had no Half-pence, and only Half a Guinea, three Shillings, and a Farthing, before ſhe bought the Pye, then how could ſhe be robbed of Half a Guinea and three Shillings in *Moorfields* afterwards? Thus that *pretty Incident*, "*which* her learned Advocate, in his Pamphlet, ſays, "*poſſibly ſaved this poor Girl's Life*," leads to a Detection of her Guilt upon the Evidence of her own Mother.

The Mother mentions another ſtrange Circumſtance. "She thought "the Girl had been murdered by the *Jews*, and thrown into *Houndſditch*." Why then did ſhe advertiſe her loſt, ſtrayed, or miſſing by her Friends? Why no ſearching for the Body? Was there a human Creature ſent to inquire about it? Beſides too, the very next Witneſs, the Apprentice, ſwears, what ſtands in flat Contradiction to the Miſtreſs, "That Mrs. "*Canning* told him, ſhe thought her Daughter had been ſnapped up by "ſome rakiſh young Gentleman."

The ſcreaming out of a Coach, in *Biſhopſgate-Street*, ſeems to be one of the *wandering Thoughts* ſhe ſpeaks of; for, though it is pretended ſhe received Information of that Matter by the Woman of the Oil-ſhop, yet they have not thought fit to produce this Perſon; which, in a Caſe where every Circumſtance is material, is an Omiſſion one cannot account for to the Credit of the Defence.

But it ſeems, as if the Thoughts of both Mother and Daughter *wandered* towards the ſame Objects; for the Daughter dreamt of *Biſhopſgate-Street*, while ſhe was in a convulſive Fit.

Then as to the *CONJURER*; to whom, by the bye, there was not a Word mentioned about being murdered by the *Jews*.

She was introduced to this illuſtrious Perſonage with great Solemnity; The Lights, the Skeleton, the Magic Inſtruments, the Wand, the Circle, and all the Apparatus proper to inſpire a poor ignorant Woman with Awe, and engage her to a *Diſcovery* of what ſhe wanted to know, were all before her.

She was ſo terrified, that you find, ſhe hardly remembers one Word ſhe ſaid to him; and yet ſhe muſt have ſaid *ſomething* very material, inſtructing him to give her ſo good an Account of her Daughter.

At laſt ſhe recollects, that ſhe did tell him ſomething about BISHOPSGATE-STREET, though ſhe does not remember the Particulars. But ſhe muſt have gone much further, before the Doctor could have found out, that her Daughter was in the Hands of an old Woman; that ſhe ſhould advertiſe her once more, and ſhe would come again. Whether ſhe really had this Intelligence from the Conjurer, or, in order to carry on the Plot, thought fit to invent it for the Amuſement of her credulous Friends, who had lent her Money for his Fee, is not eaſy to ſay: But either Way the Inference is, that ſhe knew *more* of her Daughter, than is conſiſtent with the Defendant's Innocence.

For, if what the Daughter ſwore had been true, how could the Mother, at one Time believing her murdered by the *Jews* at *Houndſditch*, and at another that ſhe was ſnapped up by ſome rakiſh young Gentleman, be ſo ſuddenly undeceived, and diſcover ſhe was in the Hands of an old Woman, and would return?

When

When one conſiders the Whole of this Woman's Evidence together, the ſeveral Advertiſements,---the Conference with this pretended Conjurer,---her wandering Thoughts,---the putting up Bills in the Church, and the Meeting-houſes of Preſbyterians and Methodiſts, to pray for her Daughter's ſafe Return, (by which the pious Congregations were prediſpoſed to Charity)--the nightly repeated Prayers to the ſame Purpoſe with the Apprentice at Home,---particularly the praying with him on the 29th of *January* for the Daughter's Apparition, (never mentioned till that very Evening)---that Prayer anſwered in the ſame Moment by the Daughter's ſuddenly ruſhing into the Room,---her Mother's pretended Surprize at ſeeing her, "*Feel her, feel her, 'tis an Apparition!*" and then fainting away; all theſe Things put together, together too with the Account the Daughter gave before Mr. Alderman *Chitty* about *Biſhopſgate-Street*, though they do not directly prove, yet ſurely they create ſomething more than a Suſpicion that the Whole was a Contrivance.

To ſupport the Defendant's Evidence, as to the Manner of her Eſcape out of Window, Mrs. *Canning* the Mother, *James Lord* the Apprentice, and Mrs. *Myers*, have ſworn, that her Ear (which the Defendant ſaid was ſcratched in breaking out of the Window) was bloody when ſhe returned Home. The Mother ſays, the "Ear was then bleeding." *James Lord* ſays, "it was all over bloody, and the Handkerchief bloody." And Mrs. *Myers* ſays, the Blood then dropt from her Ear upon her Shoulder."

This was ſix Hours after the Time of her leaving *Enfield-Waſh*; and, according to the Defendant's own Evidence, ſhe wrapped a white Linen Handkerchief round her Head, which ſhe found in *Wells*'s Room, and wore it, inſtead of a Cap, all the Way to her Mother's: Now, if her Ear bled at the Rate thoſe Witneſſes would have you believe, the Handkerchief muſt have been extremely bloody in *one* particular Place. That Handkerchief has been produced to ſhew to the Witneſſes under another Head of Evidence, and is now before you. Does it not give the Lye to theſe three Witneſſes? It has indeed the Marks of *little* Spots of Blood upon it, but in *different* Places, all over the Handkerchief, and not at all correſponding with their Teſtimony, but rather like Dots made by a Finger on Purpoſe.

But it being a good while ſince Mrs. *Canning* had the Poſſeſſion of this Handkerchief, I do not wonder at her forgetting in what Manner ſhe had dreſſed it up, ſeeing her Want of Memory has betrayed her into a flat Contradiction to the Evidence ſhe herſelf gave upon the Trial of *Squires*. For ſhe now ſwears her Daughter came Home with two Handkerchiefs on her Head, and that "ſhe had no Cap on;" but upon that Trial, ſhe ſaid nothing of the Handkerchief, but ſwore, that, upon her Return, "ſhe had a Cap on."

Gentlemen, it is an Objection to the Credit of the Apprentice, that he has been hid, till he is brought here as a Witneſs, leſt he ſhould make Diſcoveries; for when Mr. *Biddulph* went to the Houſe in order to aſk him a few Queſtions, another Perſon was impoſed upon him in his Stead.

It will be material to another Part of the Evidence afterwards, to recollect *Lord*'s Deſcription of the Defendant upon the 29th of *January*, that "ſhe was black and blue as if beaten," and that "her Arms and Face "were as black as his Hat." He alſo tells you, what is contradictory to all the reſt of the Evidence, that on her firſt coming Home, before Mr. *Scarrat* or any body came in, ſhe ſaid ſhe had been confined at *Enfield-Waſh*. If you conſider the whole Tenor of the Evidence for the Defendant, you muſt be convinced that this Lad has ſwore falſly, and that he was hid for a very iniquitous Purpoſe.

The Name of Mr. *Scarrat*, the next Witneſs, I have had Occaſion to mention once or twice already, in Terms not much to his Advantage.

He came to the Defendant, *before* ſhe was *asked* any Queſtions;---one of the Witneſſes ſays, it was *before* ſhe *anſwered* any Queſtions.

What brought *him* there, a total Stranger both to the Mother and Daughter? for, if you can believe him, he had never ſpoke to either of them in his Life.

He ſays, he was prompted merely by Curioſity, upon hearing, in the Neighbourhood, that *Betty Canning* was returned Home: And the Moment he came in he asked her, "*where ſhe had been confined?*"

Ready to ſatisfy this *Stranger* at once, ſhe told him ſhe had been confined ſomewhere on the *Hertfordſhire* Road, for ſhe remembered the Coachman's going by.

The next Queſtion was, "How far from *London?*" She anſwered, "Near *nine or ten Miles.*"

Without further Inquiry, SCARRAT *inſtantly* replied, "I'll lay a Guinea to a Farthing, ſhe has been at Mother *Wells*'s:" She immediately ſaid, "I think I did hear the Name of *Wills* or *Wells:*" And he then *helped* her to a perfect *Deſcription* of *Wells*'s Houſe, and the Places about it.

Mr. *Scarrat* proceeds to aſk her various Queſtions, in order (as he ſays) to be ſatisfied, whether ſhe really had been there. He aſked her about the Proſpect from the Window,—the plough'd Land,—the Brook,—the Tanner's,—and every remarkable Thing he could recollect; and to every Queſtion ſhe anſwered in the Affirmative.

If *Scarrat* really meant to be ſatisfied whether ſhe had been at *Wells*'s, ſeeing ſhe anſwered affirmatively to every Queſtion, why did he not put *one Queſtion* at leaſt, to which her anſwering *Yes* would have convinced him, ſhe had *not* been there? The Reaſon of that Omiſſion may be eaſily collected from the reſt of his Behaviour.

Being aſked, whether he knew Mrs. *Wells*'s, he would have you think he only knew her Houſe by paſſing and repaſſing. Was you never there? Why, "he *believes*"---he is not ſure---"he has been there *once or twice.*" No oftener?---Upon your Oath, have not you been there more than twice? "I *believe* I have been there *two or three Times.*"---Four Times, Sir? "He "*might* have been there *three or four Times.*" At *laſt* it came up to *ten*. "He could *not* ſay *but* he had been there *ten Times!*" But, ſays he, I had never been in the Hay-loft. In this I believe him, becauſe the Defendant appears to have been helped to no Deſcription of it.---If he had been there, he might have aſked ſome Queſtions about that too, which ſhe would alſo have anſwered in the Affirmative: But though he might have never been *in* this Hay-loft, yet he had been all round the Houſe, and muſt have known by the Outſide, that there was ſuch a Room, and where the Windows were.

He ſwears further, that as ſoon as the Defendant went into the Kitchen at *Wells*'s, ſhe pointed to the Door leading to the Workſhop, though it was ſhut, and ſaid, "This is the Door leading to the Room in which "I was confined." But *Scarrat*, not knowing what the other Witneſſes had ſworn, after having out-run them all, was reduced to the Neceſſity of giving Evidence againſt the Defendant, by anſwering this Queſtion, *viz.* If ſhe had ever been before in the Kitchen with the Door of the Workſhop open, and yet had taken no Notice of it, and had never pretended to recollect the Place till after ſhe was in the Workſhop, and this too after ſhe had been in every other Room of the Houſe, ſuppoſing all this, what he would have thought of her? Little dreaming of what had been proved, he anſwered, it would have led him to diſbelieve her whole Story.

This is the Man who was preſent at Mr. Alderman *Chitty*'s granting a Warrant againſt Mrs. *Wells* for a capital Felony; who knew by the Deſcription ſhe could not be the Perſon meant, and yet he never dropt the leaſt Hint to prevent it: And *now* he denies bearing any Ill-will to Mrs. *Wells*, his old Acquaintance, or that he ever vowed Revenge againſt her.

This is the Man, who, though an entire Stranger to *Canning*, firſt helped her to a perfect Deſcription of the Places about *Wells*'s Houſe, which gave Credit to her Story; and afterwards, in order to give her Credit with a Jury to convict two innocent Women, by way of *Corroboration*, as he terms it, committed Perjury.

Mary Myers and Mrs. *Woodward* ſay, the Defendant's Shift was neither draggled, nor dirty. Yet this was the *Shift*, you are to ſuppoſe ſhe had on, when two Men had dragged her twelve Miles, for ſix Hours together, through dirty Roads, in *January*---which Shift ſhe wore for a Month in a filthy Room, and upon her Return through the ſame dirty Road.

Had this been true, not only the Shift would have been draggled and dirty, but her Petticoat, Shoes, and Stockings muſt have been extremely ſo---Why were they never produced?

Mr. *Lyon*, Mr. *Wintlebury*, and Mr. *Adamſon* are next called to prove what paſſed at *Enfield-Waſh*.

The firſt of theſe Witneſſes, being an exceeding honeſt Man, and cautious of what he ſwears, has done the Defendant ſo little Service by his Evidence, that he might very well have been ſpared. He tells you, that he himſelf has no other Reaſon for believing what the Defendant ſaid, than becauſe ſhe ſaid it; for that he never made the leaſt Inquiry about it, but ſwallowed the whole Story at once upon the Credit of this Servant of his, without ſuppoſing it poſſible ſhe ſhould tell him a Lye. Had his Head been as good as his Heart, he would certainly have required ſome Reaſon for aſſenting to the moſt wonderful Story he ever heard in his Life.

But as much as I admire his Goodneſs, I cannot help being ſorry for his Credulity; becauſe I am apprehenſive, his being ſo eaſily to be impoſed on, might have encouraged the Defendant at firſt to invent this ridiculous Excuſe for abſenting ſo long from his Service.

Mr. *Wintlebury* endeavours to account for the Defendant's ſaying there was more Hay in the Room than when ſhe had been confined there, by ſwearing that it appeared to have been toſſed up, and hollow towards the North Window. But this ſtands contradicted by almoſt every Witneſs.

He ſays alſo, That *George Squires* endeavoured to go away in a Hurry, and that he would have avoided an Examination. Though this is not much to the Purpoſe, yet it is a very ſuſpicious Evidence; for *Squires* was ſo well guarded, it was hardly poſſible for him to eſcape; and there being no Charge againſt him, nor the Defendant ſo much as pretending to have ever ſeen him before, what had he to apprehend, which ſhould make him attempt it? Beſides, you find, he voluntarily and readily gave a full Account of himſelf and his Mother, the Moment his Mother was charged with the Robbery, by declaring that they were at *Acbotſbury* on the 1ſt of *January*, and for ſeveral Days after.

Mr. *Adamſon* owns the Defendant made no Obſervation in the Kitchen: And yet you find, even by her own Witneſſes, that ſhe could have ſeen near Two-thirds of it from the Room in which ſhe is ſuppoſed to have been confined. None of them deny this; and ſome admit, that the Hole between the Hay-loft and the Kitchen was ſo large, that ſhe might have looked through the Kitchen into the Road. Now, if ſhe had been in this Hay-loft for a whole Month together, was it poſſible, when ſhe was brought to the Kitchen again, ſhe ſhould forget, that it was contiguous to the Hay-loft, and leading to it by only five or ſix Steps? Whereas you find by this Witneſs, that when ſhe was firſt brought into the Houſe, ſeeing the Stair-caſe which faces the Street-door, ſhe immediately ſaid, ſhe believed, "that was the Stair-caſe ſhe was carried up."

It appears inconteſtably, that this Stair-caſe is at a conſiderable Diſtance from the Hay-loft, and has no Sort of Communication with it. And *Adamſon* himſelf allows, it is not at all like the little Flight of Steps leading from the Kitchen;—that it ſtruck him, for he thought it *ſtrange* ſhe ſhould make ſuch a Miſtake. How contradictory to each other are the Teſtimonies of this Man and *Scarrat!* Obſerve here the good Effects of a ſeparate Examination.

When ſhe was carried into the Hay-loft, did ſhe immediately ſay, (what ſhe muſt have known before ſhe got up three of the Steps, if ſhe had ever been there before) This is the Place? No.—But when ſhe was in the Room, and *after a Pauſe*, ſhe recollected, (having ſeen every other Room of the Houſe) "This is the Room, but there is more Hay in it." *Adamſon* tells you, it occurred to him to ſearch about the Houſe, whether there had been any Hay lately carried there; but that there was no Appearance of any,---not a ſingle Blade could be found.

Not recovered from the Amazement into which her owning the Stair-caſe had thrown him, and having yet received no Proof of her Sincerity, he deviſed a moſt ingenious Trial, to ſatisfy himſelf that the Defendant had been really confined in the Hay-loft. And this was by aſking her concerning the *Proſpect from the Window*. But this ſagacious Gentleman had not thought of the Experiment, until ſhe had been in the Room for the Space of five or ſix Minutes, to furniſh herſelf with Obſervations.

And, after all, what was her Anſwer? "*Hills and Trees at a Diſtance.*" The Chances were ſo many in her Favour, that Hills and Trees might

might be ſeen from any Country Window, that ſhe might have ventured this, *before* ſhe was carried there. But if Mr. *Adamſon* had not been over-fond of removing Doubts, he would certainly have required a more ample Deſcription of a Proſpect ſhe pretended to have had for a Month together. The Trees were almoſt peeping in at the Window, and muſt have been ſeen by her, as well as the Hills, as ſoon as ſhe entered the Room.—But beſides theſe, there were many other Things (as you find by the Witneſſes) obſervable from the Room. A Hedge, and a Ditch broad enough for a Foot-way, juſt under the ſame Window,---ſeveral Fields, both plowed and in Graſs, and a Variety of other Things proper to be mentioned, in Anſwer to ſuch a Queſtion, of ſuch a Tendency. And yet, you obſerve, the Anſwer of "Hills and Trees at a Diſtance," was ſufficient with Mr. *Adamſon* to deſtroy the glaring Proof ſhe had juſt before given him of her Inſincerity.

He alſo ſwears, he helped to pull down the Boards from the Window, and that Mr. *Colley* aſſiſted in it. This was a Fact ſo very material, tending to deſtroy one of the capital Objections to the Defendant's Credit, that one ſhould have expected the fulleſt Evidence to prove it. *Colley* had been before called to Facts infinitely leſs material, but he has not mentioned a Word of this. From whence one might fairly conclude, that *Colley*'s Account of this Matter would have done the Defendant or Mr. *Adamſon* no Service.

The Willingneſs of *Adamſon* to reconcile all Difficulties, and regain for the Defendant a forfeited Credit, appears by his riding back to aſk her about the Hay. To obviate this Objection to himſelf, he has ventured to deny even his ſaying to her, "What! *Hay, Bet!*" But he dares not diſown his riding back to inform himſelf about it; and another of the Defendant's Witneſſes, who was then with her, ſwears to the very Words. That other Witneſs was material to ſeveral Facts, as well as Mr. *Adamſon*; and as one of them muſt be forſworn (unleſs the *Doctrine of Miſtake* is to prevail univerſally), it will be of equal Advantage to the Proſecution, give up which you pleaſe.

Beals, the Turnpike-Man, was the next Witneſs to prove his ſeeing the Defendant on the *1ſt* of *January* carried by two Men in the Road towards *Enfield*. But what does he prove? Moſt clearly, that he never ſaw her there; which appears paſt all Doubt, even by the Defendant's own Teſtimony. *She* ſwore, ſhe was ſtripped of her Gown and Apron in *Moorfields*, and had neither of them on when ſhe arrived at *Wells*'s; but *Beals* ſwears, the Woman he ſaw had a light coloured Gown and an Apron on: So that, of all the Women in the World, whoever it was, certainly it was *not Elizabeth Canning*.

There is another Reaſon, why ſhe could not be the Perſon. *Canning* was inſenſible, in a convulſive Fit, and therefore unable to walk a Yard; but the Woman *Beals* ſaw, ſo far from being borne by two Men, was walking very faſt, "*nimbly going along the Road, ſobbing and crying*; whilſt one of the Men was pulling her on, ſaying, "Come along, you are drunk;" the other following, "Lord, how drunk ſhe is!"---Could this be *Elizabeth Canning?* Were the Cries he heard, like the Screams of a Woman in a convulſive Fit? Could *Elizabeth Canning*, in her then Condition, without either Gown or Apron, be the Perſon this Witneſs deſcribes? How many Impoſſibilities muſt be ſwallowed to ſuppoſe this Woman guiltleſs?

But even theſe are not the only Proofs it was not the Defendant, whom *Beals* is ſuppoſed to have ſeen on the Road. For, if you conſider the Place and Time of the Night, you'll find another Impoſſibility to contend with.

What *Beals* has given an Account of, was at *Stamford-Hill* Turnpike, about four Miles from *Moorfields*. According to the Defendant's Evidence, ſhe was robbed in *Moorfields* between Nine and Ten, and ſhe arrived at *Wells*'s about Four in the Morning: So that this Journey of Eleven Miles (the Diſtance between *Moorfields* and *Wells*'s) muſt have taken up above ſix Hours; at which Rate of travelling, ſhe could not have reached this Turnpike till almoſt Twelve o'Clock. But what *Beals* ſaw was betwixt Ten and Eleven, which was but an Hour after the Defendant was firſt attacked in *Moorfields*. Is it poſſible that two Men could have carried her, in ſuch a Condition, four Miles in one Hour?

Beſides, the Witneſs is uncertain as to the Day of the Month. He ſwears only to the "*Fore-end of* January," but is not able, by any Circumſtance whatever, to fix it to the firſt Day of the Month. Whereas *New-year's Day* being a very remarkable Time, it is probable he would have been able to recollect it particularly, had that been the Day.

Such was the Evidence of the Defendant's being ſeen upon the Road, between *London* and *Enfield Waſh*, on the *1ſt* of *January*. Let us now examine the Proof of her being ſeen in her Return Home upon the 29*th*.

Thomas Bennet, the firſt Witneſs called to this Fact, ſays, that about a Quarter of a Mile from Mrs. *Wells*'s, and twenty Poles below the ten-mile Stone, he met a Woman, "miſerably poor, without either Gown, "Stays, or Hat, yet with ſomething about her, not a Gown:"—That ſhe appeared to be a Stranger to the Road, for ſhe inquired the Way to *London*, and told him, "*She had been frightened by a Tanner's Dog.*"

Had he omitted this laſt Circumſtance, there had been nothing to detect him of Falſhood by; and the Fact would then have depended merely upon his Credit, which, *probably by Appearance*, could not have weighed much, unſupported by other Proofs. But the Incident of the Tanner's Dog has quite defeated his Evidence, for it was impoſſible ſhe could tell him of this, in her Way from *Enfield-Waſh* to *London*, before ſhe was come ſo far as the Tanner's. She might, indeed, have met a Dog, and been frightened by him; but how could ſhe, a perfect Stranger, know he belonged to a Tanner? This Witneſs tells you, the Tanner's is an hundred Yards on this Side of the ten-mile Stone, but he met the Woman twenty Poles below the ten-mile Stone:---And it was not the Witneſs, but the Defendant, who called it a *Tanner*'s Dog.

This will not be thought too nice an Objection to the Credit of one depoſing a Fact not very credible in itſelf, and which you will find to be falſe, when coupled with the Evidence of the ſubſequent Witneſſes. And in a Caſe of this extraordinary Nature,---where the Defendant's Attorney (not the preſent Attorney, to give him his Due) had advertiſed for Evidence, it became neceſſary narrowly to watch every Circumſtance coming from the Mouth of a Witneſs in ſo low a Station of Life.

The next Witneſs was *David Dyer*. He ſays, he ſaw a "poor diſtreſſed Creature" paſs very ſlowly by him on the 29*th* of *January*;---that he ſaid to her, "Sweetheart, do you want a Huſband?" Being aſked to give an Account of her Cloathing, he ſays, *She had a white Handkerchief on her Head.* In this he goes too far; for, according to her Mother's Account, the white Handkerchief was covered by a coloured one, which ſhe had taken out of her Pocket, and which, from the Smallneſs of the white one, muſt have totally concealed it.

Willing to fix every Circumſtance, he ſwears to ſomething that may anſwer to the Bed-gown,---"A ſhortiſh Thing about her, that did not "come very low;" and that he ſaw the Woman ſoon afterwards, and took her to be the ſame Perſon with the Priſoner at the Bar. But being called upon to deſcribe her, as ſhe appeared to him upon the Road, this Witneſs, unacquainted with what the reſt had ſworn, (another good Effect of a ſeparate Examination) proves moſt clearly, that the Perſon he ſaw, if any one he ſaw, was not *Elizabeth Canning*. Her *Face*, ſays he, was very *pale*,—not black, but *whitiſh*.—He looked earneſtly at her, and particularly obſerved her, and did not only admire her Face, but her *Hands* too---they were *delicately white.*

Refer yourſelves to the Deſcription given of her at her Return Home, particularly by the Apprentice: "*She was black and blue, as if beat, her* "*Arms and Face as black as his Hat.*" Could this be a *pale Woman with a white Hand*, whom *Dyer* met upon the Road?

Mary Cobb, the only remaining Witneſs to the Defendant's being on the *Enfield* Road on the 29*th* of *January*, ſwears ſhe met her *creeping along*, in the Middle of the three *Ducks-Fields*, between the five and ſix-mile Stones. This is ſaid to be a Miſtake, and that it is between the ſix and ſeven-mile Stones. Take it either Way: If ſhe met her between the five and ſix-mile Stones, it was near five Miles from *Wells*'s;---if between the ſix and ſeven-mile Stones, it was near four Miles from thence; for *Wells*'s Houſe is about the Midway between the ten and eleven-mile Stones.

Now, by comparing this Woman's Evidence with what the Defendant has ſworn, you will find it impoſſible to be true.

The Defendant ſwore ſhe ſet out from Mother *Wells*'s at Four o'Clock, and that the Clock ſtruck Ten as ſhe was going over *Moorfields:* So ſhe was ſix Hours travelling eleven Miles, (the Diſtance between *Wells*'s and *Moorfields*) which is leſs than at the Rate of two Miles an Hour.

Reckoning from the Time the Defendant herſelf has fixed for her ſetting out, it muſt have been paſt Six before ſhe had *crept* to the Middle of the three *Ducks-Fields*, ſuppoſing it to be but four Miles from *Wells*'s, and if five Miles, then it muſt have been half an Hour later. Now, at what Time did this Witneſs ſee her? She ſays it was duſkiſh. The 29*th* of *January* was the Day after a New Moon, ſo there could be no Moonlight; and if it was duſkiſh, it could not be ſo late as Five o'Clock. A great deal of Pains was taken, in the Croſs-Examination of this Witneſs, to fix the Time of her being at the Place, where ſhe is ſuppoſed to have met the Defendant. At Three o'Clock ſhe left her own Houſe,---ſhe had a Mile to go to one Mrs. *Carter*'s---ſhe had been there, but I think ſtayed not a Minute,---ſhe called no where on the Road,---ſhe might indeed be detained a little by Acquaintances, who met her, but made no conſiderable Stop any where,---and met *Canning* within a Quarter of a Mile of her own Houſe, on her Return Home;---ſo then ſhe muſt have walked a Mile and three Quarters, and no more, from Three o'Clock, and make very little Stay. How late could it poſſibly be then? Let this Woman creep as ſlow as ſhe pleaſes, let her be as ſlow in Walking as ſhe appears in Invention, ſhe could not eke out the Time ſo as to meet the Defendant. Even Five o'Clock will not do---duſkiſh will not anſwer---It muſt have been paſt Six before *Canning* could poſſibly come to that Place, by her own Calculation. But this Mrs. *Cobb* has even ventured to ſwear to a perfect, an abſolute Remembrance of the Defendant's Face, *by the Tip of her Noſe!* By what Light could ſhe make ſo nice an Obſervation, after Six in the Evening, on the 29*th* of *January?*

Upon the Teſtimony of theſe three laſt Witneſſes I ſhall only make this further Obſervation, that, if it were poſſible to admit they ſaw any Perſon in the Manner they have ſworn, it appears, by every Circumſtance, they all ſaw one and the ſame Perſon, and the Evidence of *Dyer* fully proves, that Woman was not the Defendant.

Theſe, Gentlemen, are the Objections which have occurred to me on that Part of the Caſe, relating to the Defendant's having been ſeen on the *Enfield* Road on the *1ſt* and 29th of *January:* By which it appears, that her Friends have reaped no great Benefit from their advertiſing for Evidence.

The next Attempt was to anſwer the Proofs we gave of the Gypſies being at *Abbotſbury* on the *1ſt* of *January*; in my Obſervations upon which, I ſhall not take up much of your Time. Indeed I cannot take upon myſelf to enter minutely into the Evidence, becauſe I was unavoidably abſent Yeſterday, when moſt of the Witneſſes to it were examined. But from the Notes of my learned Friend, the Gentleman whom I have the Honour to aſſiſt, I am authorized to ſay, the Defendant has had no better Succeſs in this Part of her Caſe, than in the reſt.

Are the Witneſſes to prove the Gypſey's being at *Enfield* before the 24th of *January* ſo very certain, both as to the *Perſon* of *Mary Squires*, and the exact *Times* of ſeeing her there, as to leave no *Poſſibility* of Miſtake? If ſo, this will reſt merely upon the Credit of the Witneſſes; otherwiſe it will not admit of Diſpute. For it is moſt certain, that the Witneſſes for the Crown cannot poſſibly be miſtaken in either of theſe Reſpects.

It is obſervable, that none of the Defendant's Witneſſes pretend to have ever ſeen *Mary Squires* with either of her two Children; whereas every one of our Witneſſes ſwears directly to all their Perſons.

With what Uncertainty do the Defendant's Witneſſes ſpeak alſo to Point of Time! Some of them do not know one Day, and ſome not one Month from another, and ſome are ignorant whether *Chriſtmas* is in *June* or *January*.—One keeps the Day of the Month by his Clock,---another

ther refers herſelf to the Almanack, without being able to diſtinguiſh by it what Day of the Week ſuch a particular Day of the Month was. The Experiment was made upon her Croſs-Examination, and an Almanack was put into her Hand,--ſhe underſtood nothing by it. But, ſays ſhe, I ſwear from the Aſſiſtance of a *Sheet* Almanack; yet what had been ſhewn her, was the ſame cut into Leaves, and bound up.

Gentlemen, thoſe who pretend to be poſitive as to Time, either refer to Circumſtances inconcluſive, or to Papers and Books, not one of which has been produced. It was material for them to be exact, and they ſaw the Neceſſity of being ſo. Why then did they produce no written Evidence to aſcertain Facts of ſuch Conſequence, ſince by their own Account this was to be had?---Is it not apparent, no Diligence has been wanting in this Defence to lay before you every Circumſtance that could be conſtrued in their Favour? To what Cauſe can ſuch Omiſſion be aſcribed? Perſons ſpeaking merely upon Memory are very liable to miſtake; and in a Cauſe of ſo much Spirit, the Zeal of Witneſſes may urge them to ſtrain the Truth at leaſt, even where they would not venture at direct Perjury. Falſhood is gloſſed with Doubtfulneſs, and Doubts are raiſed to Certainty.

An Inſtance of this was exemplified in the Evidence of *Anne Johnſon*, who ſwears ſhe ſaw *Mary Squires* at *Enfield* on the 18th of *January*. Was it poſſible for any Witneſs to be more poſitive than this Woman? She remembers the Time perfectly; it was juſt two Days after ſhe carried her Work Home to Mr. *Smitheram* her Maſter, who entered in his Book the Time of its being both delivered out and returned.

Here was a Reference to a written Memorandum, and the producing it would have fixed the Time paſt Doubt. Yet this, like all the reſt, was thought proper, by thoſe concerned for the Defendant, to be left merely upon the Credit of Memory. But, by Accident, we got Acceſs to Mr. *Smitheram*'s Book of Accounts; and he and his Daughter, in whoſe Hand-writing the Entries were, have been ſo kind this Morning, as to produce the very Book which *Anne Johnſon* referred to; by which it appears, that the Work was carried Home on the 23d of *January*. So that the Time of her having ſeen *Mary Squires*, two Days after, muſt have been on the 25th, which was the Day after *Squires*'s coming to *Enfield*, according to the Account of all our Witneſſes.

I do not mean by this to impute any thing more than Miſtake to this *Anne Johnſon*. But it ſhews how uncertain Memory is, how poſitively Witneſſes, warmed into a Contention for Victory, will depoſe Facts, which they ſhould relate with ſome Degree of Doubtfulneſs, and ſhews indeed the Reaſon, why no Books or Papers are produced.

Sarah Star ſwears to the 18th or 19th of *January*, and refers to a Note of Hand of the ſame Date, which ſhe delivered to Mr. *Miles*, the Defendant's then Attorney. But neither the Note itſelf, nor Mr. *Miles*, nor the Perſon, who, *Star* ſays, brought the Note to her, is produced.

In ſhort, for 'tis Time to make an End, nothing concluſive appears.

Grace Kirby, another Witneſs, ready as the reſt to fix an early Time of ſeeing *Squires*, upon her Croſs-Examination is not certain of having ſeen her, till within eight Days before *Squires*'s being apprehended, which was on the 1ſt of *February*.

Wife Baſſet is ſure of the Time, becauſe ſhe killed a Hog on the *Thurſday* before New *Chriſtmas-Day*; and ſhe has no other Reaſon for fixing the Time, but becauſe it was the *Monday* was a Month after; which brings it to the 22d of *January*.

How vague and uncertain is all this Evidence, compared with the clear, determinate, poſitive, abſolute Teſtimony, that *Mary Squires* was at *Abbotſbury* on the 1ſt of *January!* I ſhould be aſhamed to take up more of your Time in Obſervations upon this Part of the Defence.

They next call *Ward* and *Jones* to prove, that *Suſannah Wells* confeſſed the Defendant's Confinement.

Ward, having juſt read the News-paper relating the Particulars of the Defendant's Story, went to ſee Mother *Wells* in *Clerkenwell* Bridewell, and *Jones* went with him as his Friend. One of them (*Ward*, as I recollect) aſked *Wells*, "*How came you to keep the Girl a Fortnight?*" To which *Wells* anſwered, "*It was twenty-eight Days.*" The next Queſtion was, "*In what Room was ſhe?*" The Anſwer was, *You know the Room very well.*" This was the whole Converſation tending to a Confeſſion: But ſuch a Confeſſion, I may venture to ſay, was never before given in Proof.

Wells, at every other Time, both before and after this pretended Confeſſion, ſtoutly denied every Article of the Charge. It is therefore moſt likely ſhe did not mean, at this Time, to admit it. And if you conſider the Occaſion of *Ward* and *Jones* going there, and the very Words of the Converſation, you will find that *Wells* really confeſſed nothing, but only corrected *Ward*'s Miſtake by the Charge againſt her. The News-paper had mentioned, that *Wells* had confined the Girl twenty-eight Days; *Ward* had miſtaken it for a Fortnight, and *Wells* ſet him right. The whole of which, taken together, amounts to juſt as much as if *Wells* had more fully anſwered, *viz.* You are miſtaken as to Time, for I am charged with having confined her twenty-eight Days.

Her Anſwer to the other Queſtion naturally bears the ſame Conſtruction, "*You know the Room very well.*" What Room did he know? That which he had read an Account of, and in which the Girl had ſaid ſhe was confined.

This is the natural and the only ſenſible Expoſition of the Words. If *Wells* intended to confeſs the Crime ſhe was accuſed of, ſomething more would have been ſaid, explaining the Motives and Deſign of ſuch an extraordinary Tranſaction. The ſame Curioſity, which carried theſe two Witneſſes to *Bridewell*, would certainly have urged them to further Queſtions; and the ſame Candour, which this pretended Confeſſion ſuppoſes at this Time in *Wells*, would as certainly have led her to explicit Anſwers.

If, on the contrary, *Wells* did not intend a Confeſſion, how infamous was it in theſe Men, by a pretended Miſtake of a Fortnight inſtead of twenty-eight Days, to enſnare her into an Anſwer, which by an equivocal Interpretation ſhould amount to a Confeſſion, and leave it unexplained, in order to be furniſhed with Evidence?

If this was the only ſcandalous Part of the Defence, it would require more Obſervation than I ſhall trouble you to make.

To as little Purpoſe was the Attempt by *Paul Stevens*, a Publican, to prove the Confeſſion of *Mary Squires* in *Clerkenwell* Priſon. This Witneſs went there with two or three Gentlemen to ſee her, about three or four Days after her Commitment. But who theſe Gentlemen are, or why they do not appear to ſuppore this Man's Evidence, we know not. The whole Confeſſion amounts to no more than this, namely, "*What I am here for, I am innocent of*;" and afterwards ſpeaking of being at *Wells*'s Houſe, "*I believe, whilſt I was there*, Elizabeth Canning *was there.*" This, and this alone, they call a Confeſſion; to procure which, they treated her with a Bottle of Wine. Severities had been tried before to no manner of Purpoſe: She had been complaining, that they had buffeted her about, becauſe ſhe was not willing to anſwer Queſtions. But good Words and a Bottle of Wine opened the old Woman's Heart, and ſhe frankly confeſſed to theſe civil Gentlemen,---What?---that ſhe was innocent of the Charge againſt her. But ſhe *believed*, whilſt ſhe was there, *Elizabeth Canning* was there. She never ſaid ſhe *knew*, but ſhe believed. It is plain ſhe never ſaw her; for if ſhe had ever ſeen her, it could not reſt upon her Belief. And the Witneſs himſelf is ſo doubtful of the Words ſpoken, that nothing, beſides the Innocence of *Squires*, and the Perjury of *Canning*, can be collected from it. At firſt, *Stevens* was poſitive, that the Words were, "I believe, while I was there, *Canning* was there." Then the Witneſs *believes* theſe were the Words--and then the Words were, "To be ſure *Canning* was there, *as I believe.*" And ſeveral Times afterwards the Witneſs varied the Expreſſion, and could never fix it.

What a Confeſſion is here proved! A ſtedfaſt Declaration of her own Innocence, coupled with a Belief, touching a Tranſaction, which, if innocent, ſhe muſt be ignorant of.

This poor Woman was a Stranger to *Wells* having never ſeen her till the 24th of *January*, when ſhe came to lodge in her Houſe. Eight Days after, ſhe (with all the People of the Houſe) was apprehended on the Accuſation of *Canning*, that ſhe had been robbed and confined there.---*Wells* bore an infamous Character univerſally;---*Canning*'s Complaint was favoured by ſeveral Perſons of Credit and Reputation; and therefore *Squires* was inclined to believe the Girl had been robbed by Somebody, and that her Story might be partly true. But her own Innocence ſhe perſiſted in;---ſo there's an End of all Pretence of Confeſſion.

They next call Witneſſes to impeach the Evidence of *Natus* and his Wife.

Nathaniel Crumphorne ſays, that *ſo lately* as laſt *Friday* Fortnight, the 21ſt of *April*, he aſked *Judith Natus*, "How came you to have the Conſcience, knowing this poor, innocent Creature was at Mother *Wells*'s, to go and be againſt her?" And that *Judith Natus* anſwered, "Indeed, Mr. *Crumphorne*, I cannot ſay *but* ſhe really was there, when we lodged there."

Conſidering theſe Words as an Excuſe, in anſwer to *Crumphorne*'s Reproach for giving Evidence againſt *Canning*, you will have no Difficulty in believing the very reverſe of what that Witneſs intends; and conſidering the Time of this Converſation, it looks as if this *Crumphorne* was tampering with the Witneſs to ſwear what in Truth ſhe could not. *Crumphorne* is certain to every Word ſpoken, and indeed it was very material he ſhould be ſo; for by ſtriking out the ſingle Word *but*, the Senſe would be intirely altered, and then the Anſwer would be proper to the Queſtion. And that *Crumphorne* goes too far in ſwearing to the very Expreſſion, appears by the next Witneſs, his Wife, who gives Evidence of theſe Words only, "Indeed, Mr. *Crumphorne*, ſhe really was there, when we lodged there." The former Part of the Words, "*I cannot ſay but,*" is intirely left out. So that it remains doubtful, what were all, and the particular, though few, Words made uſe of upon this Occaſion. You will therefore apply your Attention to the Subſtance of this Converſation, that *Judith Natus* was reproached with giving falſe Evidence, and that ſhe was juſtifying herſelf.

That *Natus* and his Wife lay at *Wells*'s during the Month of *January*, is ſuppoſed even by this very Witneſs. Now I ſhould be glad to know in what Part of the Houſe they lay. It appears, that every other Room in the Houſe, except the Hay-loft, was wholly occupied by the reſt of the Family. And if they lay in the Hay-loft, it could not be while the Defendant was there, becauſe *ſhe* ſwore, "ſhe did not ſee a human Creature during all the Time of her Confinement, but once through a Crack of the Door."

Further, to diſcredit *Fortune Natus*'s Evidence, one *Jackſon* is called to prove the Propoſal of a Wager by *Natus*, at the *Four Swans*, whether he had not lain out of *Wells*'s Houſe a ſingle Night during the Month of *January*. This was intended to contradict *Natus*, as having, in his Evidence, denied propoſing any ſuch Wager. But in reality *Natus* was ſo far from denying it, that he himſelf gave an Account of his having lain out of the Houſe *one Night, and no more*. And his Wife, you may remember, gave the ſame Account. This Circumſtance, ſo confirmed by the Defendant's Witneſs, would add Credit to *Natus*, if he ſtood in need of it.

The next Evidence is to the Impeachment of *Natus*'s Character, by three Perſons ſwearing with ſuch Rancour and Malice, as is ſufficient to overthrow all Pretence of Credit in themſelves.

One of them, in effect, ſays, he believes *Fortune Natus* is ſo infamous a Fellow, that without the Temptation of Intereſt, or any Paſſion to indulge, but merely for the ſake of giving falſe Teſtimony, and from his Propenſity to Lying, he would perjure himſelf in a Court of Juſtice.

But let not human Nature bear the Reproach of ſuch a Character.---There cannot be a Man on this Side Hell ſo abandoned by his Maker, as that raſh Witneſs would have you to think. The Earth has never bore ſuch a Monſter, as to fall in Love with naked Falſhood. What Devil incarnate was ever heard of, who did not incline to Truth, till he was warped by ſome particular Temptation to leave her? For has not the Author of Nature created her lovely in the Eyes of all Mankind? Let any Man breathing aſk his own Heart, whether he was ever perſuaded to embrace a Falſhood, till ſhe was robed in the Garb of Truth to deceive him? It would be a Contradiction in Terms to ſay otherwiſe. The Witneſs, who is capable of repreſenting *Natus* in ſuch Colours, muſt be conſcious of the Truth of this Obſervation, and feel himſelf impelled to ſuch a horrid Miſrepreſentation, either by Avarice or Revenge, or ſome Paſſion which he dares not avow.

But see the real Character of this *Natus*, byone who knows him better.--Mr. *Bell*, his Master, says, he has known him very well for fifteen Months past, and that he is his Servant;---that he is a very honest, civil, and industrious Man;---that he never once caught him in a Lye in his Life;---that he has now eight Servants, and would be glad to have his Fellow.

The same Man may indeed have several Characters, as different People are differently affected to him. And perhaps it would be a good general Rule, to take the Medium betwixt the two Extremes of any Character whatever. But surely there never were two such Extremes as these concerning the same Character before; and considering the Nature of the Evidence, and who are the Witnesses, I may very safely rest upon the Credit of *Natus*'s Testimony, especially as it has been so well supported by many other Witnesses, attesting such a Number of Circumstances to confirm it.

Another Witness, Mr. *Metcalf*, was called to contradict Mr. *Whiffin*, as to the Time of his receiving the Sign-Iron. But *Metcalf*'s Evidence is so very uncertain and indeterminate, that it proves nothing. He swears to a Transaction upon the 8th of *January*; but when he is called upon to assign his Reason for being particular to the Day of the Month, all he can say is, that he keeps his Reckoning by his Clock, and is ignorant whether his Account is according to the Old Stile, or New.

But Mr. *Whiffin*'s Evidence is sufficiently supported by several Circumstances, the Time is fixed beyond all Doubt, and there now remains no Stain upon his Character.

Gentlemen, I think I have taken Notice of all the material Circumstances on both Sides, two only excepted, which I did not sooner recollect.

One is, the Defendant's claiming the Bed-gown, before sworn by her to have been found at *Wells*'s, in the Grate in the Chimney. This then lay, together with the Pitcher, on a Table at the Mansion-House; and she would have taken them both away; but that was objected to, because they did not belong to her, and that they might be deposited in some public Place, for the sake of further Discoveries: Upon this (relinquishing the Pitcher) she insisted on taking away the Bed-gown, for "*That* "*was her Mother's*"---It has been proved, that there was no Grate in the Chimney at *Wells*'s.

And I should have added to the Observations upon the Evidence of the Mother, who proved the Defendant's Hand-writing to some Papers now before you, that the Innocence of the Defendant having been most cogently inferred from her supposed Simplicity, and she having been represented as a poor, silly, illiterate Creature, incapable of inventing such a Story, to furnish her Advocates with so excellent an Argument, she set her *Mark* to her Information before Mr. *Fielding*, as if unable to write her Name; which Information is also before you. I dare say, it was not *then* imagined that this *Marks-Woman* had received so good an Education. Who would have thought, upon reading the Pamphlet, which that good Magistrate was pleased to oblige the World with, containing the Information at large, with such ingenious Remarks upon her Stupidity;---who would have dreamt, that this "*Child in Years, more* "*so in Understanding*," was able to write a fair, legible Hand?

And this may serve as a Specimen to shew what mean Artifices have been made use of to deceive Mankind.

Gentlemen, you have now before you the whole Merits of this Cause; the Subject of universal Controversy, which it is hoped your Verdict will put an End to.

Permit me, therefore, to remind you briefly of what you must necessarily believe, in order to acquit the Defendant of the Charge against her.

In the first Place, you must believe a most astonishing Story of several Incidents, every one of which is to the highest Degree improbable. You must also believe, that above forty Witnesses to the *Alibi* of the Gypsey are all guilty of Perjury, although there is a greater Combination of Circumstances to add Credit to their Evidence, than was ever before required to satisfy a human Inquiry. To this End, you must also believe, that all these Witnesses conspired to this Perjury, and preconcerted every Circumstance with so much Art and Contrivance, as to defeat the Possibility of Detection upon a separate Examination; and all this you are to suppose, although the Evidence to contradict them is infinitely less clear, less certain, and less conclusive.

But if, notwithstanding, you can prevail upon yourselves to suppose *Mary Squires* to have been at *Enfield*, when we proved her elsewhere, or (which is as hard to suppose) that the Defendant mistook her for another, you have yet more Difficulties to reconcile. For you must further suppose, either that Mr. Alderman *Chitty*, Mr. *Nash*, *Hague*, *Aldridge*, together with many of the Defendant's own Witnesses to several Circumstances, are absolutely perjured; or else you must yield your Assent to a new Train of Events, as many and as wonderful as those in the Defendant's Story.

You must, moreover, believe all the ten Witnesses, confirming *Natus*'s Evidence, likewise guilty of Perjury; although no Attempt has been made to disprove their Testimony, except only (what I hope is sufficiently answered) with respect to *Natus* himself, and also as to the Time of *Whiffin*'s buying the Sign-Iron.

And upon what Foundation are you to suppose all this?---Upon the Credit of *Elizabeth Canning*, proved to be self-contradicted in no less than three Instances, relative to a single Fact; or, upon the Evidence of her Witnesses, who have given no Answer to the Charge. For it is observable, that not one of the Witnesses for the Crown, except to the *Alibi* of *Squires*, is contradicted by those for the Defendant; and yet, if their Evidence be true, she must be guilty.

These, Gentlemen, are the Remarks occurring to me upon the various Circumstances in this very long Trial. Many of them may, perhaps, have been unnecessary or improper, whilst some, which I may have omitted, should have been enforced; but whatever Errors are imputable to me in the Course of this Prosecution, I solemnly protest, that the mis-stating or misapplying any Facts has been intirely foreign to my Intention throughout the Cause; in the Merits of which I have at no Time been engaged, otherwise than, as I conceived, the Duty of my Profession directed me: And this Duty I have discharged to the best of my Abilities.

Mr. *Nares*. I only beg leave to mention one Thing. There has been one Reason attempted to be given, why a very material Witness is not produced, the Want of which Witness is attended with the utmost Inconveniency to the Prisoner at the Bar; that is, *Virtue Hall*: By her not being called we can give no Evidence relative to her; that is as to what she has said, and the Means used in her Recantation. Mr. *Davy* has given this as a Reason, because she is not in Law a Witness; but I beg leave to say, that according to all the Cases, and common Practice every Day, she is a Witness; it only goes to her Credit, and that goes to the Jury. You know the Case of *Cartwright* at *Hertford*; he confessed he had perjured himself in four or five different Courts. I should be glad if the Court would deliver their Opinions on it.

Mr. Baron *Legge*. I believe Witnesses have very often been called, that have declared they have been perjured in other Instances; but I will never admit or suffer a Person, that will say they have been perjured in another Affair, and I knew it before they were sent for. When she swears true, I cannot tell; but that she has swore false once, I must know.

Mr. *Nares*. In the Case of Subornation of Perjury they are admitted every Day.

Mr. Baron *Legge*. They are admitted; but it goes so much to their Credit.

Mr. *Recorder*. I remember, that in the Trial of *Titus Oates*, Lord Chief-Justice *Jefferys* would have been glad to have hanged him, but would not suffer a perjured Person to be examined against him. What must such Sett of Witnesses swear? Why, they must set out in saying they have been perjured before. Then what is the Consequence, but that they must destroy their own Credit.

Mr. Baron *Legge*. When a Witness stands up, and tells us she has once swore false, what Credit can be given to her Testimony?

Mr. *Davy*. I have known such Witnesses examined more than once: The Jury have a Right to call and examine her, but I have no Right to call her, neither has the Defendant.

Mr. RECORDER.

Gentlemen of the Jury, *Elizabeth Canning*, the Prisoner at the Bar, stands indicted for Perjury, in swearing that *Mary Squires*—[*See the Indictment, the Perjury assigned, and the Averment mentioned before in this Trial*].—But as this is a Trial of unusual Length, and of great Expectation, I shall state the Evidence in the clearest Manner I have been able to collect it; and if, in the stating the several Facts which have been laid before you, during the Course of this long Proceeding, I should accidentally disclose my own Opinion, I must desire that it may have no Weight, or make the least Impression on you, in determining your Verdict, otherwise than as the Weight of the Evidence justifies it. As this Indictment is founded upon the Evidence given by *Elizabeth Canning* against *Mary Squires*, on whose Testimony she was capitally convicted, *Thomas Gurney*, the Short-hand Writer, is called, who says, that upon the 22d Day of *February*, *Mary Squires* was tried in this Court; and upon that Trial, *Elizabeth Canning* swore, "That on the first Day of *January*, in the Year "1753, she had been at *Saltpetre-Bank* to see her Uncle and Aunt, and "stayed there till about Nine at Night;—that her Uncle and Aunt came "with her to *Aldgate*, when they parted;—that she was then alone, and "so came down *Houndsditch*, and over *Moorfields* by Bedlam Wall, where "two lusty Men, both in Great-Coats, laid hold of her, and took half a "Guinea in a little Box out of her Pocket, and three Shillings that were "loose;---that they afterwards tied her Hands behind her, and dragged "her to *Wells*'s House at *Enfield-Wash*, where they arrived about Four "o'Clock in the Morning; that she saw there the said Gypsey Woman "*Squires* sitting in a Chair, who took her by the Hand, and asked her if "she chose to go their Way, saying, that if she did, she should have "fine Cloaths; but she refusing, *Mary Squires* then took a Knife out of "a Dresser-Drawer, and cut the Lace of her Stays, and took them from "her;---that *Mary Squires* gave her a Slap on the Face, and pushed her "up Stairs out of the Kitchen into a Room called the Hay-loft, and shut "the Door, and threatened her, if she stirred or moved, to cut her "Throat;---that when Day-light appeared, she could see in the Room "a black Pitcher, not quite full of Water, about twenty-four Pieces of "Bread, a Fire-place, and a Grate;---that she continued there a Month "by the Weeks, all but a few Hours;---that she broke down a Board "that was nailed up at the Inside of the Window, and got out on "*Monday* the 29th of *January*, about Four o'Clock in the Afternoon; "that she took out of the Grate in the Chimney an old Sort of a Bed-"gown and Handkerchief, which she tied over her Head instead of a "Cap, and got to her Mother's House in *Aldermanbury*, about a Quarter "after Ten o'Clock at Night."

In order, therefore, to prove that the Evidence she then gave was false, a great Number of Witnesses have been called to prove *Mary Squires* at a different Place, at the Time on which *Elizabeth Canning* has sworn to her robbing her at *Wells*'s at *Enfield-Wash*.

The first of these Witnesses is *Esther Hopkins*, who says, that she keeps a Public House at *South-Parrot*, which is some Miles beyond *Abbotsbury* in *Dorsetshire*; is positive she saw *Mary Squires*, her Son and Daughter, at her House, on the 29th of *December* 1752; that they lodged at her House that Night; the Reason of her remembering it is, that two Gentlemen that Day had been there, who left their Reckoning unpaid; that *Mary Squires*, her Son and Daughter, went away next Morning; is particularly positive to *Mary Squires*, having never seen such another remarkable Woman; that she is more positive to the Son than to the Daughter, for he had a Bag which he carried under his Arm. They all travelled on Foot.

The next Witness was *Alice Farnham*, who lives at *Winyard's Gap*, ten Miles beyond *Abbotsbury*. She says, that she saw *Mary Squires* at *Winyard's Gap*, about Eight or Nine o'Clock, on the *Saturday* Morning next after New *Christmas*, with her Son and Daughter; the Reason of her being so positive to *Mary Squires* is, that having seen the Picture of Mother *Shipton*, she thought she resembled that Picture. They all stayed about an Hour at her House, and had a Quart of Beer, and some Bread and Cheese, and when they parted with her said, that they would come and see her again at Old *Christmas*; that they all went towards *Abbotsbury*, which is ten or eleven Miles from *Winyard's Gap*; that she had seen them come into *South-Parrot* the Day before, and seeing they were Gypsies, her Mother asked, if she was not frightened. This she remembers was on a *Saturday*, because she had a Mind

to

to have gone that Day to *Crookhorne* Market to buy ſome Things againſt Old *Chriſtmas*, but her Mother would not let her go. She ſaw a Bag under the Son's Arm, and the Daughter dreſſed very neat in a white Holland Gown. Has never ſeen them ſince; but is very poſitive to them. That they had a Mug of Beer, and paid for it.

The next Witneſs, who undertakes to prove the whole Journey to *Enfield-Waſh*, is *George Squires*, who is Son to *Mary Squires*, who ſays, he was at *South-Parrot* on *Friday* next after New *Chriſtmas-Day*, and they put up at the *Red Lion* there, and ſtayed one Night only: That (they ſet out from *Newington* near *Southwark* about ſeven or eight Weeks before *Michaelmas* preceding) from *South-Parrot* they all went to *Winyard's Gap*, and then to *Litton*: That they lay there upon *Saturday*, and he left his Mother and Siſter there, and went to *Abbotſbury* on *Sunday*, to ſee ſome Friends he had there, and particularly to ſee *William Clarke*: That he and *Clarke* went to *Litton* for his Mother and Siſter the *Monday* following, and at *Litton* the Siſter, *Clarke*, and he, dined together; his Mother being gone towards *Abbotſbury* to ſee for *Clarke* and him; but upon her Return dined with them. After Dinner they all ſet out for *Abbotſbury*, and arrived there upon the *Monday* Night, being the 1*ſt* of *January*, and lay there, at the Sign of the *Ship*, at one *Gibbons*'s; they danced till Twelve o'Clock at Night, and ſeveral People were with them. His Partner was *Gibbons*'s Siſter, and having been at *Abbotſbury* before, he knew ſeveral there. *Clarke* danced with his Siſter; and that his Mother, his Siſter, and himſelf, ſtayed at *Abbotſbury* from the 1*ſt* to the 9*th* of *January*. That the 1*ſt* of *January* being a wet Day, one *Andrew Wake*, who was then an Exciſeman at *Abbotsbury*, borrowed his Great-Coat of him, in order to make his Survey. That on *Tueſday* the 9th of *January*, his Mother and Siſter and himſelf left *Abbotsbury*: *Clarke* went with them to a Place called *Porterſham*, about a Mile and a Half from *Abbotsbury*. The next Day they went to *Ridgway*, about five or ſix Miles from *Abbotsbury*. *Clarke* and he lay together, and lay there at the Sign of the *Ship*, at one *Bewley*'s, where there happened to be a Horſe which had juſt died; and his Money being ſhort, he left a Piece of Nankeen for his Reckoning, his Mother and Siſter being then with him. From thence, on *Thurſday* the 11th, they all went to *Dorcheſter*, and there they had an Account of his Siſter *Mary*'s Illneſs, and then they determined to haſten to her; and the Waters being very much out, he carried his Mother upon his Back, and a Miller took his Siſter on a Horſe behind him through the Water. They travelled on Foot almoſt the whole Night, and arrived at a Village called *Chettle*, which is four Miles beyond *Blandford*, and on the *Saturday* following they all lay at *Martin* in a Barn belonging to Farmer *Thane*. On the *Sunday* after they all went to *Coombe*, and lay there at one *Greville*'s, the Sign of the *Lamb*, who is ſince dead. On the *Monday* following he does not recollect where they lay, neither can he recollect where they all lay till his Arrival at *Baſingſtoke*, and when they got there, they put up at the *Spread-Eagle*, where the Woman of the Houſe, at his Siſter's Requeſt, wrote a Letter to *Clarke* at *Abbotsbury*. They lay that Night at a Place called *Old Bayſing* (their uſual Way of travelling being about ten Miles a Day). From thence they went to *Bagſhot*, and lay at the Sign of the *Greyhound* there; and from thence to *Brentford*, where they all arrived and lay there upon the *Saturday*; and on the *Sunday* he went to *London* to ſee his Siſter *Mary*, and on the *Monday* he brought her to *Brentford* to one Mrs. *Edwards*'s, where they all ſtayed till *Tueſday*, and on *Tueſday* they all went to the Sign of the *Seven Siſters* at a Green near *Tottenham*, and on *Wedneſday* they all arrived at Mrs. *Wells*'s at *Enfield*, whom he never ſaw before, but was recommended there. That before they went to Mrs. *Wells*'s, they called at another Houſe, where they were recommended to a Houſe at *Cheſhunt*; but that being too far, they went to *Wells*'s, where he left his Mother and Siſters. That in two or three Days after he went to *London* to receive ſome Money, and returned next Day, and found his Mother and Siſters at *Wells*'s. His Mother and Siſters lay in the Room over the Parlour, and he lay in a little Room fronting the Stairs, and *Wells*, her Daughter, and *Virtue Hall* lay in a Room on the left Hand, and one *Fortune Natus* and his Wife lay in a Room ſome few Steps out of the Kitchen. That, during the Time they were at *Wells*'s, they bought their Chandlery Ware of one *Larney*, and it being Herring Time, they lived very much upon Herrings, which they bought of an old Man who carried them about to ſell. That, during the whole Time he was at *Wells*'s, he never ſaw the Priſoner *Canning*, neither had he ever ſeen her before his Mother was arreſted, which was on *Thurſday* the 1ſt of *February*. Upon his Croſs-Examination he ſays, that he cannot recollect where he was the *Chriſtmas* before he ſet out towards *Dorſetſhire*, neither can he recollect the ſeveral particular Places through which he travelled, except *Lewes* and *Salisbury*, and ſome other principal Towns in the Weſt of *England*. He gives an Account of the whole Journey from *South-Parrot* to *Enfield*, except four Days, which is from their Arrival at *Coombe* till they got to *Baſingſtoke*.

Then, to confirm the Account which *George Squires* has given, they call a great many Witneſſes. The firſt is *John Fry*, who is a Tiler and Plaiſterer, and lives at *Litton* in *Dorſetſhire*. He ſays, that he ſaw a Gypſey the 30th of *December* at one *James Hawkins*'s, a Public Houſe; that it was on a *Saturday*. He remembers it, becauſe it was New *Chriſtmas* Time, and the *Monday* following was New-Year's Day. Is very poſitive both to *Mary Squires*, her Son, and her Daughter. The Part of the Houſe he ſaw them in was the Kitchen, and has known *Mary Squires* for thirty Years.

Francis Gladman is called next. He is ſure that he ſaw *Mary Squires*, her Son and Daughter, at *Litton*, in the Morning of the 1ſt of *January*, for he ſhaved *George Squires* the *Sunday* before. He remembers the Day particularly, becauſe he was one of the Ringers who rung-in the New Year. That *Mary Squires* was aſked whether ſhe could tell Fortunes, and ſhe ſaid, No. Then he aſked her, whether ſhe could ſpeak *Spaniſh* or *French?* who anſwered, ſhe could not. The next Witneſs is

James Angel, who ſays, that he ſaw *Mary Squires* and her Daughter at *Hawkins*'s at *Litton* on the 31ſt Day of *December*: But he did not ſee *George Squires*, becauſe he was gone to *Abbotſbury*. He remembers it, becauſe the *Monday* following he was called to ring-in the New Year. He did not ſee *Mary Squires* in the Evening, becauſe ſhe was gone to *Abbotsbury*, which was three Miles from *Litton*. The next Witneſs is

James Hawkins, who remembers that *Mary Squires*, her Son and Daughter, came to his Houſe at *Litton* on *Saturday* the 30th of *December*, and they ſtayed there all *Sunday*, except *George*, who went to *Abbotsbury* on the *Sunday*; and that *George Squires* and *William Clarke* returned from *Abbotsbury* about Ten or Eleven o'Clock on *Monday* Morning; and after they had dined, they all ſet out for *Abbotsbury* about Two o'Clock the ſame Day.

William Clarke is called next, who lives at *Abbotsbury*, and is very well acquainted with *Mary Squires*, her Son and Daughter. He ſays, that *George Squires* came to him at *Abbotsbury* on *Sunday* the 31ſt of *December*; he ſtayed with him there till *Monday* Morning. That he aſked *George* after his Siſter *Lucy*, who told him, that his Mother and ſhe were at *Litton*. That they both together went to *Litton* next Morning, where they arrived about three o'Clock. *Mary Squires* was not there upon their firſt Arrival, becauſe ſhe went towards *Abbotsbury* to meet her Son *George*. That upon her coming back to *Litton*, they all dined together upon a boiled Fowl, and after Dinner he went with them to *Abbotsbury*, and it being the 1ſt of *January*, they had a Dance at *Gibbons*'s, the Sign of the *Ship* there. That *Lucy Squires* was his Partner, and one *Arnold* played on the Muſic. Is very ſure, that both *Mary Squires*, her Son and Daughter, were at *Abbotsbury* upon that Day, and is as ſure that they all continued there till *Tueſday* the 9th of *January*, for he ſaw them there every Day; and upon that *Tueſday* he ſet out with them on their Journey, and went with them to *Porterſham*, and then to *Ridgway*, where he left them at one *Bewley*'s Houſe there. That they had Beef-Steaks for their Supper, and when he parted with them, *George* borrowed ſix Shillings of him. That he, the Witneſs, deſired *Lucy* to write to him, and told her how to direct to him. That he has known *Mary Squires*, her Son and Daughter, four Years.

The next is *John Gibbons*, who keeps the Sign of the *Old Ship* at *Abbotsbury*. He ſays, he knows *Mary Squires*, her Son and Daughter. Has known *Mary Squires* for three Years. Is very poſitive they were all at his Houſe the 1ſt of *January*, 1753, in the Evening, dancing. That *George* danced with his Siſter, *Lucy* with *Clarke*. That they all ſtayed at his Houſe from that Time till *Tueſday* the 9th of *January*; and remembers, that while they were there, the Exciſeman borrowed *George*'s Great-Coat to go his Rounds. That they and *Clarke* went away together on *Tueſday* the 9th of *January*. He was a Witneſs at the Trial of *Mary Squires*, but doth not remember he was aſked about the Dancing on the 1ſt of *January*.

George Clements is called next, who confirms what the other Witneſſes have ſworn, about the Dancing at *Gibbons*'s, in every Circumſtance. That he ſaw *Mary Squires*, her Son and Daughter, at *Abbotsbury*, the 2d and 3d of *January*. The *Sunday* following he dined with them at *Gibbons*'s. That *Clarke* and they ſet out together the *Tueſday* following. That he knows them all very well, remembers *Mary Squires* many Years. The next is

Melchiſedech Arnold, who is a Blackſmith, and lives at *Abbotsbury*. He ſaw *Mary Squires*, her Son and Daughter, at *Abbotsbury* the 1ſt of *January*, at the *Old Ship* there. Remembers the Dancing that Night, and played on the Fiddle. That *Clarke* was *Lucy*'s Partner, and *George* was *Mary Gibbons*'s Partner. That he ſaw them all ſeveral Times during the Week they were there, and remembers all the ſeveral Circumſtances mentioned by the other Witneſſes.

John Ford is called next, who is a Carpenter, and lives at *Abbotsbury*; is Uncle to *Gibbons*, who keeps the *Old Ship*, which is the Exciſe-Office; ſaw *Mary Squires*, her Son and Daughter, there every Day during their Stay there, which was from the 1ſt of *January* to the 9th; knows *Mary Squires* as well as his own Mother; that he ſells Bread, and they bought their Bread of him during the whole Time they ſtayed. The next is

Daniel Wallace, who is a Mercer at *Abbotsbury*. He is very poſitive that he ſaw *Mary Squires*, her Son and Daughter, at *Abbotsbury* on *Sunday* the 7th of *January*, and that *George Squires* bought Sugar of him; that ſeeing *Mary Squires* on the Day of his having bought a new Jack, ſhe aſked him to dine with her that Day. Then they call

Hugh Bond, who is a Schoolmaſter at *Abbotsbury*, who ſays, that on the 31ſt of *December*, being Holiday-Time, he went to ſee his Wife, who was ill in *Devonſhire*, and he returned to *Abbotsbury* on *Monday* the 8th of *January*. That he lodged at the *Old Ship*. Is very poſitive that he ſaw *Mary Squires*, her Son and Daughter, there that Night, and ſaw them there next Morning, the 9th of *January*. That he had ſome Converſation with *George Squires*, along with one *Wake* an Exciſeman, who officiated for one *Ward* an Exciſeman, who was then ſick; and *Wake* lay at the *Ship* in the ſame Bed where *Ward* uſed to lie, and that *George Squires* lay in another Bed in the ſame Room. Then

John Bailey is called, who is a Carpenter at *Abbotsbury*. He ſays, he has known *Mary Squires* ten or fifteen Years, and has known *George* and *Lucy* three Years. Is very poſitive that he ſaw them all at the *Old Ship* there on *Monday* the 1ſt of *January*; that they continued there from that Time till *Tueſday* the 9th; and that he ſhaved *George* twice within that Time, and remembers it particularly by his Brother's ſetting out on the 1ſt of *January* for *Briſtol*, in order to go to Sea. The next is

Thomas Anſon, who lives at *Abbotsbury*. He has known *Mary Squires*, her Son and Daugher, about four Years, and is very ſure he ſaw them at the *Old Ship* there on *Friday* the 5th of *January*, and is ſure they are the ſame Perſons he had ſeen four Years before; that *Clarke* was with them, and it was reported that *Clarke* and *Lucy* were Sweethearts. Then they call

John Hawkins, who is a Weaver at *Abbotsbury*, who remembers ſeeing *Mary Squires*, her Son and Daughter, at *Abbotsbury* the 1ſt of *January* at *Gibbons*'s; is certain that they all continued there from the 1ſt to the 9th of *January*, having ſeen them every Day; and he particularly remembers the Dancing, and *Arnold*'s playing on the Fiddle. Then

Andrew Wake the Exciſeman is called (who is mentioned by ſome of the former Witneſſes). He ſays, that he was ordered to officiate as Exciſeman at *Abbotsbury* during the Illneſs of one *Ward*, who was taken ſick there. That he went to *Abbotsbury* on *Sunday* the 31ſt of *December*, to

to *Gibbons's*, the Sign of the *Ship*, which is the Excise-Office; was in Company with *George* and *Lucy Squires*, and *Clarke*, at that House, and on that Day; and that *George* and he lay in the same Room; and that he saw *Mary Squires*, was in Company with her and *Lucy*, and in the same House, on the *Wednesday* following. He also remembers the Dancing at *Gibbons's* on the 1st of *January*, and that *George* and *Lucy* and *Clarke* danced there on that Evening, and particularly remembers that *Arnold* played on the Fiddle; and he being a Dealer in Cyder, he surveyed him; and this Witness being at that Time out of Order, he borrowed a Great-Coat of *George*; and that *Mary Squires* ordered something for him to take; and says, that he left the Excise-Books with *Ward*, when he went away from *Abbotsbury*, which was on the 14th of *January*. He then refers to those Books, and swears to the Entries and the Journal. Says, that when he went to Bed at *Abbotsbury*, he always went to his own Room through that where *Mary Squires* and *Lucy* lay, and that he generally saw them every Night during his Stay there. He afterwards went to *Dorchester*, where he saw in the News an Account of *Elizabeth Canning's* being robbed by *Mary Squires* on the 1st of *January*, and that she was found guilty; and that he then immediately said, she could not be the Woman, because he saw her on that Day at *Abbotsbury*. He then went to *Lewes*, and there he received the Commissioners of Excise Orders to attend the then Lord-Mayor in *London*; and upon his Arrival there he went to *Mary Squires* then in *Newgate*, who immediately knew him, and seemed rejoiced to see him, and put him in mind of all the several Circumstances before-mentioned; and concludes with saying, that she is the same Person that he saw at *Abbotsbury* at the Time he has sworn to. The next is

Francis Aldborough, (who is produced to confirm the Evidence of the last Witness, with respect to the Entries in the Books returned to the Excise-Office by the Excise-Officers out of the Country) and he produces the Books, by which it appears that the last Witness *Andrew Wake* officiated for *John Ward* (who was ill) during that Time of which *Wake* has given you an Account. The next Witnesses are

William Haines, and *John Haines* his Son, who both prove, that *Mary Squires*, her Son and Daughter, were all at *Portersham* (which is a few Miles off *Abbotsbury*) on the 9th of *January*, and that *William Clarke* was with them, and that they lodged at the Sign of the *Chequer* there: That he invited them to his House, which they refusing, he and one *Chipman*, who was with him, went to them at the *Chequer*: That the Reason of the Father's being so certain of the Day of the Month is, because he went to *Abbotsbury* the Day before, which was the 8th. He is very positive to *Mary Squires*, and has known her for thirty Years.—The Son confirms the Testimony of his Father, in remembering them at *Portersham*, and remembers also his seeing *Mary Squires* at *Abbotsbury* on the 6th of *January*, and that it was wet Weather. From *Portersham* they went to *Ridgway*, which is four or five Miles from *Portersham*. To prove their Arrival at *Ridgway*,

Francis Bewley is called, who keeps a Public House there, who swears, that he saw this Family at *Ridgway* on *Wednesday* the 10th of *January*, about Ten or Eleven o'Clock in the Morning; that they had Beef-steaks there; that he remembers a Woman whose Horse died there; that he supplied her with another in its Place, and remembers this particular Circumstance of the Horse being drawn out of the Stable to be skinned, and that at that Time *Mary Squires* came into the Yard, and it was a remarkable wet Day; that *Clarke* bargained with a Turnip-man for an Horse to carry him back to *Abbotsbury*. Remembers that *Mary Squires* and her Family being short of Money, desired he would take a Waistcoat they had for the Reckoning, which he did, and which Witness produced it, and has kept it ever since; and that he remembers them both by those Circumstances, as well as by the dead Horse, the Witness of the Weather, and by its being *Blandford* Sessions, which is always held on the 10th of *January*. Then they call

Thomas Mockeridge, who is the Man that sold Turnips, and whose Horse *Clarke* hired to return to *Abbotsbury*; and he remembers all or most of the above-mentioned Evidence, as to *Mary Squires*, her Son and Daughter, being at *Ridgway* on the 10th of *January*; that they were at one *Bewley's*, the Sign of the *Ship* there; that he remembers *Mary Squires* above three Years before that Time, and is very positive as to the Circumstance about skinning the Horse. The next is

John Taylor, who lives at *Fordington* near *Dorchester*, who swears, That he saw *Mary Squires*, her Son and Daughter, there on *Thursday* the 11th of *January*. Remembers that the Rains had been so great on the 10th, that they could not go along the High Road, but were obliged to go through his Yard; that a Miller's Boy carried the Daughter through the Water on his Horse, and that *Mary Squires* walked through great Part of the Water, and there were three little Rivers to cross. They all told him they lay at *Ridgway* the Night before, and asked him their Way to *Chettle*. The next Witness is

Thomas Hunt, who was threshing in a Barn at *Chettle* on the 12th of *January*, and says, that he knows, and saw *Mary Squires*, her Son and Daughter, there on that Day; that there being no Public House there, he, at their Request, got them Lodgings in an Out-house belonging to Mr. *Watts*, where they lay on Straw, and stayed there till between Nine and Ten o'Clock next Morning: it was very wet Weather, and it was on or about Old New-year's Day. From *Chettle* they went to *Martin*; to prove which

John Elderton is called, who says, that he is Servant to one Farmer *Thane*, who lives at *Martin*, and is positive that *Mary Squires*, her Son and Daughter, by Consent of his Master, lay in an Out-house belonging to his Master; that he saw them all there at Four in the Afternoon on the *Saturday* Se'nnight after Old *Christmas-Day*, and he saw them about Eight o'Clock next Morning; and that his Master saw them at the same Time, of which he would have given Evidence, but was prevented by his being taken ill at *Salisbury*. This last Witness is confirmed by

William Hart in the Circumstances and Facts before-mentioned, with this further, that *Lucy* was next Morning mending some China. The next is

John Blandford, who is a Blacksmith, works for Farmer *Thane*, and is positive that he saw *Mary Squires* at Farmer *Thane's* Barn at the Time the other Witnesses swear to. Then

Joseph Hayter is called, who is a Maltster at *Coombe*, who says, that he met them all upon the Road between *Martin* and *Coombe* on the 14th of *January*, being the *Sunday* next after Old *Christmas*; is positive to *Mary* and *George Squires*, having seen them before; he met them about Eleven o'Clock in the Forenoon; and upon his Return to *Coombe* the same Day, he saw them all at one Mrs. *Greville's*, the Sign of the *Lamb* there. This last Witness is confirmed by

Mary Greville, who was Sister to *Thomas Greville*, who was prosecuted for Perjury, for what he swore at the Trial of *Mary Squires*, but is now dead; and she swears, that she saw them all at *Coombe* on the 14th of *January* at her Mother's, Mrs. *Greville's*, the Sign of the *Lamb* there, and that they lay there that Night, and went away the next Morning. They are also proved to be at *Coombe* on the 14th of *January* by four other Witnesses, the first of whom is

George Towil, who saw them there on the 14th of *January* at Mrs. *Greville's*, the Sign of the *Lamb*:

Richard Aimer, who saw them at Mrs. *Greville's* the Morning they went away, which was the 15th of *January*: And by

Robert Merchant, who saw them there the 14th of *January*: And by

Martha Waters, who saw them there the same Day, and that she asked them to tell her Fortune. From thence they went to *Basingstoke*, which was about forty Miles, and they were four Days in travelling thither; but there is no Evidence laid before you of the several Places through which they went in getting there: But this Chasm will not be very material, if you give Credit to the several Witnesses whose Evidence I have already laid before you; for if you believe that *Mary Squires* was at *Abbotsbury* on the 1st of *January*, which is the Day on which the Perjury is assigned, it is impossible that she could have been at *Enfield* on the same 1st of *January*; which the Defendant swore she was.

Mary Morris is called next, who says, that she lives at *Basingstoke*, and is positive that she saw *Mary Squires*, her Son and Daughter, at her own House there, the Sign of the *Spread-Eagle*, on the 18th of *January*, and has this particular Reason for remembering it, which is, that *Lucy Squires* desired she would write a Letter for her to one *Clarke* at *Abbotsbury*. The Letter was produced, and she swears it was the same she wrote, and which she sent by her little Boy to the Post-Office. She says, that they stayed at her House about four or five Hours, and from thence they set out for *Old Basing*, which is about two Miles from *Basingstoke*. She is very certain as to their Persons, and says that *Mary Squires* had lain once at her House. From thence they went to *Brentford*; and to prove them there,

Elizabeth Edwards is called, who says, that she lives at *Brentford*; that *Mary Squires*, her Son and Daughter, came to her House there on *Saturday* the 20th of *January*; is sure they came on that Day; recollects the Time, because one of her Neighbour's Children was christened on that Day; and on the next Day, being *Sunday*, *George Squires* went to *London* to fetch his other Sister, and brought her on *Monday*, and on *Tuesday* they all went away; is positive to *Mary Squires*, because some Time after she saw her in *Newgate*. The next is

Susannah Burwill, who is Daughter to the last Witness, and confirms her Mother's Evidence in every Particular. From thence they went to a Place called *Page-Green*; to prove which, they call

William Tredget, who keeps the *Seven Sisters*, a Public House at *Tottenham*, four Miles from *London*; is very sure that he saw *Mary Squires*, her Son and Daughter, at *Page-Green* on the 23d of *January*, who told him they wanted Lodgings; that his Wife and he were together; she recommended them to lodge at a Farm-House in that Neighbourhood; and says, that he is certain as to the Person of *Mary Squires*, having seen her three Years before, and had taken Notice of her as the most uncommon Face he had ever seen, and went to see her when in *Newgate*. They then call

Mary Tredget his Wife, who agrees with her Husband in every Circumstance of his Evidence. And the next Day, as appears by the Evidence of *George Squires*, they all arrived at *Enfield*.

The next Piece of Evidence is to prove the Letter sent by the Post, which *Mary Morris* says in her Evidence she wrote to *Clarke* at the Request of *Lucy Squires*; and to prove this they call

Thomas Ravenhill, who is Clerk of the Western Road, and he proves the Letter to be sent from *Basingstoke* to *London* by the Mark of the Post-Office in *London*; it was sent to *Dorchester*, which is the Post-Town to which *Abbotsbury* is nearest; and that the whole Postage through *London* from *Basingstoke* to *Abbotsbury* amounted to Seven-pence.

The Evidence next proper to be laid before you is that of Mr. Alderman *Chitty*, who was the Sitting Alderman at *Guildhall* upon the 31st of *January* 1753, which was the Day on which *Elizabeth Canning* laid her Information before him of the Treatment she had met with at *Wells's*. The Account she then gave, appears by the Notes he took, which he produced, and which have been already read in Evidence; so that by comparing the Information she laid before him, and the Evidence she gave at the Trial of *Mary Squires*, you will find they differ in many remarkable Circumstances, both as to the Size of the Room she was confined in, the Furniture of it, as well as the Bread and the Water she swears she found and left there. As to the Size of the Room, she swore before him, that it was a square, dark, or darkish Room, furnished in the Manner you have heard; that there was some Water left in the Pitcher when she made her Escape; and that she found in the Room no more than four or five Pieces of Bread, amounting to the Quantity of about a Quartern Loaf: So that, by comparing the Information she then gave, with the Evidence she gave at the Trial of *Mary Squires*, you will find that there is a manifest Contrariety in those two Accounts in many Particulars. The next Witness is

Mr. *Gawen Nash*, who says, that upon seeing a very extraordinary Paragraph in the News-paper relating to *Elizabeth Canning*, and being an Acquaintance of Mr. *Lyon*, (who was her Master) he went to Mr. *Lyon* on the 31st of *January* 1753, and hearing that *Elizabeth Canning* was to be examined before Alderman *Chitty* that Day, he went with Mr. *Lyon* to hear the Account she gave; and remembers that being asked by the Alderman,

what Sort of a Room ſhe was confined in, her Anſwer was, That it was a little, ſquare, dark, or darkiſh Room, and that there were ſome Boards nailed before the Windows, through which ſhe ſaw the *Hertford* Stage-Coachman, who uſed to carry her Miſtreſs; that there was in the Room a broken Stool, and an Iron Grate in the Chimney, and a few old Pictures over it. She ſaid, that ſhe lay on bare Boards, and that there were ſeveral Pieces of Bread which were blue and mouldy, and amounted to about the Quantity of a Quartern Loaf. The Account ſhe gave of her Eſcape was by pulling down a Board nailed on the Window, and that ſhe hurt her Ear by a Nail in getting out. She ſaid, ſhe heard the Name of Mother *Wells* during her Confinement, and therefore concluded ſhe had been at her Houſe; but ſhe never mentioned the Name of *Virtue Hall* before Alderman *Chitty*. Upon this, the Alderman granted his Warrant, which being backed by a *Middleſex* Juſtice, *Aldridge*, *Lyon*, *Hague*, and himſelf went to *Enfield*, to ſee it executed. That, when they went to *Wells*'s, they ſaw ſeveral People in the Parlour there, and having taken a View of ſeveral Rooms in the Houſe, they ſaw a labouring Man there, and aſking him if there were not ſome other Rooms in the Houſe, he pulled a Button off a Door, and opened it, which led up ſeven or eight Steps into the Hay-loft or Workſhop. He is very confident that there was no Lock on the Door, or even the Marks of one, when he went into the Room: It appeared a very long one; and not reſembling the Deſcription which *Canning* had given of it, he wondered where the Room was in which ſhe was confined; and upon acquainting his Companions with the Variety of Things he had obſerved there, (and of which ſhe had not made the leaſt Mention) particularly of the Quantity of Hay, the Neſt of Drawers, the Tub of Pollard, the three old Saddles, the Bed made of Hay, where ſome poor People ſeemed to have lain, together with the Jack-line and Pullies, the little Chimney, where there did not appear to have been either Hearth or Grate, nor any Pictures over the Chimney, nor the Appearance of any; though he ſays there was a Window which commanded the great *Hertford* Road, through which might be ſeen a great Watering-Pond, which was within nine or ten Feet of the Window; and that this Window was in the Eaſt Part of the Room, but had not (as he could obſerve) the leaſt Appearance of ever having been boarded up, and was large enough for him to get out of, and was ſo near the Ground, that he ſhook Hands with his Wife out of it when ſhe ſtood on the Ground, the Caſement of which opened and ſhut very eaſy, and the Room was light; and if he had hung his Body out of that Window, his Feet could have been at moſt not above three Feet from the Ground. The Eaſt Window looks over a Lane, and Trees grow within Reach of it; and then obſerving that there was a good deal of Hay, which *Elizabeth Canning* had not mentioned, he told the Company with him, that he was ſure that could not be the Room. Afterwards they had an Account brought them, that *Wells*, and *Mary Squires*, and the reſt, were ſecured; upon which, they went to *Wells*'s, and being impatient for the Arrival of *Elizabeth Canning*, who was then on the Road, *Adamſon* went to meet her, and aſked her upon the Road, whether there was any Hay in the Room? who anſwered, there was a little Hay there; at which he ſeemed very much pleaſed. And a very little Time after this, *Elizabeth Canning* was brought to *Wells*'s; and being brought into the Parlour, where the Priſoners then were, ſhe was deſired to fix on the Perſon who robbed her, and ſhe inſtantly fixed on *Mary Squires* (but at this Time *Mary Squires* was in ſuch a Situation in the Room, that neither *Canning* nor he could ſee her Face). Upon which, *Lucy Squires* ſaid to her Mother, The young Woman (meaning *Elizabeth Canning*) charges you with robbing her. *Mary Squires*, upon that, came acroſs the Room to her, and ſaid, Madam, do you ſay I robbed you? Pray, look at this Face; for if you had ſeen it before, you muſt have remembered it; for God Almighty never made ſuch another. And upon *Canning*'s ſaying that ſhe robbed her on New-year's Day, *Mary Squires* ſaid, Lord! Madam, I was on that Day an hundred and twenty Miles off. Upon which the Witneſs aſked, Where? Her Anſwer was, That ſhe was at *Abbotſbury* in *Dorſetſhire*, and that ſhe could bring an hundred People to prove it, who had known her for twenty, thirty, and forty Years. There was one *Judith Natus* then in the Room, who ſaid, that ſhe, *Judith Natus*, had been in the Houſe ten or eleven Weeks, and that *Mary Squires* had been in the Houſe but a very little Time; and that *Judith Natus* then ſaid, that ſhe had never ſeen *Canning* before. When ſhe was taken into the Room called the Hay-loft, ſhe ſaid, ſhe remembered a little Hay there, the Pitcher, and a Tobacco-roll; but being aſked about the Cheſt of Drawers, the Tub wherein the Pollard was, and ſeveral other Things in the Room, ſhe made no Anſwer. And being aſked, why ſhe did not endeavour to eſcape out of the Eaſt Window, ſhe ſaid, ſhe thought it was faſtened. And upon the whole, this Witneſs tells you, that upon comparing what he had obſerved at *Wells*'s, with the Account which *Canning* gave before Alderman *Chitty*, he was of Opinion, that her Evidence was deſignedly falſe, or at leaſt that ſhe was groſly miſtaken. On his being aſked, why he did not give this Evidence at the Trial of *Mary Squires*? his Anſwer was, That he was that Day obliged to leave the *Old-Bailey*, to attend the Goldſmiths Company (having an Employment under them); and being fully ſatisfied of the Innocence of *Mary Squires*, concluded that ſhe could not be found guilty; and that he declared the Subſtance of what he has now ſworn to ſeveral People before that Trial; and being extremely uneaſy after her Conviction at his not giving Evidence upon her Trial, he went to Sir *Criſp Gaſcoyne*, then Lord-Mayor, to whom he diſcloſed the Whole or the Subſtance of the Evidence he has now given. The next Witneſs is

John Hague, who went with the laſt Witneſs to *Enfield*, and having told him what paſſed before Alderman *Chitty*, agreed to go with him, *Aldridge*, and *Lyon*, to *Enfield*. He confirms the Account which *Naſh* has given in every Particular; but with this Addition, that during the Time that *Elizabeth Canning* was in the Houſe, till ſhe was carried into the Parlour, (where *Mary Squires*, *Wells*, and the reſt were) ſhe never mentioned her being robbed. He ſays, indeed, that *Elizabeth Canning*, on being aſked whether ſhe ſaw the Perſon who robbed her, pointed to *Mary Squires*; but he was ſurprized at her doing ſo, becauſe, in the Situation *Mary Squires* then was, he thought it impoſſible ſhe ſhould ſee her Face. Says, he heard *Mary Squires* expreſs herſelf (when ſhe was charged with the Robbery) in the Manner *Naſh* has mentioned. He deſcribes the Room in the ſame Manner *Naſh* has done; that there was not the leaſt Appearance of a Grate ever having been there, or Pictures over the Chimney. Agrees with *Naſh* as to the Windows, Trees, Hay, and Bed there, and likewiſe the Cheſt of Drawers, *&c.* which appeared to have been above a Year there, and that there was only a Button on the Door, and no Lock, no Pent-houſe under either of the Windows; and then finding that what he ſaw did not correſpond with the Account which *Canning* had given, ſaid to her with ſome Warmth, Zounds, Child, I cannot think you have been here at all. Upon which *Naſh*, *Aldridge*, and he told *Lyon*, that they thought her whole Story was falſe, which he thinks to be the Reaſon they were not ſubpœna'd to give Evidence at the Trial of *Mary Squires*, though he owns he was in Court during the whole Trial. He ſays, that *Elizabeth Canning* charged *Virtue Hall* and *Lucy Squires*, as being preſent when her Stays were cut off; but they both very ſolemnly affirmed at that Time, that they never ſaw her in their Lives, before ſhe ſo charged them. He ſays, he was ſo greatly affected by the Evidence which *Elizabeth Canning* had given, that he had not Spirits to deſire to be called to contradict her. And ſays farther, that upon *Mary Squires*'s being convicted, he could not reſt till he applied to the late Lord-Mayor, to acquaint him with the Account he has now given; and that his only Motive in ſo doing, was that of reſcuing the Innocent from Oppreſſion.

The next is *Edward Aldridge*, who is a Silverſmith in *Foſter-Lane*, who went with *Naſh*, *Lyon*, and *Hague*, the 1ſt of *February* 1753, and who agrees with the two former Witneſſes in every Particular as to the Deſcription of the Room, and is of Opinion, that when *Elizabeth Canning* was firſt carried there on that Day, that ſhe did not ſeem to know where ſhe was; and that when ſhe was firſt taken into the Parlour, *Wells* aſked her, if ſhe knew her? Her Anſwer was, that ſhe did not. And that *George Squires* aſked her the ſame Queſtion as to her knowing him; to which ſhe gave the ſame Anſwer: But ſays, that ſhe charged the old Woman in the Corner of the Chimney (meaning *Mary Squires*) as the Perſon who cut off her Stays; but is of Opinion, that *Elizabeth Canning* could not at that Time ſee her Face; and is poſitive in remembering what *Mary Squires* ſaid as to her being very remarkable in her Perſon, and of her being at *Abbotſbury* at the Time when *Elizabeth Canning* ſwore ſhe was robbed. He then made his Obſervations on the Room called the Hay-loft, and recollects ſeeing all the Particulars there which *Naſh* and *Hague* have mentioned in their Evidence; and ſays, that from all the Obſervations he could make, he is convinced that it was not a Place of Confinement. He ſays, that he went to *Wells*'s as a Friend of *Canning*'s at his own Expence; and after laying all the Circumſtances attending this extraordinary Caſe together, he ſaw one Mr. *Hall*, of *Theobalds*, and told him, that he thought *Elizabeth Canning* was miſtaken; for he was ſure ſhe never had been at *Wells*'s. He ſays, he was at the *Old-Bailey* Part of the Time of the Trial of *Mary Squires*, but went away to dine with the Goldſmiths Company, concluding that ſhe muſt have been acquitted, as being quite innocent of the Robbery with which ſhe was charged. The next Witneſs is

William White, one of the Marſhal's Men, who is one of thoſe who went to *Wells*'s, in order to execute the Warrant, and took *Wells*, *Mary Squires*, and the reſt into Cuſtody. When they were ſecured, they deſired they might look over their Goods, which they did in his Preſence: But he ſaw no Stays amongſt them. He then went into the Hay-loft, where he obſerved about twelve or fifteen Truſſes of Hay, which ſeemed to have been there a conſiderable Time; and he alſo obſerved all the other Things in the Room, which the other Witneſſes have mentioned, and concluded as they did, (for the Reaſons you have heard from them) that *Elizabeth Canning* was miſtaken. He went under the North Window, out of which ſhe ſays ſhe eſcaped; but there were not the leaſt Marks or Footſteps to be ſeen of any body's getting out of that Window, neither was there the Appearance of any Shed or Pent-houſe. Was preſent when *Elizabeth Canning* fixed on *Mary Squires*, and heard both *Mary Squires*, her Son, and her Daughter ſay, that they were at that Time in *Dorſetſhire*; and the other Daughter ſaid, that ſhe was at that Time at her Uncle's in the Borough. The next Witneſs is

Fortune Natus, who is a poor labouring Man (and is mentioned by ſome of the other Witneſſes). He ſays, that he came to lodge at Mrs. *Wells*'s about a Fortnight after Sir *Criſp Gaſcoyne* was ſworn Lord-Mayor, and that he and his Wife lay in the Room called the Workſhop or Hay-loft; that his Bed was made of Hay and Straw, and his Bolſter a Sack of Wool; and deſcribes the Situation of both Windows in the Room, and that one of them looked into the great Road. He ſays, that he and his Wife continued in that Room from the 27th of *November* to the 2d of *February* following, except one Night, during which Time he had a very good Opportunity of obſerving every Thing in it; and ſays, that there was no Grate in the Chimney, but remembers the Neſt of Drawers, the Side-ſaddles, the Tub with Pollard, and many other Things, which he ſpecifies particularly in his Evidence. He mentions the Sign of the *Crown*, which was at the Feet of his Bed, which he ſays was bought by *Wells*; but is poſitive that there were no Pictures over the Chimney; and ſays, that he is ſure that he lodged there the whole Month of *January*, and continued there till the Warrant was executed on the 2d of *February*, and after; and that he never ſaw *Elizabeth Canning* there, or any where elſe, before that Day. He ſays, that during that Month of *January*, *Wells*'s Son and Daughters uſed frequently to go into this Hay-loft, where he and his Wife lay, for Hay and Pollard, as they wanted; and ſays, that during his Stay there, *Virtue Hall* was a Lodger in the Houſe; and ſays, that *Mary Squires*, her Son, and Daughters, had been there no longer than a Week and a Day before they were taken up; and when he is aſked why he is ſo particular, his Anſwer is, that *Mary Squires*'s Perſon was ſo remarkable, that it ſtruck a Sort of Terror in him. He remembers the Pitcher, and ſays, that his Wife, and all *Wells*'s Family, uſed to bring Water in it from Mrs. *Howard*'s, which was oppoſite to *Wells*'s; but ſays, that

that he never ſaw a Bed-gown at *Wells*'s. He was ſubpœna'd to give Evidence at the Trial of *Mary Squires* and *Wells*, and attended in the Yard at the *Old-Bailey*; but was aſſaulted there, and was (with ſome other Witneſſes, who attended there on the ſame Occaſion) turned out of the Yard three or four different Times. Then

Judith Natus (who is Wife to the laſt Witneſs) is called in, who agrees with the Evidence her Huſband has given in every Particular; that they lodged at *Wells*'s ten Weeks all but three Days, and continued there till they were all taken up, which was on the 2d of *February*. She is rather more exact than he is as to the Signs; for ſhe ſays there were two Signs, one the Sign of the *Fountain*, and the other was the Sign of the *Crown*; and that *Whiffin* bought the Sign of the *Crown* ſome Time (as ſhe believes) before *Old Chriſtmas*, and afterwards bought the Irons of both the Signs, which were not taken away till about a Week before *Mary Squires* and the reſt were taken up. When ſhe is ſhewn the Bed-gown and Handkerchief, ſhe ſwears that ſhe never (to her Knowledge) ſaw them before. She remembers all the ſeveral Things in the Room, of which her Huſband has already given a very exact Account; and ſays, that ſhe gave the ſame Account ſhe does now before Mr. *Fielding*; but was ſo inſulted by the Mob at the Time when ſhe attended at the *Old-Bailey* upon the Trial of *Mary Squires* and *Wells*, that ſhe was not able to give Evidence. The next is

Mary Larney, who keeps a Chandler's Shop at *Enfield-Waſh*, who ſays, that ſhe remembers the two laſt Witneſſes lodging at *Wells*'s about the Time they have told you. She ſays, that the firſt Time ſhe ſaw *Mary Squires* was on *Wedneſday* the 24th of *January*, and ſhe did not ſee her after till the *Thurſday* Se'nnight following; and that during the Time that *Mary Squires* was at *Wells*'s, *Lucy Squires* uſed to buy Chandlery Ware of her.

Sarah Hewit is the next, who is *Wells*'s Daughter, and ſwears, that ſhe lived with her Mother that ſame Month of *January* which *Elizabeth Canning* has fixed on to be the Time of her Confinement; and ſays, that *Mary Squires* and her Family came to her Mother's on *Wedneſday* the 24th of *January*, and remained there till they were taken up. She is poſitive that *Fortune Natus* and his Wife lodged at her Mother's, in the Hay-loft, both before and after they were all taken up; and that they had been there conſiderably above two Months in the Whole; mentions the Hay and Pollard there, and the Uſe they were put there for. She is very certain that ſhe lay at her Mother's the whole Months of *December* and *January*, during which Time *Virtue Hall* and ſhe went very frequently into the Hay-loft. Remembers a particular Circumſtance of Trees growing againſt the Eaſt Window of that Room, and that upon the 8th of *January*, *Edward Allen*, *Giles Knight*, and *John Larney* lopped them, and at that Time *Virtue Hall* and ſhe both looked out of the Window, the Caſement of which, ſhe, the Witneſs, opened, and that the Trees belonged to one *Richard Allen*. She was preſent when *Elizabeth Canning* fixed on *Mary Squires* as the Perſon who robbed her; but ſays, that at that Time *Mary Squires* was in ſuch a Situation, that it was impoſſible for her to ſee her Face. The next Witneſs is

John Larney, (who is produced to give an Account of the lopping the Trees mentioned by the laſt Witneſs) who ſays, that he very well remembers that he, *Allen* and *Knight*, went together on the 8th of *January* 1753, for that Purpoſe; and that *Knight* lopped them, and told him, that he ſhould have the Lops; and that at the ſame Time *Sarah Howit* and *Virtue Hall* were looking out of the Window of the Workſhop, and that *Allen* flung Dirt at them, which they deſired he would not do. He ſays, he had the Arms of the Trees, and *Watts* had the Spray. He ſays, that he plaiſtered up two of the four Windows in the Workſhop, and there remained only two, *viz.* one on the Eaſt, and the other on the North; that the Window on the Eaſt was not above ſeven or eight Feet from the Ground, and that the Wall was ſo very thin, being only Lath and Plaiſter, that any one might have puſhed it down. He is very poſitive to the 8th of *January* being the Day on which the Trees were lopped, becauſe his Child was chriſtened, and he ſet his Chimney on Fire with the Lops which he burnt on that Occaſion. He lives oppoſite to *Wells*'s, and gave this Account before the Trial of *Mary Squires*.

Giles Knight is called next, who ſays, that he lopped the Trees mentioned by the former Witneſs, and is very poſitive that he lopped them on the 8th of *January*. Remembers that Circumſtance of *Virtue Hall* and *Sarah Howit* looking out of the Window of the Workſhop at the ſame Time, and of Dirt being flung at them, and that *Larney* had the Lops, and *Wells* the Spray, for which ſhe gave them ſome Beer. Remembers an Accident of one Mrs. *Picket*'s Cart breaking down that Day; and ſays, that the Window out of which the Women looked at that Time was large enough for him to get out of. The next Witneſs is

Edward Allen, who (as the two former Witneſſes ſwear) was with them at the Time of the lopping the Trees which were near the Workſhop, and is very poſitive to the 8th of *January*, as the other Witneſſes have ſworn; and particularly remembers that *Virtue Hall* and *Sarah Howit* looked out of the Window of the Workſhop or Hay-loft at the ſame Time; and confirms what they have ſaid in every Circumſtance.

John Cantril is called next, who keeps a Public-Houſe a little Diſtance from *Wells*'s, and ſays, that upon this 8th of *January*, *Knight* and *Allen* came to his Houſe, and ſaid they had been at Play, throwing Clods at *Sarah Howit* and *Virtue Hall*, who were looking out of a Caſement that Day at *Wells*'s: He is very particular to that Day, becauſe it happened on a *Monday*, and the *Tueſday* following he had a Piece of Beef, which he intended to roaſt for his Cuſtomers, being *Chriſtmas* Time; and ſays, That he remembers that *Fortune Natus* and his Wife lodged at *Wells*'s between two and three Months. The End of producing this remarkable Piece of Evidence, as to that Circumſtance of lopping the Trees on the 8th of *January*, is, that (if theſe Witneſſes ſwear true) it is impoſſible that *Canning* could have been alone, or even at all in the Workſhop or Hay-loft at *Wells*'s, upon the 8th of *January* 1753, which ſhe ſwore ſhe was, upon the Trial of *Mary Squires* and *Wells*. The next Witneſs is

Ezra Whiffin, who is referred to by ſome of the former Witneſſes, as being the Perſon who bought *Wells*'s Sign-Irons. He lives at *Enfield-Waſh*, and having Occaſion for ſome Sign-Irons, and hearing that *Wells* had ſome to diſpoſe of, he went to her on the 18th of *January* 1753, who told him they were in the Room called the Hay-loft; he went with her there, and looking about for the Irons, *Wells* ſaid, Now I recollect, the Irons are under the Feet of this poor Creature's Bed (pointing to the Bed where *Natus*'s Wife then lay). She then took up from under the Bed a Piece of Wood, to which the Irons were then fixed. He agreed to buy the Irons, which his Son took out of the Wood, and brought the Wood back to her. He gives you a Reaſon for his remembering the Day ſo particularly, becauſe he was on that 18th of *January* going to a Place called *Wormleigh*, to borrow five Guineas of a Man who kept a Public-Houſe there, in order to make up a Sum he then owed his Brewer, (for which he had given a Note, in which one *Livingſtone* joined with him) who had arreſted him for it. Then *Livingſtone* is called, who confirms *Whiffin* in that Circumſtance of the Note.

John Whiffin, the Son of *Ezra Whiffin*, is called next, who ſwears that he went with his Father to *Wells*'s on the 18th of *January*; and is poſitive to his taking the Sign-Irons out of the Wood by his Father's Orders, and returned the Wood to *Wells* in about three or four Days after. The next Witneſs is

Elizabeth Long, who is one of *Wells*'s Daughters, and lives only three Doors from her Mother, and uſed to go there every Day. She is very certain that her Siſter, and *Virtue Hall*, and *Fortune Natus* and his Wife, lived at her Mother's the whole Month of *January* 1753. She ſays, ſhe has known the Room called the Workſhop above twenty-two Years, and believes ſhe went into it almoſt every Day during that whole Month. She is very poſitive to the Hay-bed, the Chimney, (in which there was no Grate) the Pollard, and the reſt of the Things mentioned by the other Witneſſes. Swears to the Pitcher being her Mother's; but as to the Bed-gown and Handkerchief, ſhe never ſaw them till ſhe ſaw them at the Lord-Mayor's. She was in the Parlour at her Mother's when *Canning* was brought in, in order to fix on the Perſon who robbed her, and gives the ſame Account of her Behaviour there which you have heard from the other Witneſſes. She ſays, ſhe was in the *Old-Bailey* Yard, together with *Larney* and *Knight*, when her Mother and *Mary Squires* were tried; but they were not ſuffered to continue there, or give their Evidence. The next is

John Howit, who married *Wells*'s Daughter, and is very poſitive that he was in the Workſhop on the 19th, 20th, and 21ſt of *January* 1753, having ſome Tools there which he had Occaſion to make uſe of; remembers *Fortune Natus* and his Wife lodging there at that Time, but never ſaw *Canning* till the Trial of *Mary Squires*. He was at the *Old-Bailey* at the Time of that Trial, but was very near being killed there by the Mob.

Robert White is called, who very well remembers *Fortune Natus* and his Wife lodging at *Wells*'s about the Time you have heard.

The next Piece of Evidence laid before you, is the Model of this Hay-loft, or Workſhop (to ſhew you that it is not a little, ſquare Room, as *Canning* deſcribed it before Alderman *Chitty*), which is produced by *John Donoval*, who is a Surveyor; and it appears to be thirty-five Feet three Inches long, and nine Feet eight Inches over.

Elizabeth Mayle, a Midwife, is called next, who ſays, that in the Beginning of *February* (being a few Days after *Elizabeth Canning* came Home) ſhe went to make her Mother a Viſit, and ſeeing *Elizabeth Canning* lying on her Bed there, and to all Appearance very ill, and inquiring into the Cauſe of her Illneſs, her Mother told her the Condition her Daughter came Home in. *Elizabeth Canning* then told her the Whole which had happened to her; and on the Witneſs's aſking her, whether ſhe had been debauched? ſhe anſwered, That ſhe had loſt her Senſes, or was in Fits, and could not tell. Upon which ſhe inquired for the Shift ſhe came Home in; and upon its being produced, ſhe aſked, if that was the Shift ſhe went away in? and upon being told it was, ſhe immediately ſaid, that ſhe ſuppoſed it had been waſhed ſince it came Home; but the Mother ſaying it had not, ſhe ſaid, ſhe thought it appeared a good deal too clean to have been worn ſo long; for it was uncommonly clean for ſo long wearing: That upon looking on the Shift, ſhe aſſured the Mother, that her Daughter had not been debauched, if ſhe had worn no other Shift: But ſhe ſays, that, in her Opinion, the Shift could not have been worn three Weeks; nay, thinks that a Week's Wear would have made it as dirty as it then appeared; for it was not the leaſt draggled. That there were only three little Spots upon it, which appeared to be Excrement. She ſaid, ſhe made her a few Viſits after, and ordered her a Glyſter; and on the laſt Viſit ſhe made her, ſhe mentioned the three Spots on her Shift as having the Appearance of Excrement; at which her Mother was very angry, and told her, that ſhe came to ſet her Friends againſt her. On being aſked the Character of *Elizabeth Canning*, ſhe gave her a very good one. The next Witneſs is

George Brogden, Clerk to Mr. *Fielding*, and he is produced only to prove the Information, which ſhe ſwore to before Mr. *Fielding*, and to which ſhe ſet her Mark; and by that Information it appears, that the Water in the Pitcher was conſumed on the *Friday*; but in her Evidence ſhe ſwears it was conſumed the ſame Day ſhe eſcaped.

Deputy *Molineux* is called next, who ſwears, that being with Sir *Criſp Gaſcoyne*, then Lord-Mayor, at the Manſion-Houſe, ſome Time after *Mary Squires* was convicted, that *Elizabeth Canning* and *Virtue Hall* were there together; and after Sir *Criſp Gaſcoyne* had examined *Virtue Hall*, he aſked *Elizabeth Canning*, if ſhe had any Thing to ſay? who anſwered, No. And the Bed-gown and Pitcher being then upon the Table, *Elizabeth Canning* was rolling up the Bed-gown, in order to take it away. My Lord-Mayor then ſaid, ſhe muſt not take it: Upon which *Elizabeth Canning* ſaid, It is my Mother's. This ſurpriſed the Witneſs very much, becauſe he had heard, that, upon the Trial of *Mary Squires*, ſhe ſwore, that ſhe had found it in the Chimney at *Wells*'s. The next and laſt Witneſs is

Mr. *Reed*, who ſwears, that he was preſent at the Manſion-houſe at the ſame Time which the laſt Witneſs mentions, and remembers the ſeveral Circumſtances mentioned by him, as aforeſaid.

Here concludes the Evidence given in Support of this Indictment.

The

The Counsel for the Defendant have made many Observations upon the Evidence you have heard, which it is unnecessary for me to repeat; but, upon the whole, insist upon it, that as this Matter has undergone a very strict Examination by a solemn Trial, that therefore any future Inquiry is unprecedented, and consequently improper: However, in order to oppose or contradict a good deal of the Evidence you have already heard, they have called several Witnesses; the first of whom is

Edward Lyon, who says, that *Elizabeth Canning* was his Servant, and continued in his Service till the 1st of *January* 1753; that he has known *Elizabeth Canning* above sixteen Years, and that she always behaved well; that the first Time he missed her was on the 1st of *January* 1753, and that she never had been absent before; upon which he went to her Mother's, but could hear nothing of her. The first Time he saw her after that was upon the 31st of the same Month, when she was under Examination before Alderman *Chitty*; but being thick of Hearing, did not know what had passed. He says, that a Warrant being granted, he went to *Enfield-Wash*, with *Hague*, *Nash*, and *Aldridge*. When they arrived there, he was told, that several Persons were secured at *Wells*'s; and when he came to *Wells*'s, he saw several Women in the Parlour there. That some Time afterward *Elizabeth Canning* arrived there, and was set upon the Dresser in the Kitchen. He says, he cautioned her very particularly not to charge any one but those she was very sure of. She promised him she would not. She was soon afterwards carried into the Parlour, where they all were. She saw Mrs. *Wells* first, and said, she had nothing to charge her with; but upon seeing *Mary Squires*, she said, she was the Woman who cut her Stays off. He believes she saw her Face before she charged her (because otherwise he thinks she hardly would have charged her). Upon this, *Mary Squires* came up to her, and said she hoped she would not swear her Life away, for she never saw her before: But says, that *Elizabeth Canning* did not at that Time mention the Day upon which she was robbed. She said, that *Lucy Squires* and *Virtue Hall* were in the Room at the same Time she was robbed; and that when she saw *George Squires*, she said, he looked very like the Man who robbed her in *Moorfields*; but she would not swear to him. At this Time he had no Great-Coat on; but when he was with his Great-Coat on at Mr. *Tashmaker's*, she was more positive to him, saying, that was the Great-Coat, under which he put her Gown when he robbed her in *Moorfields*. He said, for his Part, he never had any Doubt of the Truth of what *Canning* had sworn at the Trial of *Mary Squires*; and says, that he several Times, and with the utmost Seriousness, desired *Elizabeth Canning* would tell the Truth, and not deceive him; and owns that this Affair has been the Means of his breaking off his Acquaintance with *Nash*, *Hague*, and *Aldridge*. He denies his contributing any Thing towards the Prosecution of *Mary Squires*. The next Witness is

Thomas Colley, who married *Elizabeth Canning*'s Aunt; and he says, that upon the 1st of *January* 1753, *Elizabeth Canning* dined at his House upon Mutton, and drank Tea in the Afternoon, eat Toast and Butter, and supped upon cold roast Beef. She lived at that Time with Mr. *Lyon*, and that he and his Wife went with her at Nine o'Clock that Night, and left her at the End of *Houndsditch*; and about Twelve o'Clock at Night her Mother's Apprentice came to his House, to enquire for *Elizabeth Canning*, which made him conclude she did not get Home.

His Wife, Mrs. *Colley*, is called next, who gives the same Account that her Husband has, with this Addition, that she did not see her from the 1st of *January* till the 30th, when *Elizabeth Canning* was at her Mother's, and complained she was very ill. The next Witness is

Elizabeth Canning, the Mother of the Defendant, who says, that her Daughter had been some Time in Mr. *Lyon*'s Service, and that upon the 1st of *January* 1753, she called upon her in her Way to her Uncle *Colley*'s; and that pretty late that Evening Mr. *Lyon* called upon her, to inquire for her Daughter. This surprised her a good deal; upon which she sent to *Colley*'s, who sent her Word, that they had parted with her at *Houndsditch* at Nine that Night; and says, that she never heard of, or saw her from that Time till the Night before the 30th of *January*, when she came to her House about a Quarter after Ten that Night (though she advertised her three several Times). She says, that when she came into her House she was in a most deplorable Condition, her Hands black and blue, and her Face bloated, had on the Bed-gown now produced, and two ragged Handkerchiefs on her Head, neither of which she had ever seen before; her Ear was bloody; that she sent for Mrs. *Woodward* and some other Neighbours, who came to her; and on her Daughter's being asked, where she had been? she answered, she could not tell, but had seen the *Hertford* Coach from the Place where she was. She said, that she remembered an old Woman and two young Women. She gave an Account of her being robbed, and carried away, and her Confinement; and said, she had nothing at all to support her from the *Friday* before she made her Escape. She gives an Account of her Daughter's Illness, and that she sent for a Physician and an Apothecary. She remembers that her Daughter, on the Night she came Home, mentioned the Name of *Wells* or *Wills*. She mentions the Money her Daughter had in her Pocket at the Time of her going to *Colley*, which I think was between twelve and thirteen Shillings. She says farther, that during her Daughter's Absence, she was advised to go to a Conjurer, who bid her be easy, for she would certainly come Home again, and believes he told her she was in the Hands of an old Woman; but says, that her own Apprehensions were, that she was murdered by the *Jews*, and thrown into *Houndsditch*. She says, that she told her she lay in Hay durng her Confinement; that she has only a very moderate Stomach, and has known her frequently to be fourteen Days without going to Stool. Upon this Witness's being asked whether she did not swear, at the Trial of *Mary Squires*, that her Daughter had a Cap on her Head when she came Home? she answered, she did not; but upon the Short-hand Writer's being asked that Question, his Answer was, that she did, at that Trial, swear, that her Daughter had a Cap on her Head at that Time. At this Time some Notices were produced, and proved to be signed by the Defendant, signifying her Intention to take her Trial at some of the Times mentioned in some or one of those Notices, and her Name wrote in a very legible Hand; though in the Information before Mr. *Fielding*, nothing more appears but her Mark. After this, a Witness is called, who speaks only to the several Advertisements in the News-papers. The next Witness is

James Lord, (who is Apprentice to *Elizabeth Canning*'s Mother) who agrees as to the Time of her being missing, and was sent to several Places to inquire for her; but he did not see her from the 1st to the 29th of *January* 1753; and on that very Night his Mistress went upon her Knees, to pray that she might see even the Apparition of her Daughter; and very soon afterwards the Latch of the Door was lifted up, and *Elizabeth Canning* came in. When he first saw her, he did not know her, she was in such a miserable Condition, much the same as her Mother has mentioned, and particularly her Ear bleeding fresh, (though she had then walked ten Miles) and was almost spent. He went for Mrs. *Woodward*, and others of the Neighbours; and she then told them, that she had been at Mrs. *Wells*'s at *Enfield-Wash*, and said, that she had heard People go to and fro in the House, and mention the Name of *Wells* or *Wills*. Then

Robert Scarrat is called, who says, that hearing, on the 29th of *January* 1753, that *Elizabeth Canning* was come Home late that Night, he went to her Mother's, late as it was, to see her. She had a Bed-gown on her; and having heard her asked where she had been, and hearing her Answer, that she had been at a Place from whence she had seen the *Hertford* Coachman, and about nine or ten Miles from *London*, he immediately said, he would lay a Guinea to a Farthing that he guessed where she had been; and then said, he was sure she had been at Mother *Wells*'s; upon which she said, she was sure she had heard that Name mentioned in the House where she was confined. She then described the Room to be a longish and darkish Room (which does not agree with her Description of it before the Alderman). She then described the Fields through which she passed in her Return Home, a little Brook, and a Tanner's Yard; said that she met a Man, who directed her in her Road to *London*; and described the Woman who cut her Stays to be a tall, swarthy, black Woman, and two young Women in the Room at the same Time. He says, that he went to *Enfield-Wash* the first of *February*, and was present when *Elizabeth Canning* was brought into the Parlour, and saw her point to *Mary Squires*, saying, That is the Woman who cut my Stays off; upon which *Mary Squires* said, Dear Madam, take care how you swear my precious Life away; to which *Elizabeth Canning* said, I know you too well, to my Sorrow. And on being asked whether she knew any other in the Parlour, she said, that she did not know *George Squires*; but that *Lucy Squires* and *Virtue Hall* were in the Room when her Stays were cut off. He says, that she mentioned some of the Things which were in the Room she was confined in, and pointed to the Window out of which she escaped. Upon his Cross-examination, he says, he never was in the Workshop at *Wells*'s, till this 1st of *February*; but owns (with some Difficulty) that he might have been in the House near ten Times, and that he has known *Wells* for about three or four Years. He says, that he heard *Canning* give her Information before Alderman *Chitty*, and heard her give Evidence at the Trial of *Mary Squires*, and thinks that her Evidence on the Trial did not vary from her Information before the Alderman; but will not take upon him to give an Account of the Particulars of her Evidence before the Alderman. He owns, that when he was in Service at *Edmonton*, that he rode his Master's Horses to *Wells*'s; but disowns his having any Quarrel with her, or saying that he would be revenged on her. And says, that he believes there was no Lock on the Door of the Room called the Workshop. The next is

Mary Myers, who says, that she has known Mrs. *Canning* and her Daughter some Time, and that the Daughter is a very sober Girl. She gives an Account of the Time when *Elizabeth Canning* was missing, and of her Return to her Mother's between Ten and Eleven o'Clock at Night on the 29th of *January*. She tells you the Company she saw there, and the Condition she was in, which was very bad. She says, that she gave the same Account of her being robbed in *Moorfields*, and her being carried to *Wells*'s, and of her Treatment there, which you have already heard, and is much the same Account which she gave at the Trial of *Mary Squires*: That she then gave a particular Account of her Escape, which you have also heard; and that she tore her Ear, and the Blood dropped upon her Shoulder after she returned to her Mother's. This Witness says, that she went with *Canning* to *Wells*'s on the 1st of *February*, and gives you an Account of her fixing on *Mary Squires* as the Person who robbed her, and what *Mary Squires* then said, as is before mentioned by the other Witnesses then present; that she fixed on the Workshop as the Place of her Confinement; but said, there was at that Time more Hay in it; and that *Adamson* put his Back against one of the Windows there, to try if she could give an Account of the Prospect; which she did, by describing Hills at a Distance. She says, that she looked at *Canning*'s Shift, and that it was dirty. Cannot tell the Reason of *Scarrat*'s being at Mrs. *Canning*'s the Night her Daughter came Home; but says, he lived in that Neighbourhood. The next Witness is

Mrs. *Woodward*, who says, that she was at Mrs. *Canning*'s the Night that *Elizabeth Canning* came Home, and was the first Person that came there. She came Home about half an Hour past Ten, the 29th of *January*, on *Monday* at Night, and saw *Scarrat* and *Wintlebury* there; and at *Elizabeth Canning*'s Request, she sent for her Master and Mistress *Lyon*, and that *Elizabeth Canning* said to the Witness, Oh! Mrs. *Woodward*, I have been almost starved; I have had only Bread and Water, and have not had even Water since last *Friday*. She was asked where she had been, and said she had been confined in a Room on the *Hertford* Road. She then gave a very particular Account of her being robbed, and of the Treatment she met with from *Mary Squires* at *Wells*'s, and of her being confined there. She agrees with the other Witnesses in the Account they gave of the deplorable Condition she was in, and believes her to be as ill as she then appeared to be. That she went with *Elizabeth Canning* to *Enfield-Wash* on *Thursday* the 1st of *February*; and upon *Tuesday* after that, she was so ill, they were forced to put her in a Chair, to carry her to Mr. *Fielding*'s. The next Witness is

John Wintlebury, who was known to *Elizabeth Canning*'s Mother about fourteen

fourteen or fifteen Years. He says, she is a very honest Woman, and that her Daughter *Elizabeth* lived with him as a Servant about eighteen Months; that he saw her the Night she came Home, when she was in a very bad Condition, and had nothing on but a Bed-gown, and a Piece of a Handkerchief upon her Head; that her Ear was bloody; that upon taking her by the Hand, she said, Lord! Sir, you do not know what I have undergone; that then she gave an Account where she had been, by seeing the *Hertford* Stage Coachman: That he was with her when she gave her Information before Alderman *Chitty*, but cannot be particular as to what passed there: That he went on the 1st of *February* to *Wells*'s at *Enfield-Wash*, and went into the Room called the Workshop, and observed a good deal of Hay there, which appeared to be fresh tossed up; and says, he arrived there at least an Hour before *Aldridge*, *Hague*, or *Nash*: That upon *Elizabeth Canning*'s being carried into the Parlour, she fixed upon, and charged *Mary Squires*, as the Person who cut her Stays off; to which *Mary Squires* made no Answer; but, on the contrary, denies that *Mary Squires* even desired her not to swear her Life away (which is a Circumstance the other Witnesses have very particularly sworn to): That when *Elizabeth Canning* saw the Door of the Workshop opened, she said, This is the Room I was confined in. He was present when *Adamson* set his Back to one of the Windows of the Room, and examined her about the Prospect; and says, that the North Window seemed to be fresh boarded up. That when he observed *George Squires* in the Parlour, *Elizabeth Canning* thought he was very like one of the Men who robbed her in *Moorfields*; and among eight or nine Women then in the Parlour, she fixed upon *Virtue Hall* and *Lucy Squires*, as being present when her Stays were cut off. He says, he cannot be so particular as to the Account she gave before Alderman *Chitty*, as to that which she gave before Mr. *Tashmaker*; and thinks that the Account she gave before Mr. *Tashmaker* corresponded exactly with the Evidence she gave at the Trial of *Mary Squires*. Upon his Cross-Examination, he owns, he did not give so particular an Account at the Trial of *Mary Squires* as he does now; and says, he took little Observation of the Evidence given by her before Alderman *Chitty*. The Witness called next is

Joseph Adamson, who has known *Elizabeth Canning* for eleven Years; but had not seen her for three Months till he went to meet her going to *Enfield-Wash*. He denies his giving her any Information of there being any Hay in the Room; but that she of her own Accord said there was. That when she was taken into the Parlour, she fixed upon *Mary Squires* as the Person who cut off her Stays; and when she was carried into the Workshop, she said the East Window was fastened up, and she could not open it; and that he made the Experiment by setting his Back to the Window, to know whether she could give any Account of the Prospect; and he observed that the Wood which covered the North Window seemed to be fresh cracked. The next Witness is

Sutherton Bakler, Apothecary, who says, that he saw *Elizabeth Canning* on the 30th of *January*; that she was in Bed, and in a very low Condition; that he administered some Medicines to her, being Glysters; and then Dr. *Eaton*, a Physician, was sent for; but before the Medicines which the Doctor prescribed had any Effect, she went to *Enfield-Wash*, which was on the first of *February*. He says, she appeared to be half-starved, and she did not make Water till after the 6th of *February*. And then they call

Dr. *Eaton*, who says, that he attended *Elizabeth Canning* on the 6th of *February*; that he found her very weak, and that she complained of a Colic in her Stomach and Bowels; that he thought her in Danger seven or eight Days, but upon the 4th of *March* she was quite recovered; and thought the Symptoms of her Illness proceeded from Hunger, Thirst, Cold, and great Hardships; though he says, that her Disorder might have proceeded from other Causes, and thinks she had a bad Habit of Body. The next Witness is

Robert Beals, who, upon the 1st of *January* 1753, kept the Turnpike on *Stamford-Hill*, which leads from *Moorfields* to *Enfield*; who says, that he was very ill the *Christmas* before; and that the *February* following, his two Children, which are very young, (not above eight or nine Years old) told him, that a Woman had been forced away from *Moorfields* to *Enfield-Wash*, and had been confined there above a Month; upon which he said, Lord! I was at the Gate when she was carried through; and says, that about Ten or Eleven o'Clock at Night, the Beginning of *January*, he heard a sobbing Sort of a Cry about three hundred Yards distant from him; that there appeared to him to be two Men and a Woman; that they did not come through the Gate, but as they were going over the Stile, heard one of the Men say, Come along, you Bitch, you are drunk; and the Woman seeming very unwilling to go over the Stile, one of the Men attempting to lift her over, she fell down, and cried bitterly, but never spoke; one of them held her, and the other pushed her along. She appeared to be a Woman in great Distress, and sobbed and cried bitterly; but, notwithstanding this Distress, he never mentioned it for above six Weeks; and he says, he durst not venture to stop the two Men, because he was alone. He cannot take upon him particularly to say, that this was upon New-year's Day; but says, the Gown the Woman then wore was white, though he says there was no Moon that Night. The next Witness is

Thomas Bennet, who lives at *Enfield*, opposite to the Ten-mile Stone; and he says, that upon the 29th of *January*, coming towards *London* between Four and Five o'Clock in the Afternoon, he met a Woman, who appeared miserably poor, at a Gate-way between *Wright*'s and *Jenge*'s, about a Quarter of a Mile on this Side Mrs. *Wells*'s; that she had neither Gown, Stays, Cap, or Hat on; that she enquired the Way to *London*, which he directed her: He remembers it by a Circumstance of binding an Apprentice that Day; but says, that he never mentioned this till the *March* following.

David Dyer is called next, who says, that about the same Time he met a poor distressed Creature, and asked her, if she wanted a Husband? and looking upon the Defendant, believes her to be the same Person? that he saw her about Four of the Clock in the Afternoon. She did not appear black in the Face, or at all bruised; but, on the contrary, very pale and thin. Then they call

Mary Cobb, who says, that about three Miles on this Side *Wells*'s, in a Field called *Ducks-Field*, just at the shutting in of Day-light on the 29th of *January*, she met a Woman in a miserable Condition, dressed in a poor dirty Bed gown, a black Petticoat, and a Bit of an Handkerchief on her Head, who was near falling as she was getting over a Stile; that some Time afterwards, hearing of this Affair, and recollecting the Person she had so met, she concluded that she must be *Elizabeth Canning*; and now upon looking at her more minutely, believes it was her; for she then observed something particular about the Tip of her Nose, by which she is more certain of her now; that Justice *Tashmaker* asked her about this Affair, to whom she gave the same Account she now does. The next Witness is

William Howard, who is produced in order to shew, that the Witness *Aldridge* had once a different Opinion of *Elizabeth Canning* to that which he has now disclosed in his Evidence. He says, that *Aldridge* and his Brother, a little Time after *Mary Squires* was taken up, brought him the Case of *Elizabeth Canning*, and recommended her as an Object of Compassion, and proposed a Subscription to support her; and that he came to him a second Time on the same Subject; but when he came the second Time, he said, that the Girl (meaning *Elizabeth Canning*) was not so clear in her Description of the Room where she said she was confined. Then

Mrs. *Howard*, his Wife, is called, and confirms what her Husband has said as to *Aldridge*'s desiring him to subscribe. She lives opposite to *Wells*'s, and believes that she saw *Mary Squires* pass and repass several Times in the Month of *January*; and thinks that he saw *Mary Squires* and her Family at *Wells*'s Door the *Sunday* Se'nnight before they were taken up, and believes her to be the same Woman now in Court. She owns that she is short-sighted, and that *Mary Squires* and her Family might be fifty Yards Distance from her, when she first saw them; but she thinks that she has seen them pass by her House within the Distance of thirty Yards. The next Witness is

William Headland, who says, that to the best of his Memory, he was with his Father (who lives at *Enfield-Wash*) some Time before *January* was Twelve-month, and was there when *Wells* and the rest were taken up; and says, that he took a Piece of Lead up, which lay under the Window from whence *Elizabeth Canning* escaped: It was bloody, and he heard that it was the Lead which tore her Ear when she escaped. He cannot tell the exact Day he took it up, but he gave it to his Mother. He says, that he saw *Mary Squires* the 9th of *January* at *Enfield-Wash*, telling Fortunes; and also saw her there on the 12th, doing of the same; and her two Daughters were with her at *Wells*'s; remembers it by its being Market-day. He saw her get into the Cart when she was taken away, and saw her in Court, and believes her to be the same Woman he saw there. He says, that he is twenty-one Years old; but though he is so particular in his Account of *Mary Squires*, &c. he gives but a very uncertain Account of himself: For he can scarce (if at all) give an Account with whom he has lived for several Months past before he returned to his Father; neither can he tell us in what Month *Christmas* is; he says indeed, that he lived with one *Allen*, as an hired Servant, ten or eleven Weeks.

Elizabeth Headland, the last Witness's Mother, is called, who only proves, that her Son gave her the Piece of Lead at or a little after the Time that *Mary Squires* and the rest were taken up, and the Blood on it was dry; but she has now lost or mislaid it. The next Witness is

Samuel Story, who (upon looking at *Mary Squires*) says, that he knows her very well, and has seen her several Times, and particularly at an House in *White-Webbs-Lane*, near *Enfield-Chace*; and that he saw her on the 23d of *December* 1752, at *Wells*'s Door; and says, that his Curiosity led him to see if she was the same Woman he had seen before, and therefore he went within ten Yards of her, and thinks her the same; and afterwards went to see her in *Newgate*, and is still of the same Opinion; and says, that he has occasionally seen her for three Years together, but never spoke to her. He says, that he has seen two young Women with her, and that they all used to wear Blankets, and travel with two Asses and a little Horse. Then

William Smith is called, who lives at *Enfield*, and is a considerable Farmer there. He says, that he saw *Mary Squires* in his Cow-House on the 15th of *December* 1752, and has seen her and her Family about the Country several Times. They came at that Time to enquire for a Lodging. He saw *Mary Squires* next Morning, and there were two young Men and two young Women with her, whom he cannot remember. They lay in his Barn, and were there three Nights and two Days, and had a little black Horse with them, which they lost. He afterwards saw her in *Newgate*, and is positive to her. He is positive that he saw her the 15th of *December*, because he sold some Corn on the 16th. The Witness called next is

Loomworth Dane, who keeps the *Bell* at *Enfield-Wash*, and says, that he never saw *Mary Squires* till Winter was Twelve-month; and that upon Old *Christmas Day*, which was the 5th of *January*, as he was standing on an Heap of Gravel, he is sure he saw her at *Enfield-Wash*; for his Servant having an Holiday that Day, he kept Shop; and one *Norton* bought a Collar of him for his Horse, which he entered in his Book, (which Book is not produced) and that is the Reason which he gives of his remembering the Time. He saw her when taken up and put into the Cart, and also in *Newgate*, and is sure she is the same Woman. He is asked about Mrs. *Headland*'s Character, (whose Evidence you have heard) which, he says, is not a very good one. The next Witness is

Samuel Arnot, who is a Labourer, and lives on *Enfield Chace*, and says, that upon a *Friday*, about nine or ten Days before New *Christmas*, *Mary Squires* asked him (telling him her Name) for a little brown Horse which she had lost; and says, that he saw her the *Sunday* after, and that a Man, two Women, and two Children were with her, which Children were not above four or five Years old, and he believes they all lay at *William Smith*'s; that he afterwards saw *Mary Squires* in *Newgate*, and is of Opinion that she is the same he then saw. Then they call

Elizabeth Arnot, Wife to the last Witness, who says, that she saw *Mary Squires* in Farmer *Smith*'s Cow-house at *Enfield*, about a Week before New *Christmas*, and that she then inquired about her Horse, which she had lost, and that she saw her afterwards in *Newgate*. The next is

Sarah Star, who lives next Door to *Wells*'s, and ſays, that ſhe ſaw *Mary Squires* at her own Houſe on the 18th of *January* was Twelve-month; but had never ſeen her before: That ſhe then offered to mend China, and ſtayed at her Houſe three Quarters of an Hour, and wanted to tell her and her Servants their Fortunes, and terrified her very much. She afterwards ſaw her in the Cart when taken up, and in *Newgate*, and believes her the ſame Perſon. She believes ſhe ſaw her on the 18th of *January*, becauſe ſhe thinks her Huſband ſold a Load of Peaſe that Day, and that there was a Note given on that Account; but that Note has not been produced. Then

Daniel Vaſs is called, who ſays, that he ſaw *Mary Squires* go by his Houſe near *Enfield* on Old *Chriſtmas-Day*; ſhe went the Foot-way, and he was then in his own Yard; he looked pretty much at her, and ſhe ſeemed ſurpriſed at his doing ſo. He did not look at her above a Minute, and never ſaw her before; but he went to her when in *Newgate*, though in a different Dreſs; yet is ſure ſhe is the ſame Perſon he ſaw go by his Yard. The next is

Jane Dadwell, who keeps a Shop at *Enfield*, who ſays, that ſhe ſaw *Mary Squires* at her Houſe on *Thurſday* the 28th of *December*; knew her very well, for ſhe had been there ſeveral Times before; is particular to that Day, becauſe ſhe dreſſed Meat on *Chriſtmas-Day* for her Cuſtomers, and ſhe was then in her Back-houſe waſhing her Diſhes. She went to ſee her in *Newgate*, when ſhe owned that ſhe had been at her Shop. The next called is

Tobias Kellog, who lives at *Enfield*, and ſays, that he ſaw *Mary Squires* at *Enfield* ſome Time before Old *Chriſtmas* (though he is ſo ignorant, that he cannot tell on what Day of the Month Old *Chriſtmas-Day* was); but ſays, he believes he ſaw her there a Month before ſhe was taken up; he thinks that he ſaw her three or four Times; that ſhe aſked him for Tobacco, and would have told him his Fortune; and that ſhe told one *John Rowley* his Fortune. Then one

John Frame is called, who, in *January* was Twelve-month, lived as a Servant with Mr. *Parſons* in *James's-Street*, *Groſvenor-Square*, who had a Country-Houſe at *Enfield*; and being at Work in the Gardens there on the 11th or 12th of *January* was Twelve-month, *Mary Squires* ſpoke to him through the Paliſadoes, and wanted to tell him his Fortune, which ſhe told him: He is poſitive to the Time, becauſe his Maſter and Miſtreſs went to *London* on the 9th of that Month; and ſays, that he ſaw her about a Twelve-month before at *Enfield*, and ſaw her in *Newgate*, and thinks her the ſame Perſon. The next is

Joſeph Gould, who lives at *Enfield*, and ſays, that he ſaw *Mary Squires* on the 8th or 9th of *January* 1753, about a Quarter of a Mile from *Wells*'s; and hearing from *Virtue Hall* that there were Gypſies at *Wells*'s, he took particular Notice of her; and he ſaw her afterwards in *Newgate*. Then

Mary Gould, his Wife, is called, who ſays, that ſhe ſaw *Mary Squires* the 11th or 12th of *January* was Twelve-month, who aſked her, if ſhe had any China to mend, and told her ſhe would not live long. She ſays, ſhe ſaw her about a Week before ſhe was taken up, and ſaw her when ſhe (the Witneſs) was at Work at Mr. *Parſons*'s; and alſo ſaw her in *Newgate*, and believes her the ſame. The next Witneſs is

Humphrey Holding, who ſays, that the firſt Time he ſaw *Mary Squires* was on the 8th of *January* 1753; that he is a Gardener, and was at Work at Mr. *Parſons*'s, and that the Family went to *London* on the 9th of *January*; and that he ſaw *Mary Squires* the Day before, who aſking him if the Family were at Home, he anſwered, that they were; and ſays, that he ſaw her afterwards on the 11th, when he was pruning Dr. *Harrington*'s Vines, and he ſet down his Day's Work in a Book, becauſe he was not paid for it. She alſo inquired if the Family had any China to mend. He is deſired to produce his Book, which he had not about him; and ſays, that he was examined two or three Times, but could not poſſibly recollect the Time of ſeeing her, becauſe he had not his Book wherein he ſets down his Work. He ſays, that he ſaw her at Mr. *Taſhmaker*'s, and in *Newgate*. Then

Sarah Vaſs, Wife of *Daniel Vaſs*, a former Witneſs, is called, who was a Charewoman at Mr. *Parſons*'s, and ſaw *Mary Squires* on *Thurſday* the 11th of *January* 1753: She fixes on that Day, becauſe Mr. *Parſons* went to *London* on the 9th, which was on *Tueſday*; and that ſhe would have told her her Fortune. She alſo ſaw her paſſing by the Day before ſhe was taken up; ſhe then aſked her for a Pipe of Tobacco, and had then ſome Converſation with her; and afterwards ſaw her in *Newgate*, and is certain ſhe is the ſame Perſon. The next Witneſs (whoſe Evidence is ſomething particular) is

Anne Johnſon, who has lived at *Enfield* ſome Years, and gets her Living principally by Spinning. She ſays, that ſhe ſaw *Mary Squires* on the 18th of *January* 1753, at her Door. The Reaſon of her fixing upon that Day is, becauſe ſhe ſpins for one Mr. *Smitheram*, and ſwears that ſhe carried her Work to him two Days before ſhe ſaw her (which was the 16th). She ſays, that ſhe ſaw *Mary Squires* three ſeveral Times before that, and in the Compaſs of ten or eleven Days; and afterwards ſaw her in *Newgate*. This Witneſs has alſo told you, that when her Work was given her to do by Mr. *Smitheram*, and alſo when ſhe carried it to him after it was done, that it was entered into a Book kept by Mr. *Smitheram*, or by ſome of his Family, for that Purpoſe. It was therefore thought proper to call Mr. *Smitheram*, and to enquire whether a Book was kept for that Purpoſe; and he tells you, that he did employ the Witneſs *Anne Johnſon* in the Buſineſs ſhe has mentioned; and he produces a Book, in which are two Columns, in one of which is entered the Yarn which he delivers out, and in the other, that which he receives after it is ſpun; and upon producing that Book, it is obſervable, that it is entered, that on *January* the 16th one Pound of Yarn is delivered to *Anne Johnſon* to be ſpun; and in the ſecond Column in the ſame Book, one Pound of Yarn is entered to be returned on *January* the 23d, by the ſame Perſon, *Anne Johnſon*, who ſpun it; ſo that it is impoſſible (if Credit is to be given to this Book, to which ſhe herſelf refers) that ſhe could have ſeen *Mary Squires* on the 18th of *January*; becauſe ſhe did not carry Home her Work (as appears by the Book) till the 23d of that Month; which is an Obſervation you will think worthy your Notice, and eſpecially as this is the only written Evidence referred to by the Defendant's Witneſſes which has been produced. They then call

Wife, the Wife of *John Baſſet*, who ſays, that ſhe ſaw *Mary Squires* at *Enfield-Waſh* on the 21ſt or 22d of *January* 1753, and remembers it by a Circumſtance of killing an Hog, and of a Servant's leaving her Service at that Time; that ſhe ſaw her in her own Houſe, and gave her a Penny to tell her Fortune. She ſaw her afterwards in *Newgate*; and upon a Converſation with *Mary Squires* there, about ſeeing her, *Mary Squires* told her, ſhe wronged her. The next is

James Pratt, who ſays, that he ſaw *Mary Squires*, a Man, two Women, and ſome Children, in Farmer *Smith*'s Cow-houſe, about three Days before New *Chriſtmas*, as near as he can remember, where they continued about three Days; and that *Mary Squires* then complained of the Loſs of her Horſe. Then they call

Lydia Farroway, who was a Servant to Mr. *Howard* at *Enfield-Waſh*; and ſhe ſays, that ſhe ſaw *Mary Squires* there upon the *Tueſday* Se'nnight before ſhe was taken up, and remembers it by this Circumſtance, that ſhe was on that Day making Pyes for her young Maſter's Birth-day; and ſaw her afterwards in *Newgate*, and thinks ſhe can be certain to her. The next is

Margaret Richardſon, who ſays, that ſhe ſaw *Mary Squires* at *Enfield* laſt *January* was Twelve-month, in a Chandler's Shop there, and ſtayed with her a Quarter of an Hour, and left her in the Shop; and ſhe alſo ſaw her on Old *Chriſtmas-Day*; remembers it, becauſe her Dog was going to lay hold on her, which her Huſband prevented. She appears to be very ignorant; for, being aſked in what Month *Chriſtmas* is, ſhe ſays, ſhe does not know. Then

George Clements is called, who is Servant to Mr. *Star* at *Enfield*, and ſays, that he ſaw *Mary Squires* there a Fortnight before ſhe was taken up, and that ſhe wanted to tell his Miſtreſs her Fortune, which frighted her; and ſays, that he ſaw her two or three Days after, but Nobody was with her either of the Times. He afterwards ſaw her and knew her in *Newgate*, and ſhe aſked, what Harm had ſhe done him? The next is

Hannah Fenſham, who ſays, that ſhe ſaw *Mary Squires* alone at a Place near *Enfield* on the 16th of *January* 1753, and ſaw her ſeveral Times afterwards paſſing and repaſſing; and ſaw her afterwards in *Newgate*.

Elizabeth Sherrard is the next, and ſhe ſays, that ſhe ſaw *Mary Squires* at *Wells*'s on *Wedneſday*, *Thurſday*, *Friday*, and *Saturday* next before New *Chriſtmas*; and ſays, that ſhe ſaw a young Man and two Women with her, which ſhe believes to be her Son and Daughters. She appears very ignorant, and can ſcarce give an Account at what Seaſon of the Year *Chriſtmas* is. The next Witneſs is

John Ward, (who is produced in order to prove a Confeſſion made by *Suſannah Wells*, at the Time of her Confinement in *Bridewell*, before ſhe and *Mary Squires* were tried) who ſays, that he went to ſee her in *Bridewell*; upon her ſhewing ſome Surprize at ſeeing him, he told her, that he ſaw her Name in the News, and then aſked her, how ſhe came to keep the Girl a Fortnight? She, upon that, ſaid, ſhe was there twenty-eight Days. He then aſked her, what Room ſhe was in? Her Anſwer was, that he knew the Room very well (though he ſays, that he had not ſeen it for twelve Years before). You will conſider in what Light this Evidence appears; for, as it is laid before you by the Defendant to prove *Wells*'s Confeſſion of the Fact charged upon her, the Queſtion is, whether it can have that Effect? And in order to determine that, you will obſerve, he tells her, that the Reaſon of his Viſit was, becauſe he ſaw her Name in the News-papers, and then aſked her, how ſhe came to keep the Girl a Fortnight? Upon which ſhe ſaid, it was twenty-eight Days. Now it is very notorious, that the Account which the Defendant herſelf gave of her Confinement, as well as the Account given of it in the News-papers, was twenty-eight Days; ſo that you will take it into your Conſideration, whether you will believe this to be a Confeſſion, or whether ſhe ſpoke from the News-papers, in order to rectify the Witneſs's Miſtake in charging her with confining the Girl (as he then called the Defendant) a Fortnight, when it appeared by the News-papers to be twenty-eight Days. Then

Richard Jones is called, who was with the laſt Witneſs to ſee *Wells* in *Bridewell*, and agrees with him as to the Converſation which paſſed relating to the Defendant's Confinement in the Terms you have heard. The next Witneſſes they call, are

Nathaniel Crumphorne, and *Elizabeth* his Wife; and they are produced to prove a Converſation between thoſe Witneſſes and *Judith* the Wife of *Fortune Natus*, relating to the preſent Defendant, which ſeems very extraordinary; for they tell you, that upon the 21ſt of *April* laſt, *Judith Natus* was at their Houſe, and that *Nathaniel Crumphorne* ſaid to her, that as ſhe knew that *Elizabeth Canning* was at *Wells*'s, how could ſhe go againſt her? And that the Anſwer ſhe made was, Indeed, Mr. *Crumphorne*, I cannot ſay but ſhe really was there when we lodged there. I mention this as a very extraordinary Piece of Evidence; becauſe, if what is ſworn by this Evidence is true, the Conſequence muſt neceſſarily be, that not only this *Judith Natus* and her Huſband, but many Witneſſes, whoſe Evidence I have already ſtated to you relating to that Fact of her being there, muſt be abſolutely and wilfully perjured. The next is

Paul Stevens, who is called to prove a Confeſſion which he ſays *Mary Squires* made in *New-Priſon*, and there he ſays, that *Mary Squires* owned ſhe had been at *Wells*'s; but at the ſame Time ſaid, that ſhe neither cut the Defendant's Stays off, or robbed her; but ſaid, that *Betty Canning* was at *Wells*'s about a Fortnight and three Days, and that ſhe was there at the ſame Time. Now this, as well as all other Confeſſions, muſt be taken intire; and if ſo, it is certain that *Mary Squires* diſowns the Robbery, though ſhe owns (if ſhe made this Confeſſion) that *Betty Canning* was at *Wells*'s at the Time ſhe was there. This Confeſſion alſo (if ſhe made it) muſt appear ſomething wonderful, when you conſider the former Evidence.

Then, in order to diſcredit *Fortune Natus*, they call three Witneſſes, *viz.* *Joſeph Haines*, *Paul Chapman*, and *Thomas Green*. The firſt of them ſays, that he has in general a bad Character: The ſecond ſays, that both he and his Wife have but very indifferent Characters, and ought not to be believed upon Oath; but it ſeems that there has been ſome Difference between *Chapman* and him about a Note: And the laſt Witneſs ſays, that he believes *Fortune Natus* would ſwear any Thing for Hire. Then, to diſcredit *Ezra Whiffin*, they have called

William Metcalf, who is a Glazier and Painter, and he says, that upon the 8th of *January*, Old Stile, which is the 19th New Stile, *Whiffin* having employed him to paint his Sign, it was brought Home that Day, and then the Witness told *Whiffin*, that Mrs. *Wells* had got her Sign-Irons to sell; and therefore concludes, that if *Whiffin* had bought her Sign-Irons on the 18th, which he swore he did (which was the Day before) he would naturally have told him so. Upon his Cross-Examination, he tells you, that he remembers this Circumstance by an Entry in a Book, a Copy of which he produced; but he owns, that the Figures 1753 in that Copy were wrote so late as last *Saturday*. Now to establish the Characters of *Whiffin* and *Fortune Natus*, the Counsel for the King have called some Witnesses. The first is

Mr. *Smitheram* (who has been called before), who says, that he has known *Whiffin* a Year and an Half, and that his general Character is a very good one, and that he does not believe he would forswear himself. Then

Mr. *Barnes* and Mr. *Smart* are called, who both have known him between three and four Years, and agree in giving him the Character of a very honest Man. As to *Fortune Natus*'s Character,

Thomas Bell is called, who says, that he has worked for him about fifteen Months, and that he has always behaved honestly and well, and does not believe he would be guilty of Perjury; and says further, that he has eight Servants, and does not think he has so good a Servant, or one he values so much as he does *Fortune Natus*.

I have now laid before you the Evidence given both on one Side and the other, with all the Exactness I have been able; and as the Verdict you are to give is attended with great Expectation, you will weigh and consider the Evidence you have heard with the utmost Care and Impartiality, and not suffer yourselves to be influenced either by popular Clamour, or by any Apprehensions of the Consequence of doing the Public and yourselves that Justice which is expected from you. 'Tis certain that this Trial has been carried on by different Setts of People, who have interested themselves in it with uncommon Zeal, and whose Passions have led them into the greatest Extremities, as well as the highest Extravagancies, according to the Part they have supported, which has drawn it into an unusual Length, and has given it the Appearance of greater Intricacy and Difficulty than otherwise it could have met with. As you have heard all the Witnesses examined with the utmost Accuracy, and carefully attended to their Evidence; your Verdict will, at least it ought, to give a general Satisfaction, in clearing up those Doubts which this extraordinary Affair has occasioned.

I believe there never happened a greater Contrariety of Evidence (not to give it a worse Name) during the Course of any Trial, than there has in this: However, it is generally so ordered by Providence, that Truth is attended with so strong a Connection, and such an invincible Uniformity, that it seldom, if ever, fails in having its due Weight.

It may not be amiss just shortly to recapitulate, and take a View of the Evidence as it has been given, and how it has been applied.

The first Fact they, who are concerned for the Prosecution, undertake to prove, is, that *Mary Squires*, her Son and Daughter, were, upon the 29th of *December*, at a Place called *South-Parret* in *Dorsetshire*; and that she and they travelled from thence through *Abbotsbury* (where they stayed from *Monday* the 1st of *January* to the *Tuesday* Se'nnight following), then arrived at *Wells*'s on *Wednesday* the 24th of that Month; and their whole Journey through the several Counties they passed, proved by thirty-eight different Witnesses, confirmed by many Circumstances, who don't appear to have the least Correspondence together, or to act in Concert on this Occasion; but, on the contrary, most of them utter Strangers to each other.

You will then compare *Elizabeth Canning*'s Information before Alderman *Chitty*, with the Evidence she gave at the Trial of *Mary Squires*, as to her Description of the Room, as well as the Account she gave of what was in it, and consider how, and in what Particulars, she differed. Then the Principles upon which *Nash*, *Aldridge*, and *Hague* went upon; first in giving her Credit, and then in disbelieving her whole Story after they had taken a View of the Room, and considered the different Accounts she gave, as well as their Opinion how easily she might have escaped, if she had been there. There is another very remarkable Circumstance, which you must remember is proved by four Witnesses, I mean that of lopping the Trees which grew at the Window of the Room she swears herself confined in, which was done on *Monday* the 8th of *January*, at which Time she swore herself in that Room. There is also something very particular as to the Shift she had on, in which she swore she was, at that Season of the Year, dragged to *Wells*'s, and worn twenty-nine Days. Besides this, her setting her Mark only to the Information she gave before Mr. *Fielding*, and writing her Name in a fair legible Hand to the Notices she gave of taking her Trial. And added to all this, her attempting to take away the Bed-gown at the Time of her being at the then Lord-Mayor's, insisting upon its being her Mother's. When you have laid this Evidence together, and weighed it with proper Attention, you will then take her Defence into your Consideration, and determine whether she has answered the Crime with which she is charged to your Satisfaction. In the first Place, you will consider, whether the Evidence she gave against *Mary Squires* can possibly be true; and in the next Place, whether you think it probable. As to the first, there is no Sort of Evidence even to assist you in determining whether it is possible for Human Nature to subsist for twenty-nine Days together upon no more than a Quartern-Loaf, and a Pitcher of Water of the Size you have seen. If you should think this possible, you will then take the Probability of her Defence into Consideration. Her Master *Lyon* tells you, that he differed from the rest of his Companions who went with him to *Enfield*, and that, for his Part, he had no Doubt of the Truth of what she had sworn; and many other Witnesses she has called are of the same Opinion, for the Reasons you have heard them give. Then her Mother, and the Neighbours whom she sent for upon her Daughter's Return, have described her Dress, and have given you an Account of the miserable wretched Condition she was then in, as well as the Account she then gave of her Confinement, and the Place where she was. The Evidence of *Beals*, who kept the Turnpike at *Stamford-Hill*, is very observable, who says, that he believes *Elizabeth Canning* was dragged through the Turnpike on the 1st of *January*; yet says, that he never spoke of it till six Weeks after; and then closes this Part of her Defence with the Evidence of three Witnesses, who swear that they met her on the Road (as they believe) on her Return from *Enfield-Wash*. And then, to induce you to believe that she was not mistaken in the Person of *Mary Squires*, from whom she swore she met with this severe and cruel Treatment, she has called twenty-seven Witnesses, who all swear, that they saw *Mary Squires* in and about *Enfield* in the Months of *December* and *January*; which, if true, thirty-eight Witnesses, who positively swear to her being in other Places, must be wilfully perjured; but you must remember, that some few of those twenty-seven Witnesses have appealed to written Evidence, such as Entries in Books, none of which (as I recollect) have been produced, except that of *Smitheram*, which was referred to by *Anne Johnson*, by which it manifestly appears how greatly she was mistaken in her Evidence; and it is very remarkable, that there are not two of these twenty-seven Witnesses who can swear they saw her at the same Time. And last of all, you will consider the Confessions of *Wells* and *Mary Squires* after they were in Custody; and what *Judith Natus* said a few Days ago relating to this Affair, on which I made such Observations as have occurred to me.

And now, Gentlemen, the Whole rests for your Determination; and as it is very observable that you have attended to the Evidence with the greatest Application, and your Characters being such as will not suffer you to deviate from the Paths of Truth and Justice, I can make no Doubt but that you will acquit yourselves as honest Men. If therefore you are of Opinion that the Defendant is guilty of this Perjury, you will find her so; if innocent, you will acquit her.

The Jury withdrew at twenty Minutes after Twelve o'Clock in the Morning, to consider of their Verdict, and returned at fifteen Minutes after Two, and brought in their Verdict, Guilty of Perjury, but *not Wilful and Corrupt*.

Upon which the Recorder told them, "That he could not receive "their Verdict, because it was partial; and they must either find her "guilty of the whole Indictment, or else acquit her."

Upon which they were sent out again at twenty-five Minutes after Two, and returned at forty-one Minutes after Two; and brought in their Verdict, Guilty of *Wilful and Corrupt Perjury*.

Upon which she was committed by the Court to the Custody of the Keeper of *Newgate*.

On the *Monday* following, the 13th of *May*, she was called to the Bar, in order to receive Sentence; when her Counsel delivered into Court Affidavits of two of the Jurymen, Mr. *Frome* and Mr. *Russel*, setting forth that the Verdict given was not according to their Consciences, which were read.

Upon which Mr. *Manning*, the Foreman of the Jury, was sent for by the Court, and asked how this Matter was? who gave the following Account how they were divided.

The Foreman then acquainted the Court, "That all of them, *but those* "*two*, were of Opinion she was guilty of the whole Indictment, but "the said two did not think she was wilfully guilty, yet nevertheless, "thought she was guilty; but believing Somebody had seduced the Girl, "and forged the Story, for her to tell and stand by (in short, they all "believed so): And upon such Belief they found, and gave their Ver-"dict, Guilty, but *not Wilful*: But were informed by the Recorder, "that he could not take that Verdict, for they must either acquit her, "or else find her guilty of the whole Indictment.

"That when they withdrew to consider again of the Charge, the said "*two Men* declared they could not come in to find her guilty of the "whole Indictment; but upon arguing the Case with them, and telling "them, they might as well find her guilty of the whole Indictment, "they said, they could not agree to it, unless the rest of the Jury would "consent to recommend her to the Court for Mercy. That then they "all agreed to find her guilty of the whole Indictment; which they all "agreed she was guilty of before, except the said *two*; and accordingly "gave in their Verdict, *Guilty of Wilful and Corrupt Perjury*."

Upon which the Prisoner's Counsel insisted upon a new Trial, which the Court would not agree to.---The Court were divided, and the Recorder read the Act of Parliament concerning the Crime of Perjury, wherein it empowers the Court to sentence the Parties found guilty of the said Crime.---Her Counsel still insisted it was Law, and that they had a Right to a new Trial, and quoted the Case of *Ashley* and *Simons* the *Jew*; where the Jurymen made Affidavits, that the Verdict recorded was by Mistake, and was not what they meant or intended to bring in, and thereupon a new Trial was granted; and farther, that they had something to offer in Arrest of Judgment.

Then the Recorder said,---"As this Case is so much become a Party "Affair, (which I am sorry to see) I had rather put it off till next "Sessions, that it may be argued before the same Judges that tried her, "who may come down next Sessions on Purpose." Then the Court agreed to put it off till the first Day of next Sessions, which began *May* 30, 1754.*

At the Session of Oyer and Terminer holden for the City of *London* at *Justice-Hall* aforesaid, on *Thursday* the 30th Day of *May*, 1754, before the

* After the Court had deferred giving Sentence till the following Sessions, the Friends of *Elizabeth Canning* drew up the following Queries, and laid them before Counsel.

QUERIES *proposed to* SOLLOM EMLYN, *Esq*; *Counsellor at Law*, (*Editor of* Hale's Pleas of the Crown, *Folio*, *and of* State Trials, 6 *Vols. Folio*, 1742; *and who wrote that admirable Preface prefixed to the last*).

Query 1. Is not *E. C.* surrendering herself voluntarily, when she had nothing to lose by going away, an Argument of her Innocence?

Answer. As a Person's flying from Justice is a Presumption of Guilt, so a voluntary Surrender is, by Parity of Reason, a Presumption of Innocence; but then it is but a Presumption, which may be overthrown by direct positive Evidence.

Q. 2. Is it agreeable to Law, that a Jury, once charged with the Evidence, may be permitted to go at large, before they have delivered in their Verdict?

the Right Hon. *Thomas Rawlinſon*, Eſq; Lord-Mayor of the ſame City; Sir *John Willes*, Knt. Chief Juſtice of his Majeſty's Court of *Common-Pleas*; Sir *Thomas Denniſen*, Knt. one of his Majeſty's Juſtices of the Court of *King's-Bench*; *Edward Clive*, Eſq; one of the Juſtices of his Majeſty's Court of *Common-Pleas*; *Henry Legge*, Eſq; one of the Barons of his Majeſty's Court of *Exchequer*; Sir *Sidney Stafford Smythe*, Knt. one other of the Barons of his Majeſty's Court of *Exchequer*; Sir *John Barnard*, Knt. *William Benn*, Eſq; Sir *Robert Ladbroke*, Knt. *Francis Cokayne*, Eſq; *Robert Alſop*, Eſq; Aldermen of the ſaid City of *London*; *William Moreton*, Eſq; Recorder of the ſame City; *Stephen Theodore Janſſen*, Eſq; *Marſhe Dickinſon*, Eſq; *Robert Scott*, Eſq; Sir *Richard Glyn*, Knt. and *William Alexander*, Eſq; other the Aldermen of the ſame City; the Defendant was brought to the Bar, to receive Judgment.

Her Counſel argued for a new Trial, and to ſupport their Arguments, again quoted the Caſe of *Aſhley* and *Simons* the *Jew*, and inſiſted, That was a Precedent in their Favour.——Judge *Willes* acquainted the Court, "A new Trial could not be granted, for in the Caſe of *Aſhley* and *Simons* "the Judge there took a wrong Verdict, which was not the Meaning of "the Jury;—but in this Caſe the Verdict was General, and they all abide "by it, *but two*, who are but weak Men, firſt to conſent and give in "their Verdict according to their Oath, and then to recant."——On which the Motion was over-ruled.—Then the Court were proceeding to Sentence, when Sir *John Barnard* ſtood up, and recommended her for Mercy, and that her Sentence might only be ſix Months Impriſonment, for he believed ſhe was not guilty alone; in which ſeven other Aldermen joined.

Then Judge *Willes* told them, he had obſerved that Collections had been made for her amounting to conſiderable Sums of Money; and if her Sentence was only to remain in *Newgate*, there would be ſuch Sums collected, and ſuch Aſſemblies of an Evening, as would render her Sentence rather a Diverſion than a Puniſhment.——Nor the Pillory he no ways judged ſafe, fearing much Miſchief might be done.---And concluding, that he thought her notoriouſly guilty. In which Opinion all the other Judges joined, with my Lord-Mayor, the Recorder, and two Aldermen, *viz.*

For Tranſportion.

The Right Hon. *Thomas Rawlinſon*, Eſq. Lord-Mayor of the City of *London*.

Sir *John Willes*, Knt. Chief Juſtice of his Majeſty's Court of *Common-Pleas*.

Sir *Thomas Denniſon*, Knt. one of his Majeſty's Juſtices of the Court of *King's-Bench*.

Edward Clive, Eſq; one of the Juſtices of his Majeſty's Court of *Common-Pleas*.

Henry Legge, Eſq; one of the Barons of his Majeſty's Court of *Exchequer*.

Sir *Sidney Stafford Smythe*, Knt. one other of the Barons of his Majeſty's Court of *Exchequer*.

William Moreton, Eſq; Recorder of *London*.

Stephen Theodore Janſſen, Eſq; } Aldermen.
Marſhe Dickinſon, Eſq; }

For Six Months Impriſonment only.

Sir *John Barnard*, Knt. }
William Benn, Eſq. }
Sir *Robert Ladbroke*, Knt. }
Francis Cokayne, Eſq. } Aldermen.
Robert Alſop, Eſq. }
Robert Scott, Eſq. }
Sir *Richard Glyn*, Knt. }
William Alexander, Eſq. }

Then *Elizabeth Canning* addreſſed the Court with the following Speech, with a low Voice,---"That ſhe hoped they would be favourable to her; "that ſhe had no Intent of ſwearing the Gypſey's Life away; and that "what had been done, was only defending herſelf; and deſired to be "conſidered as unfortunate." Then the Recorder ſpoke thus:

Mr. Recorder.

Elizabeth Canning, you now ſtand convicted (upon the cleareſt Proof) of *Wilful and Corrupt Perjury*; a Crime attended with the moſt fatal and dangerous Conſequences to the Community, though (as yet) it is not puniſhed with Death. Your Trial has taken up a great deal of Time, and the ſeveral Witneſſes have undergone the ſtricteſt Examination; and I think I may venture to affirm, that there is not one unprejudiced Perſon, of the great Numbers who have attended it, but muſt be convinced of the Juſtice and Impartiality of the Jury in the Verdict they have given.

It is with Horror I look back, and think of the Evidence you gave at the Trial of *Mary Squires*, whom you knew to be deſtitute and friendleſs, and therefore fixed upon her as a proper Object to make a Sacrifice of, at the dreadful Expence of a falſe Oath; this you preferred to the making a plain Diſcovery to thoſe who had a Right to know where you really were thoſe twenty-eight Days of your pretended Confinement at *Wells*'s; and in this you were encouraged to perſiſt, as well by that miſapplied Charity, which was bountifully given you in Compaſſion to your ſuppoſed Sufferings, as by the Advice of your miſtaken Friends, whom you had deluded and deceived into a Belief of the Truth of what you had falſely ſworn.

This audacious Attempt, and that calm and deliberate Aſſurance with which you formed a Scheme to take away the Life of one (though the moſt abject) of the human Species, together with your Youth, and the Character you then had, as well as your ſeeming Inexperience, impoſed upon many, and gained you a Credit which muſt have exceeded your higheſt Expectations; and being thus abandoned, and thus encouraged, you not only wickedly perſevered, but even triumphed over thoſe who would not ſuffer their Judgments to be miſled by ſo groſs an Impoſition.

But when at laſt People had a little recovered their Surprize, and this almoſt miraculous Tale of yours came to be temperately canvaſſed and tried, by comparing your own original Information with the Evidence you had given at the Trial, and found to vary in ſo many material and ſignificant Circumſtances; then that Reſentment you had raiſed began to ſubſide, and give way to that moſt neceſſary Inquiry (which the worthy Magiſtrate who then preſided in this Court ſo charitably undertook, and) which in its Conſequence not only ſaved that Life, which by your falſe Teſtimony was intended to be taken away, but gave riſe to this Proſecution, which muſt both expoſe the Guilty, and convince the Doubtful. And as evil Actions have ſometimes been productive of unforeſeen, nay, even good Effects; ſo this Iniquity of yours will, I hope, inſtruct Mankind not to ſuffer their Credulity to get the better of their Reaſon, by giving way to thoſe very early Impreſſions, which the Artifice of Falſhood too often makes.

I ſhall add but very little more; for I would avoid aggravating your Guilt, which is ſufficiently manifeſt by your Trial, or ſaying any thing which may increaſe the Affliction of one whom I muſt call unfortunate: But as I attended both your Trial, as well as that of *Mary Squires*, it may be expected that I ſhould declare my Thoughts as well of one as the other; I therefore, in the moſt ſolemn Manner, affirm, that I always thought your Evidence falſe, and that the Witneſſes produced in your Defence were moſt groſly miſtaken.

The Policy of foreign Countries puniſhes Offences of this Magnitude with Death, and upon this moſt rational Principle, that when a Life is attacked by a falſe Oath, maliciouſly and deliberately taken, the Puniſhment to which ſuch a ſuppoſed Criminal is thereby expoſed, falls upon the Perſon guilty of ſo horrid an Attempt: But it is your particular Happineſs that you are in a Country, where ſevere and ſanguinary Laws are not ſo familiar; and though many may expect, and the Court ſurely could, in this Caſe, juſtify the moſt ſevere and exemplary Puniſhment which the Law can inflict; yet you will ſoon be convinced, that your Sentence is in no Degree adequate to the Greatneſs of your Offence. The Judgment therefore of this Court is,

That you ſhall be impriſoned in the Goal of *Newgate* for one Month; and after the Expiration of your Impriſonment, you ſhall be tranſported to ſome of his Majeſty's Colonies or Plantations in *America* for the Term of Seven Years; and if within that Term you return, and are found at large in any of his Majeſty's Dominions of *Great Britain* or *Ireland*, you ſhall ſuffer Death as a Felon, without Benefit of Clergy.

The following Affidavits were ſoon after made and publiſhed by two of the Jurymen †.

"*Joſeph Ruſſell* and *Richard Frome*, two of the Jury for trying the "Iſſue between our Sovereign Lord the King and *Elizabeth Canning*, "Spinſter, upon an Indictment for Perjury, at, *&c.* each ſpeaking for "himſelf, and not one for the other, jointly and ſeverally make Oath "and ſay, That theſe Deponents, and the reſt of the Jurors ſworn to "try the ſaid Iſſue, agreed in their Verdict firſt delivered to the "Court, and which ſaid Verdict was unanimouſly agreed to be reduced "into, and was accordingly reduced into Writing; and was, that the "ſaid *E. Canning* was guilty of Perjury, but not wilful and corrupt; "as theſe Deponents, or either of them, did not apprehend or believe, "that ſhe the ſaid *E. Canning* knew or believed the Facts by her ſworn in "her Evidence againſt *M. Squires*, upon the Trial of the ſaid *M. Squires*, "were not true when ſhe ſo ſwore the ſame. But theſe Deponents ſay, "they were induced to join in and agree to the Verdict that is recorded, "believing that the Words *wilful and corrupt* were mere Matter of "Form, and underſtanding it to be the Opinion of the Court that the

A. I am of Opinion, that though a Jury once charged, may, by Conſent of Parties, be diſcharged wholly from trying the Cauſe; yet I do not apprehend that the Law will allow them to go at large, in a criminal Caſe, while the Trial is depending: For though in a long Trial ſuch a Confinement may be inconvenient, yet I cannot find that the Law has provided any Remedy for it; it being in the Eye of the Law a leſs Inconvenience, than expoſing the Jury to be tampered with before they have brought in their Verdict; yet I ſee not but that they may take Refreſhment, and retire to Reſt in a Place provided for them, provided that they be guarded by a ſworn Officer, that Nobody be admitted to ſpeak to them.

Q. 3. Is it not neceſſary upon an Indictment for Perjury, not only to prove that the Fact ſworn to is falſe, but alſo that the Defendant knew it to be ſo at the Time of ſwearing?

A. I think it to be very clear, that a mere miſtaken falſe Oath, without wilful and corrupt Deſign, is not Perjury within the Meaning of the Indictment; for the Indictment charges it to be done *falſely, wilfully and corruptly*. Nor did I ever know, hear or read of any one convicted of Perjury, without Evidence to prove a corrupt Deſign, Plot or Confederacy, or elſe that the Party muſt needs know it to be falſe; as in this Caſe, if it were proved that *E. C.* was elſewhere at the Time ſhe pretended to be at *Enfield*; for in this ſhe could not ſwear falſe through Miſtake, as ſhe might with reſpect to the Perſon of the Gypſey. Nor is it ſufficient that even this Evidence be but of equal Weight with the Defendant's Oath; for that would be but Oath againſt Oath, which determines nothing, unleſs it be of ſuperior Weight and Credit; for elſe, by turning the Tables, the Witneſs might equally be convicted on the Defendant's Oath.

Q. 4. Does the Law require that a Jury charged upon ſuch Indictment, muſt neceſſarily bring in their Verdict Guilty or Not Guilty generally?

A. Certainly the Law requires no ſuch Thing; for the Jury may, if they pleaſe, bring in their Verdict Special, or Guilty as to Part, and Not Guilty as to other Part. Indeed, if it be only verbolely worded, and amounts in Subſtance to a General Verdict, it may be right in the Court to tell them, it would be more proper to find it General; but then Care ſhould be taken ſo to explain it to them, that they may not by a General Verdict find the Defendant guilty of more than they believe or intended to find him.

Q. 5. Does not a finding the Defendant Not Guilty of Wilful Perjury, amount to an Acquittal, although they ſhould alſo find the Party Guilty of ſwearing falſely, not wilfully?

A. If the Jury really believed the Party innocent of wilful forſwearing, this is in Effect a General Verdict of an Acquittal, for this is the only criminal Part of the Indictment; and the ſwearing falſely, if not with Deſign and knowingly, is, as I conceive, not criminal in Law: And after this, to find a General Verdict of Guilty, is quite the contrary to their firſt finding.

Q. 6. Suppoſe the Jury, through Surprize, Inadvertency, or Miſtake, find ſuch a Verdict, is there any Remedy to prevent Judgment in ſuch Caſe?

A. This is extremely difficult, unleſs ſome Error can be ſhewn upon the Face of the Record, which may be Cauſe for arreſting Judgment. Perhaps the ſuffering the Jury to go at large in the midſt of the Trial may be ſuch a Cauſe, as being a Miſ-trial.

In the Caſe of Simons, *the* Poliſh Jew, *upon Affidavits of the Jury, that they did not mean to give ſuch Verdict as was entered (as here, that they did not mean to find the Defendant guilty of that Part of the Indictment, which charges her with wilful and corrupt Perjury, but only that ſhe had in ſome Part ſworn falſely, though not wilfully) the Court did ſet aſide the Trial.—If this be really the Caſe, the Jury ought however, for diſburthening their own Conſciences, to make ſuch Repreſentations to the Court, and leave the Effect to them.* S. Emlyn.

May 9, 1754.

† From the *Refutation of Sir* Criſp Gaſcoyne's *Addreſs to the Livery*, page 44, 45.

"ſaid

" ſaid Jury could not bring in their Verdict in the Manner they did at " firſt, and not from an Opinion or Belief that the ſaid *E. Canning* had " any Intent to charge the ſaid *M. Squires* falſely, or maliciouſly and de- " liberately to cauſe or procure the ſaid *M. Squires* to be untruly convict- " ed. And theſe Deponents further ſay, That they are very uneaſy in " their Minds, and diſſatisfied in their Conſciences, by finding that the " Verdict delivered by them, and recorded as aforeſaid, is underſtood and " imports a Conviction of the ſaid *E. Canning* of deliberate, wilful and " intended Perjury, in ſwearing Facts which ſhe knew to be falſe.

JOSEPH RUSSEL.
RICHARD FROME."

" *Joſeph Ruſſell*, one of the Jurors ſworn to try the Iſſue between our " Sovereign Lord the King and *E. Canning*, Spinſter, upon an Indict- " ment for Perjury, at the Seſſions of Oyer and Terminer holden for the " City of *London*, the 24th Day of *April* laſt, and the following Days, at " *Juſtice-Hall* in the *Old-Bailey*, in the Suburbs of the ſaid City, maketh " Oath, and ſaith, That when the ſaid Jurors went out of Court to con- " ſider of their Verdict, they began to examine, from the Notes taken by " them in Court, the Evidence on Behalf of the Proſecution; and that " when they had proceeded therein ſo far as the Teſtimony of about twelve " or fourteen Witneſſes, (to the beſt of this Deponent's Remembrance as to " the Number of ſuch Witneſſes) making their Obſervations on thoſe whoſe " Teſtimony either appeared to deſerve Credit, or to be exceptionable, an " Officer (whoſe Name this Deponent doth not know) came (as he ſaid) " from the Court, to know whether the Jury were agreed in their Ver- " dict? Whereupon *William Parſons*, one of the Jury, ſaid, How can " they think we can agree on a Verdict in ſo ſhort a Time? Others of " the Jury ſaid, You find the Court is impatient, there is a Perjury in " the two Informations that lie on the Table: Others declared, that " was not the Thing they were come to yet: And one (the Foreman, to " the beſt of this Deponent's Remembrance and Belief) ſaid, If you can " make thoſe two Examinations one Thing, there is no Perjury; but as " one mentions *all the Water to be drank up on one Day*, and the other " mentions its being *made an End of on a different Day*, there is a Perjury: " Whereupon it was urged by ſeveral of the Jury, that That was not a " wilful and corrupt Perjury: And it was then (without further Exami- " nation of the Evidence in Behalf of the Proſecution, or any Examina- " tion of the Evidence in Behalf of the Defendant, or once reading of the " Indictment, or any Mention being made of the criminal Import thereof) " unanimouſly agreed to bring in the Defendant guilty of Perjury, but not " wilful and corrupt. And he this Deponent then ſpeaking to the Fore- " man ſaid, Mr. Foreman, as we have agreed of *a Perjury*, but *not wil- " ful and corrupt*, write it down, for fear you ſhould make a Miſtake in " giving of it in; which the Foreman did accordingly. And he this " Deponent took the ſame out of his Hand to read it, and finding it to " be as aforeſaid, returned it again. And this Deponent further ſaith, " That ſuch Verdict as aforeſaid was delivered by the Foreman to the " Court; who being diſſatisfied therewith, directed the Jury to go out a " ſecond Time. And this Deponent further ſaith, That he cannot re- " member particularly what paſſed or was ſaid in Court between the Ju- " ry's delivering in their firſt Verdict, and going out a ſecond Time to " re-conſider it: But ſaith, That he this Deponent did not ſee, nor does " he believe, that there was any Copy of the Indictment againſt the De- " fendant *E. Canning* before the Jury, nor did he hear the Meaning or " Purport of ſuch Indictment once mentioned by a ſingle Perſon on the " Jury whilſt they were conſidering of their Verdict, or either of them: " Nor did he this Deponent at that Time, nor doth he now believe, that " the Defendant *E. Canning* is guilty of wilful and corrupt Perjury, in " ſwearing falſly againſt *Mary Squires*; but ſaith, That on comparing " and conſidering the Evidence, as well on the Part of the Proſecution, " as in Behalf of the ſaid Defendant *E. Canning*, he then did, and doth " now believe, that *Mary Squires* was at the Houſe of Mother *Wells*, at " *Enfield-Waſh*, and that ſhe the ſaid Defendant *E. Canning* was wrong- " ed at *Enfield-Waſh*. And this Deponent further ſaith, That whilſt the " ſaid Jury were out a ſecond Time conſidering of their Verdict, ſeveral " of them were for bringing in the Defendant *E. Canning* Not Guilty, " alledging that they did not believe her guilty of wilful and corrupt Per- " jury, or of any other Perjury or Crime, than that of her Variations " in her ſeveral Examinations in regard to the Time of her having drank " up her Water as aforeſaid: But the Foreman of the Jury declaring they " could not bring in the ſaid *E. Canning* Not Guilty, becauſe they had " already found her Guilty of Perjury; it was upon that Account, and " for that Reaſon, and no other, as this Deponent believes, agreed by the " ſaid Jury, by their ſaid ſecond Verdict, to bring in the Defendant *E. " Canning* Guilty of a Perjury (no other Reaſon, Argument or Motive " whatſoever being mentioned, to the beſt of this Deponent's Knowledge, " Remembrance or Belief, by any one of the ſaid Jury). And this De- " ponent further ſaith, That he ſhould not have been induced to join in " and agree to ſuch Verdict, had he known or conſidered that it is the " Act of the Mind, and not an undeſigned Miſtake (to which every one " from the Imperfection of human Nature is liable), that conſtitutes the " Offence whereof the ſaid *E. Canning* was indicted; or if he had then " conſidered (as he ought), that whether the laſt or Remainder of the Wa- " ter was drank on the *Friday* preceding the Day the ſaid *E. Canning* " eſcaped from *Enfield-Waſh*, or but a few Hours before ſhe made her " Eſcape, it could have no Tendency to prove the ſaid *M. Squires* guilty; " or if ſhe was guilty, could not aggravate or leſſen her Guilt. And this " Deponent further ſaith, That when the Jury agreed to ſuch ſecond " Verdict, they agreed earneſtly to recommend *E. Canning* to the Mercy " of the Court (which Recommendation was unanimouſly agreed to by " all the Jury, and not objected to by any one, to this Deponent's " Knowledge or Belief). And this Deponent further ſaith, That whilſt the " Jury were conſidering of their ſaid Verdicts, he doth not remember to " have heard, nor doth he believe, any one of the ſaid Jury declared his " Belief, that the ſaid Defendant *E. Canning* was guilty of *wilful and cor- " rupt Perjury*, the Crime whereof ſhe ſtood indicted: And that he this " Deponent would not, nor hath he any Reaſon to apprehend or believe, " that any one of the ſaid Jury would have agreed to their ſaid firſt Ver- " dict; or upon bringing in of the ſecond, would (in Purſuance of what " was previouſly and unanimouſly agreed to as aforeſaid) have recom- " mended the ſaid *E. Canning* to the Mercy of the Court, had they be- " lieved her guilty of a Crime ſo heinous in its Nature, and ſo dangerous " in its Conſequences, as wilful and corrupt Perjury, with an Intent to " take away the Life of an innocent Perſon, which, in the Opinion of " this Deponent, deſerves a more ſevere Sentence than that paſſed on the " ſaid *E. Canning*, rather than a Mitigation thereof. And this Deponent " further ſaith, That after the ſaid Jury had delivered in their ſaid ſecond " or laſt Verdict, and before they came out of Court, *Thomas Ford*, Clerk " of the Arraigns, aſked him, this Deponent, what he thought of it now? " To whom this Deponent immediately declared, That he this Deponent " believed the Girl (the ſaid *E. Canning*) was wronged at *Enfield-Waſh* " more than ever he did before: Which Circumſtance he this Deponent " repeated in Court on the 13th Day of *May* laſt; when he made his firſt " Affidavit relating to the Verdict of the ſaid Jury, in the Hearing of the " ſaid *Thomas Ford*, who in no wiſe contradicted the ſame. And this " Deponent further ſaith, That the ſaid *William Parſons*, on the 12th " Day of *May*, declared, in the Hearing of *Richard Frome*, one of the " ſaid Jury, *Thomas Hunt*, and him this Deponent, that the Senti- " ments of him the ſaid *William Parſons*, reſpecting the ſaid *E. Can- " ning* and the ſaid Verdicts, were the ſame as thoſe of this Depo- " nent as above-ſtated; but that the ſaid *William Parſons* had conſult- " ed a Friend, who had adviſed him not to make any Affidavit, for " which Reaſon he declined it, or to that Effect. And this Deponent " further ſaith, That he this Deponent is an utter Stranger to all the " Perſons who have had, or now have, the Direction and Management " of the Defence of *E. Canning* (the ſaid *Thomas Hunt* only excepted, " whom this Deponent knew during his Clerkſhip, being then his Neigh- " bour, but had not ſpoken to the ſaid *Thomas Hunt* during *E. Canning*'s " Trial, or for twelve Months before): But he had been with the Mo- " ther of the ſaid *E. Canning*, and had declared to her, and in publick, " his Diſſatisfaction and Concern at the ſaid Verdict of the ſaid Jury, " and his utter Ignorance of the Import and Conſequence thereof at the " Time he joined in the ſame: After which the ſaid *Thomas Hunt* came " to him this Deponent, in order to draw up and ſettle the Affidavit made " by this Deponent and *Richard Frome*, another of the Jury, on the ſaid " 13th Day of *May* laſt: And ſaith, his making the preſent Affidavit " proceeds from his own Motion and Free-will; and that it is made with " a ſtrict Regard to Truth, as well as a ſincere Deſire to prevent, as far " as in him lies, the ſaid *E. Canning*'s ſuffering that Infamy and Pu- " niſhment which he is fully ſatisfied ſhe has in no wiſe merited.

Jos. RUSSELL."

Sworn the 10th Day of June, 1754,
before me, at my Houſe,
ROBERT SCOTT.

There were ſeveral Pamphlets publiſhed at that Time *pro* and *con*, and ſeveral Advertiſements and Paragraphs publiſhed in the public News-Papers, relating to this *myſterious Affair*; the Subſtance of which in general were,—Some aſſerting not only the Improbability, but the Impoſſibility of her Story:—Others, That ſhe was with Child, and concealed herſelf whilſt ſhe lay in:—Some, That ſhe was an Enthuſiaſt, and inflamed with Wine, whilſt in *Newgate!*——Others, That ſhe would have diſcovered the whole Secret, if ſhe had not been tutor'd and buoy'd up by the Methodiſts, *&c.*—And ſome, That it was a Scheme laid and contrived by ſome artful Perſon, to raiſe Money.—However, no one put their Names to theſe Publications againſt her, yet it drew the two following Advertiſements; one from the Clergyman that attended her in *Newgate*, and the other from herſelf *.

" *June* 7, 1754.

" The many Falſities daily propagated in relation to the Story of *Eli- " zabeth Canning*, oblige me to acquaint the Publick, that ſoon after the " Commitment of that unhappy Girl to *Newgate*, I was requeſted by one " of her Friends to viſit her as a Clergyman. I have viſited her often, " without giving Notice of my coming; and always found the Appear- " ance of Order, Decency, and Sobriety, both in the Priſoner and her " few Attendants. I have converſed with her alone, and in the Preſence " of her Friends, on the Crime for which ſhe was indicted; I have read " to, and prayed with her and them; and as ſhe profeſſed herſelf a Mem- " ber of the Church of *England*, ſhe always joined cordially and earneſtly " in the devotional Offices of the Liturgy; nor have I been able to diſ- " cover any Thing that could give Occaſion to a Charge of Enthuſiaſm. " On the contrary, the Appearance, the Converſation, and the Behavi- " our of *Elizabeth Canning* have, to the beſt of my Obſervation, been al- " ways ſuch, as indicated a Mind not unſettled in the Principles of Re- " ligion, or conſcious of flagrant Guilt.

WILLIAM REYNER,
Rector of *St. Mary Magdalen, Old Fiſh-Street.*"

June 27, 1754.

" After being forced, by the moſt confident Aſſertions, to ſummon " a Phyſician and a Midwife upon my Trial, to clear my Character " from the foulеſt Aſperſions, whoſe Examination was made unneceſſary " by the Teſtimony of a Midwife called on the Part of the Proſecu- " tion; after being prevented examining the far greater Number of " the Cloud of Witneſſes ready to appear to my Character, by the " expreſs Declarations of Counſel retained againſt me, that they had " nothing to alledge to my Prejudice but the ſingle Crime for " which I was indicted; after the Publick has been aſſured that

* *Vide the Refutation of Sir* Criſp Gaſcoyne's *Addreſs to the Livery*, Page 47, 49.

" *Elizabeth Knett*, who was convicted of single Felony, was a prin-
" cipal Witness to prove my Return from *Enfield*, when she was not
" subpœna'd or examined, or intended to be subpœna'd or examined, to
" that or any other Fact; after having been represented by the *Inspector* *,
" as a Person inflamed with Wine, and made drunk with Enthusiasm,
" and as rising from my Seat, and coming toward a Justice of the Peace,
" with all the Appearance of beginning an instant and full Confession†;
" Assertions that have been publickly proved to be false: After these
" Things, there seemed some Room to hope, that the Torrent of Abuse
" against me would have stopped of itself. But being informed that a
" Report has been diligently propagated and prevailed, *that I had squeaked*,
" and declared I would confess or reveal the Whole, upon Condition I
" was pardoned, and permitted to conceal Names; and that I had for
" Answer, If I expected any Mercy, I must name Names; I am com-
" pelled to declare, and do in the most serious Manner, and with
" the strictest Regard to Truth, hereby declare, that I remain at this
" Instant of Time fully persuaded, and well assured, that *Mary Squires*
" was the Person who robbed me; that the House of *Susannah Wells* was
" the Place in which I was confined twenty-eight Days; and that
" I did not in my several Informations or Examinations before the dif-
" ferent Magistrates, or in my Evidence on the Trial of the said *Mary*
" *Squires* and *Susannah Wells*, knowingly, in any material, or even in the
" most minute Circumstance, deviate from the Truth. As Witness my
" Hand this 24th Day of *June*, 1754.

" Elizabeth Canning."

Witness, Benj. Drayton.

However, the Jury's recommending her to Mercy had no Effect; for *Elizabeth Canning* was transported in *August* 1754 (at the Request of her Friends) to *New-England*.

* A Newspaper published at that Time.

† Two Justices went to *Newgate*, after the Verdict, to examine her, *viz.* Mr. *Thomas Smith* and Mr. *Lediard* (two *Westminster* Justices). But she said, she did not chuse to answer them any Questions. See *the Refutation of Sir* Crisp Gascoyne's *Address to the Livery*, page 48.

The Case of ASHLEY *and* SIMONS *the* Jew, *quoted in the foregoing Trial* ‡.

HENRY SIMONS, a Native of *Ostrog* in *Volhinia*, near the *Ukraine*, in *Poland*, landed at *Harwich* in *Essex*, *August* 8, 1751, from *Holland*, with one *Hyam Levi* and another *Jew*; but before they were permitted to go on Shore, were examined by the proper Officer, and on a Belt round *Simons*'s Body, with a Purse fastened to it, were found a large Quantity of Ducats, with which he was permitted to pass to *London*; and after staying some Days in that City, in order to buy Goods, he set out in his *Polish* Dress, on the 28th for *Bristol*, to traffick there. The first Night he reached *Cranford* Bridge, (beyond *Hounslow*) in *Middlesex*, and put up at the *White-Hart* Inn, kept by one *Goddard*; where *Simons* ordered some Bread, Butter, and Beer for Supper, and then told the People of the House in the best Manner he could (for he spoke very bad, if any, *English*) that he wanted a Lodging, and would pay for it; and shewed them his Arms and Bosom, that he was clean, and pulled out Money, to shew they need not fear their Reckoning; whereupon a Bed was ordered for him; and, being fatigued, he went early to Bed, and the Maid locked his Chamber Door; but very early in the Morning, he was robbed of five hundred and fifty-four Ducats, by two Men, who held a Knife to his Throat, and threatened to kill him if he made a Noise. On coming down Stairs that Morning, he complained heavily of his being robbed and ruined, but was only laughed at and ridiculed by the Servants of the House; on which he returned pennyless to *London*; and acquainting some Friends of it, they got a Warrant to apprehend *Goddard* for robbing him; but on going down to take *Goddard*, found he was gone out of the Way to avoid being apprehended; but he surrendered against the Sessions; and at the *Old-Bailey* in 1751, in Alderman *Cokayne*'s Mayoralty, *Goddard* was indicted, for " that he, in his own Dwelling-
" house, on *Henry Simons* did make an Assault, putting him in corporal
" Fear, *&c.* and stealing from him one Leather Girdle, Value One
" Penny, and five hundred and fifty-four Pieces of Foreign Coin, called
" Ducats, Value two hundred and fifty Pounds." *Simons* swore, That *Goddard* was one of the two Men that came into his Chamber, took hold of him in Bed, and assisted in the robbing of him; but on the Evidence of *Goddard*'s Niece, his Servants in the House, one *Thomas Ashley*, a Gardener‖, and several neighbouring Gentlemen and Innkeepers appearing, and giving him a good Character, he was acquitted.

Upon *Goddard*'s Acquittal, he (that *September* Sessions) preferred a Bill of Indictment at *Hicks's-Hall* against *Simons* for Perjury, in swearing an Information before Justice *Chamberlayne*, for a Robbery against the said *Goddard*; which Bill was found by the Grand Jury of *Middlesex*. Whereupon a Warrant was obtained from Sir *Crisp Gascoyne*, Alderman of *London*, for apprehending him in *London*, which Warrant lay dormant till *October* 7 following; though he was publicly seen about *London*, asking Alms in his *Polish* Dress, and had Charity collected for him. On *October* 6, *Simons* set out for *Harwich*, in order to get over to *Holland*, with a mere Trifle in his Pocket (poor *Jews* paying nothing for their Passage) in his Way Home to *Poland*; how he was apprehended and brought to Trial by Mr. *James Ashley* for a Misdemeanour, will appear afterwards.—In the mean Time, it may be sufficient to mention, that some Friends of *Simons* removed the Indictment against him for Perjury, by *Certiorari*, into the Court of *King's-Bench*, at *Westminster*; where on the 10th of *December*, 1751, he was tried for Perjury by a Special Jury of Gentlemen of the County of *Middlesex*, and acquitted.

The Warrant for apprehending *Simons* on this Charge of Perjury lay dormant (as before-mentioned) in *Goddard*'s Sollicitor's Hands, till *October* 7, when it was called for by Mr. *James Ashley*, an Acquaintance of *Goddard*'s, who saw *Simons* on the Road near *Ilford* in *Essex*, on the 6th.---This Warrant, on the Perusal of it, being found *for London* only, the Words *Essex and* were added to it, to make it of Force both in *Essex and London*; and with this Warrant Mr. *Ashley* set out, with Mr. *Newman*, and apprehended *Simons* near *Witham* in *Essex*, and brought him to *Chelmsford*, where it was discovered, that Sir *Crisp Gascoyne* was *no Justice of the Peace for* Essex; and therefore the apprehending *Simons* on that Warrant in *Essex* illegal: However, the Warrant (after erasing *Essex and*) was backed by the Rev. Mr. *Tindall*, a Justice of the Peace for the County of *Essex* (on Alderman *Gascoyne*'s Hand being proved), though Mr. *Tindall* declined committing him, but advised *Ashley* to carry him to the original Jurisdiction: Whereupon *Simons* was carried to *London*, and committed to *New-Prison*, on the Charge against him of Perjury; and whilst there, Mr. *Ashley* lodged a Detainer against him, *for putting into his Pocket, at the* Saracen's Head *Inn in* Chelmsford, *three Pieces of foreign Gold, called Ducats, with an Intent to charge the said* Ashley *with a Robbery*. However, after *Simons*'s Acquittal of the Perjury, he was bailed out on *Ashley*'s Detainer; and at the *Lent*-Assizes at *Chelmsford* in *Essex*, *March* 12, 1752, the Trial of *Simons* came on before Mr. Justice *Foster*, on the following Indictment.

The Indictment sets forth,

ESSEX. { " THAT *Henry Simons*, on the 5th of *September*, in the
" twenty-fifth Year of his Majesty's Reign, did, in
" Form of Law, before *Richard Chamberlayne*, Esq. one of his Majesty's
" Justices of the Peace for the County of *Middlesex*, make his Informa-
" tion in Writing, by which he did, amongst other Things, charge and
" accuse one *Joseph Goddard*, and one other Person, by the Description
" of another Person unknown, of the Crime of Felony and Robbery, *to*
" *wit*, That the said *Joseph Goddard*, and the same Person unknown, had
" lately before feloniously stolen and carried away from the said *Henry*
" *Simons*, in the Dwelling-House of the said *Joseph Goddard*, five hundred
" fifty-four Ducats.

" *Count* I. That the said *Henry Simons*, wickedly devising to vex and
" aggrieve one *James Ashley*, of *London*, Merchant, on the 8th of *October*,
" in the same Year, with Force and Arms, at *Chelmsford*, in the County
" of *Essex* aforesaid, did, secretly and subtilly, put and convey into the
" Right-hand Pocket of the Coat which the said *James Ashley* had on and
" wore, three Pieces of foreign Coin of Gold called Ducats; and the
" said *Henry Simons* did afterwards, in the Presence of divers of his Ma-
" jesty's Subjects, falsely charge and accuse the said *James Ashley*, that
" he was the same Person, who, with the above-named *Joseph Goddard*,
" was so, as aforesaid, supposed to have committed the Felony and Rob-
" bery above specified, and to have stolen and carried away the said five
" hundred and fifty-four Ducats from the said *Henry Simons*, with In-
" tention unjustly to cause the said *James Ashley* to be apprehended, and
" to have it believed, that he was the same Person, who, with the said
" *Joseph Goddard*, was so, as aforesaid, supposed to have committed the
" Felony and Robbery aforesaid.

" II. That the said *Henry Simons*, on the said 8th of *October*, at *Chelms-*
" *ford* aforesaid, further wickedly intending to aggrieve the said *James*
" *Ashley*, did, privily and subtilly, put and convey into the Right-hand
" Pocket of the Coat which he then wore, three other Pieces of foreign
" Gold Coin, called Ducats; and the said *Henry Simons* did afterwards
" falsely charge and accuse the said *James Ashley*, that he had feloniously
" taken from him the said *Henry Simons*, the same three Ducats last men-
" tioned, and divers other Ducats, with Intention to cause it to be be-
" lieved and suspected, that the said *James Ashley* had been guilty of Fe-
" lony; and to cause him to be apprehended and arrested for the same.

" III. That the said *Henry Simons*, on the same Day and Year last
" aforesaid, at *Chelmsford* aforesaid, with Force and Arms, did make an
" Assault upon the said *James Ashley*, and into the right-hand Pocket of
" the Coat which he then had on and wore, three other Pieces of foreign
" Gold Coin, called Ducats, he the said *Henry Simons* did then and there
" privily, and without the Knowledge of him the said *James Ashley*, un-
" lawfully put and convey, and cause to be put and conveyed, with a
" most malicious, wicked, and cruel Intention, then and there falsely
" to charge and accuse, and to cause it to be thought and believed, that
" the said *James Ashley* had robbed him the said *Henry Simons* of the same.

" IV. That the said *Henry Simons*, on the same Day and Year last
" above-mentioned, with Force and Arms, at *Chelmsford* aforesaid, upon
" the said *James Ashley* did make an Assault, and into the right-
" hand Pocket of the Coat which the said *James Ashley* then and there had
" on and wore, three other Pieces of foreign Gold Coin, called Ducats,
" did privily, and without the Knowledge of him the said *James Ashley*,
" unlawfully put and convey, and cause to be put and conveyed; and
" that he the said *Henry Simons* did afterwards, then and there, most falsely
" and maliciously charge and accuse the said *James Ashley* with having
" robbed him the said *Henry Simons* of the said three Ducats, with Intent
" unjustly and wrongfully to subject the said *James Ashley* to the Pains
" and Penalties inflicted by the Laws of this Kingdom for such-like
" Offences."

To this Indictment *Henry Simons* pleaded, *Not Guilty*.

‡ The Case of *Ashley* and *Simons*, being a very extraordinary one, quoted in the last Trial, and probably may again, on some future Occasion, we shall give the Indictment, and the Affidavits of the Jurymen, to shew how a new Trial came to be granted in a criminal Case; but previous thereto, we shall insert the Case of *Simons* and *Goddard*, as an Introduction to it, to render the whole Affair compleat.

‖ This *Thomas Ashley*, the Gardener, a Witness for *Goddard* on his Trial, was himself tried in *April* 1752, in Alderman *Winterbottom*'s Mayoralty, for Perjury, for the Evidence he gave at that Trial, and was found Guilty, and sentenced to stand once in the Pillory at the *Sessions-House* Gate for One Hour, to be imprisoned for Twelve Months, after which to be transported for Seven Years.

Simons had before moved the Court of *King's-Bench* for a Special Jury, which were as follows:

The Special Jury.

John Morley, of *Halsted*, Esq;
John Godsalve, of *Great Baddow*, Esq;
Robert Clarke, of *Little Baddow*, Esq;
Daniel Stratton, of *Bromfield*, Esq;
John Olmius, of *Boreham*, Esq;
George Dodson, of *Shenfield*, Esq;
Thomas Brograve, of *Great Baddow*, Esq;
John Hornby, of *Ingatestone*, Esq;
Samuel Ruggles, of *Becking*, Esq;
Peter Godfrey, of *Woodford*, Esq;
Poulton Allen, of *Barking*, Esq;
Henry Hall, of *Hulton-Hall*, Esq;

And on the Evidence of Mr. *Ashley*, Mr. *Newman*, *Isaac Hubbard* the Constable, *Richard Taylor*, and others, he was convicted after a Trial of twelve Hours; the Jury going out about Nine at Night, and not returning till Two in the Morning.

Henry Simons, thus found guilty, and being upon Bail, his Friends, instead of bringing him into Court within the four first Days of the next *Easter* Term, which began the 15th of *April*, according to the Condition of the Recognizance, moved the Court of *King's-Bench*, that Judgment might be respited; and prayed for a Rule, That the Prosecutor might shew Cause, why a new Trial should not be granted: Which the Court did not then come into, there not being then sufficient Reason shewn, Whereupon the following Affidavits were made soon after:

The Jurymen's Affidavits at large.

1. *John Morley*, of *Halsted*, in the County of *Essex*, Esq. saith, he served on the Jury at the Trial of this Cause, at the last Assizes, held, *&c.* as Foreman of the said Jury; and this Deponent, on the Evidence given on the said Trial, was of Opinion, *that the Defendant did put three Ducats into the Prosecutor's Pocket; but did not find the same was done with any Intent whatsoever.*---The Deponent saith, the Jury did agree to give their Verdict, That the Deponent was guilty of putting the said three Ducats into the Prosecutor's Pocket, by reason it was sworn to that Effect; and such was the Verdict intended to be given: But the Deponent hath lately been informed, That the Verdict of the Jury recorded finds the Defendant guilty upon the third Count in the Indictment, which, the Deponent is also informed, is finding the Defendant guilty of putting the said three Ducats into the Prosecutor's Pocket, with a most malicious, wicked, and cruel Intention, falsely to charge, and cause it to be believed, that the Prosecutor had robbed the Defendant of the said three Ducats: Whereas this Deponent, and the rest of the Jury, did not find the same was done with any such Intent, *or any Intent whatsoever.*---The Deponent saith, That the said Verdict, as it now stands, is contrary to the Intent of the Deponent; and therefore the Deponent hath made this Affidavit.

2. *John Godsalve*, of *Great Baddow*, in the County of *Essex*, Esq. saith, he served on the Jury at the Trial of this Cause, *&c.* That the Deponent, on the Evidence given to him on the said Trial, *was of Opinion, That the Defendant did put three Ducats into the Prosecutor's Pocket*; but the same was not done with Intent to charge the Prosecutor *with Felony, or Robbery, or other Offence, with any evil Intent.*---The Deponent saith, That the Jury did agree to give a Verdict, that the Defendant was guilty of putting the said three Ducats into the Prosecutor's Pocket, by reason it was sworn to that Effect; and such Verdict was intended to be given: The Deponent apprehended, That he and the rest of the Jury had given such Verdict: But the Deponent hath since been informed, that the Verdict recorded finds the Defendant guilty on the third Count in the Indictment, which, the Deponent is also informed, is finding the Defendant guilty of putting the said three Ducats into the Prosecutor's Pocket, with a most malicious, wicked, and cruel Intention, falsely to charge, and cause it to be believed, that the Prosecutor had robbed the said Defendant of the said three Ducats: Whereas the Deponent and the rest of the Jury did not find, that the same was done with such Intent, *or any Intent whatsoever.*---The Deponent saith, That the said Verdict, as it now stands, is contrary to the Verdict then given in Court.---Saith, he could not rest satisfied with such Verdict, and therefore the Deponent made this Affidavit.

3. *Robert Clarke*, of *Little Baddow*, in the County of *Essex*, Esq. saith, That he served on the Jury at the Trial of this Cause last Assizes, held at *Chelmsford*, in the County of *Essex*; and that he was of Opinion, *that the Defendant put three Ducats into the Pocket of the Prosecutor*; *but that the same was not done with Intent to charge the Prosecutor with Robbery, or Felony, or any other Offence, or with any evil Intent.* The Deponent saith, That the Jury did agree to give their Verdict, that the Defendant was guilty of putting the said three Ducats into the Prosecutor's Pocket, *by reason it was sworn to that Effect*; and such was the Verdict intended to be given: That the Deponent apprehended he and the rest of the Jury had given such Verdict: But the Deponent hath been informed, that the Verdict, as taken down and recorded, finds the Defendant guilty upon the third Count in the Indictment, which, the Deponent is informed, is finding the Defendant guilty of *putting the said three Ducats into the Prosecutor's Pocket, with a most malicious, wicked, and cruel Intention, falsely to charge, and accuse, and cause it to be thought and believed, that the Prosecutor had robbed the said Defendant of the said three Ducats:* Whereas the Deponent and the rest of the Jury did not find, that the same was done with such Intent, or *any Intent whatsoever.*---The Deponent saith, That the Verdict, as it stands, is contrary to the Intent of the Deponent.---The Deponent saith, he could not in his Conscience rest satisfied with such Verdict: Therefore the Deponent made this Affidavit to explain what Verdict he did intend to find.

4. *Daniel Stratton*, of *Bromfield*, in the County of *Essex*, Esq. saith, he served on the Jury at the Trial of this Cause, at the last Assizes, held, *&c.* That this Deponent, on the Evidence given to him on the said Trial, was of Opinion, *that the Defendant put three Ducats into the Prosecutor's Pocket*; but that the same was not done with Intent to charge the Prosecutor with the Felony or Robbery *or Offence, with any evil Intent.*---The Deponent saith, That the Jury did agree to give their Verdict, That the Defendant was guilty of putting three Ducats into the Prosecutor's Pocket, by reason it was sworn to that Effect; and such was the Verdict intended to be given: The Deponent apprehended he and the rest of the Jury had given such Verdict: But the Deponent hath lately been informed, that the Verdict recorded finds the Defendant guilty on the third Count in the Indictment, which, the Deponent is also informed, is finding the Defendant guilty of putting the said three Ducats into the Prosecutor's Pocket, with a most malicious, wicked, and cruel Intention, falsely to charge, and cause it to be believed, that the Prosecutor had robbed the said Defendant of the said three Ducats: Whereas the Deponent and the rest of the Jury did not find, that the same was done with such Intent, *or any Intent whatsoever.*---The Deponent saith, That the said Verdict, as it now stands, is contrary to the Intent of the Deponent.---Saith, he could not rest satisfied with such Verdict; and therefore the Deponent made this Affidavit.

5. *John Olmius*, of *Boreham*, in the County of *Essex*, Esq. saith, he served on the Jury at the Trial of this Cause, *&c.* That this Deponent, on the Evidence given on the said Trial, was of Opinion, *That the Defendant did put three Ducats into the Prosecutor's Pocket*; *but the same was not done with Intent to charge the Prosecutor with Robbery, or Felony, or any other Offence.* Saith, That the Jury did agree, that the Defendant was guilty of putting the said three Ducats in the Prosecutor's Pocket, *by reason it was sworn to that Effect*; and such only was the Verdict intended to be given. The Deponent apprehends such Verdict was given: But the Deponent hath been informed, that the Verdict, as recorded, finds the Defendant guilty upon the third Count in the Indictment, which, the Deponent is also informed, is finding the Defendant guilty of *putting the said three Ducats into the Prosecuter's Pocket, with a most malicious and cruel Intention, falsely to charge, and cause it to be thought and believed, that the Prosecutor had robbed the said Defendant of the said three Ducats:* Whereas the Deponent and the rest of the Jury did not find the same was done *with any ill Intent whatsoever.* The Deponent saith, when the Jury came into Court, there was such a Croud and Noise within and without the Court, that the Deponent could not hear distinctly what the Judge, who tried the Cause, said or explained to them. Saith, that he did not understand the Nature of the third Count of the said Indictment. Saith, that the Verdict, as it stands, is contrary to the Intent of this Deponent. The Deponent saith, he could not in his Conscience rest satisfied with such Verdict: and therefore did, together with *Peter Godfrey* and *Poulton Allen*, Esquires, two others of the Jury, lately wait on the Judge, who tried the Cause, and explained to him what Verdict they intended to find: And also acquainted him, that, by reason of the Noise in the Court, the Deponent could not understand the Judge's Explanation of the said third Count of the said Indictment, or the Nature thereof.

6. *George Dodson*, of *Shenfield*, in the County of *Essex*, Esq. saith, he served on the Jury at the Trial of this Cause, at the last Assizes, held, *&c.* That this Deponent, on the Evidence given him on the said Trial, was of Opinion, *That the Defendant put three Ducats into the Prosecutor's Pocket*; *but the same was not done with Intent to charge the Prosecutor with Robbery, or Felony, or any other Offence, with any evil Intent.*---The Deponent saith, the Jury did agree to give their Verdict, That the Defendant was guilty of putting three Ducats into the Prosecutor's Pocket, by reason it was sworn to that Effect; and such was the Verdict intended to be given: The Deponent apprehended he, and the rest of the Jury, had given such Verdict: But the Deponent hath lately been informed, that the Verdict recorded finds the Defendant guilty on the third Count in the Indictment, which, the Deponent is also informed, is finding the Defendant guilty of putting the said *three Ducats into the Prosecutor's Pocket, with a most malicious, wicked, and cruel Intention, falsely to charge, and cause it to be believed, that the Prosecutor had robbed the said Defendant of the said three Ducats:* Whereas the Deponent, and the rest of the Jury, did not find the same was done with such Intent, *or any Intent whatsoever.*---And the Deponent saith, that when the Judge, who tried the Cause, did explain to the Deponent, and the rest of the Jury, the Nature of the Indictment, the *Deponent did reply, We find guilty of No Intent:* But cannot say whether the Judge heard him.---The Deponent saith, that the Verdict, as it now stands, is contrary to the Intent of this Deponent.---Saith, he could not rest satisfied with such Verdict; and therefore made this Affidavit.

7. *Thomas Brograve*, of *Great Baddow*, in the County of *Essex*, Esq. saith, That he served on the Jury at the Trial of this Cause, at the last Assizes, held at *Chelmsford*, for the County of *Essex*; and this Deponent, on the Evidence given to him and them on the said Trial, was of Opinion, *That the Defendant did put three Ducats into the Pocket of the Prosecutor*; *but that the same was not done with an Intent to prosecute the said* James Ashley *for Felony or Robbery: The Deponent apprehended he and the rest of the Jury had given such Verdict:* But the Deponent hath lately been informed, that the Verdict of the Jury, as taken down and recorded, finds the Defendant guilty upon the third Count in the Indictment, which, this Deponent is also informed, is finding the Defendant guilty of *putting the said three Ducats into the Prosecuter's Pocket, with a most malicious, wicked, and cruel Intention, falsely to charge and accuse, and cause it to be thought and be believed, that the Prosecuter had robbed the said* Henry Simons *the Defendant of the said three Ducats:* Whereas the Deponent and the rest of the Jury did not find, that the same was done with Intent as aforesaid.---The Deponent saith, that the said Verdict, as it now stands, is contrary to the true Intent of this Deponent: Therefore the Deponent maketh this Affidavit to explain what Verdict they did intend to find.

8. *Joseph Hornby*, of *Ingatestone*, in the County of *Essex*, Esq. saith, he served on the Jury at the Trial of this Cause, *&c.* And that it appeared to the Deponent, on the Evidence given on the said Trial, *That the Defendant did put three Ducats into the Prosecutor's Pocket*; but on the Evidence given to the Deponent by *Crisp Gascoyne*, Esq. Alderman of *London*, it appeared to the Deponent, *That the same was not done with a malicious, wicked, and cruel*

cruel Intention, falsely to charge, and cause it to be believed, that the Prosecutor had robbed the Defendant of the said three Ducats, or with any evil Intent.—The Deponent saith, that the Jury agreed to give their Verdict, That the Defendant was guilty of putting the said three Ducats into the Prosecutor's Pocket, by reason it was sworn to that Effect; and such was the Verdict intended to be given: And the Deponent apprehended, that such Verdict was given.---The Deponent saith, that when the Jury came into the Court to bring in their Verdict, *there was such a Croud and Noise in the Court, that the Deponent could not hear what the Judge, who tried the Cause, said or explained to them.---Saith, he did not understand the Nature of the third Count of the Indictment*, for the Reasons aforesaid.

9, 10. *Peter Godfrey*, of *Woodford*, and *Samuel Ruggles*, of *Bocking*, in the County of *Essex*, Esquires, severally make Oath, that they severally served on the Jury at the Trial of this Cause, the last Assizes, *&c.* and say, that these Deponents, on the Evidence given them on the said Trial, were of Opinion, *That the Defendant did put three Ducats into the Prosecutor's Pocket, but the same was not done with Intent to charge the Prosecutor with Robbery, or Felony, or any other Offence, or any evil Intent.*---The Deponents say, the Jury did agree to give their Verdict, that the Defendant was guilty of putting the said three Ducats into the Prosecutor's Pocket, by *reason it was sworn to that Effect.*---The Deponents apprehended, that they, and the rest of the Jury, had given such Verdict: But the Deponents have been informed, that the Verdict of the Jury, as is recorded, finds the Defendant guilty on the third Count in the Indictment, which, the Deponents are also informed, is finding the Defendant guilty of putting the said three Ducats into the Prosecutor's Pocket, with a most malicious, wicked, and cruel Intention, falsely to charge, and cause it to be believed, that the Prosecutor had robbed the Defendant of the said three Ducats: Whereas, when these Deponents, and the rest of the Jury, came into Court, there was such a Croud and Noise, that the Deponents could not hear distinctly what the Judge, who tried the Cause, said or explained to them.---Say, that they did not understand the Nature of the third Count of the said Indictment, for the Reasons aforesaid; the Deponents say, that the Verdict, as it now stands, is contrary to the Intent and Meaning of these Deponents.---This Deponent, *Peter Godfrey*, for himself, saith, he could not rest satisfied with such Verdict; therefore this Deponent did, together with *John Olmius* and *Poulton Allen*, Esquires, two others of the Jurors, wait on the Judge, who tried the Cause, and explained to him what Verdict they intended to find; and also acquaint him, that, by reason of the Noise in the Court, this Deponent could not understand the Judge's Explanation of the said third Count of the said Indictment, or the Nature thereof.

11. *Poulton Allen*, of *Barking*, in the County of *Essex*, Esq. saith, that the Deponent served on the Jury at the Trial of this Cause, *&c.* That the Deponent, on the Evidence given to him on the said Trial, was of Opinion, *That the Defendant did put three Ducats into the Prosecutor's Pocket*; but the same was not done with Intent to charge with Robbery, or Felony, or any other Offence. The Deponent saith, that the Jury did agree to give a Verdict, that the Defendant was guilty of putting the said three Ducats into the Prosecutor's Pocket, by reason it was sworn to that Effect.---The Deponent apprehended, he and the rest of the Jury had given such a Verdict: But the Deponent hath lately been informed, that the Verdict, as is recorded, finds the Defendant guilty on the third Count in the Indictment, which, the Deponent is also informed, is finding the Defendant guilty of putting the said three Ducats into the Prosecutor's Pocket, with a most malicious, wicked, and cruel Intention, falsely to charge and accuse, and cause to be believed, that the Prosecutor had robbed the said Defendant of the said three Ducats: Whereas the *Deponent, and the rest of the Jury, did not find the same was done with such Intent, or any ill Intent whatsoever.*---The Deponent saith, when the Jury came into Court to give their Verdict, there was such a Croud and Noise, that the Deponent could not hear distinctly what the Judge, who tried the Cause, said to them.---The Deponent saith, he did not understand the Nature of the third Count of the said Indictment, which the Deponent could not, for the Reason aforesaid, hear the Judge explain.---The Deponent saith, that the said Verdict, as it stands, is contrary to the Meaning of this Deponent.---The Deponent saith, that he could not be satisfied with such Verdict: Therefore the Deponent did, together with *Peter Godfrey* and *John Olmius*, Esquires, two other of the Jurors, wait on the Judge, who tried the Cause, and explain to him what Verdict they intended to find; *and also acquaint him, that, by Reason of the Noise in the Court, the Deponent could not understand the Judge's Explanation of the said third Count of the said Indictment.*

12. *Henry Hall*, of *Hutton-Hall*, in the County of *Essex*, Esq. saith, he served on the Jury at the Trial of this Cause, the last Assizes, *&c.* That the Deponent, on the Evidence to him given on the said Trial, was of Opinion, *That the Defendant did put three Ducats into the Prosecutor's Pocket*, but the same was not done with Intent to charge the Prosecutor *with Robbery, or Felony, or any other Offence, with any evil Intent.*---The Deponent saith, that the Jury did agree, that the Defendant was guilty of putting the said three Ducats into the Prosecutor's Pocket, as sworn to that Effect; which was the Verdict intended to be given. The Deponent apprehended, he and the rest of the Jury had given such Verdict; But the Deponent hath been informed, that the Verdict recorded finds the Defendant guilty on the third Count in the Indictment, which, the Deponent is also informed, is finding the Defendant guilty of putting the said three Ducats into the Prosecutor's Pocket, *with a most malicious, wicked, and cruel Intention, falsely to charge, accuse, and cause it to be believed, that the Prosecutor had robbed the Defendant of the said three Ducats:* Whereas the Deponent, and the rest of the Jury, did not find the same was done with any such Intent, *or with any Intent whatsoever.*---The Deponent saith, that the said Verdict is contrary to the Intent of this Deponent.---The Deponent saith, he could not rest satisfied with such Verdict; and therefore he made this Affidavit.

John Morley, of *Halsted*, Esq.
Rob. Clarke, of *Little Baddow*, Esq.
Tho. Brograve, of *Great Baddow*, Esq.
John Godsalve, of *Great Baddow*, Esq. } Sworn 23d of *April*, 1752, by *Richard Rayment*, Commissioner, at their own Houses.

John Olmius, of *Boreham*, Esq.
Daniel Stratton, of *Bromfield*, Esq. } Sworn the same Day, by the said Commissioner, at the *Saracen's-Head* Inn, *Chelmsford.*

George Dodson, of *Shenfield*, Esq.
Henry Hall, of *Hutton-Hall*, Esq. } Sworn 22d of *April*, by *Brown Chambers*, Commissioner, at their own Houses.

Poulton Allen, of *Barking*, Esq.
Peter Godfrey, of *Woodford*, Esq.
Samuel Ruggles, of *Bocking*, Esq. } Sworn 22d of *April*, before Judge *Wright.*

John Hornby, of *Ingatestone*, Esq. Sworn 27th of *April*, in Court.

An Affidavit tending to prove the Jury's due recording Henry Simons's *Conviction in public Court.*

Cornelius Norton, of *Red-Lion-Street*, *Clerkenwell*, in the County of *Middlesex*, Solicitor for the Prosecutor in this Cause, maketh Oath, and saith, He was present in Court when the Jury, who tried this Cause, publickly delivered their Verdict: The Deponent saith, The Account thereof, and the whole Transaction relating thereto, is hereafter impartially set forth, according to the best of the Deponent's Knowledge and Belief.---First, the Deponent saith, That about One of the Clock of the next Day, after this Cause was tried, the Jury, who tried the same, having assembled together, came into open Court, and, having been called over, respectively answered to their Names: They were asked by the Associate, Whether they did abide by the Verdict they gave his Lordship in private? To which the Foreman of the Jury, or one of them, answered, They did. Upon which the Associate replied, Then this is the Verdict, You find the Defendant guilty. By which this Deponent understood, they found the Defendant guilty generally on the Indictment. For immediately thereon, the Honourable Mr. Justice *Foster*, who tried the Cause, got up, and told the Jury, That he apprehended they could not find the Defendant guilty of the whole Indictment; for that the Prosecutor had not given Evidence to support the first and second Count laid in the Indictment: But he thought there was Evidence to support the third Count: And then the said Mr. Justice *Foster* took great Care and Pains to explain the Difference between the several Counts, and declared it as his Opinion, That, if they found the Defendant guilty of the said third Count, they should acquit him of the rest.---Whereupon *George Dodson*, Esq. who was one of the Jury, declared himself to the Court, That they found the Defendant *guilty of No Intent*, or to that Effect.---To which the Honourable Judge replied, Then you must acquit him; *for it is the Intent constitutes the Offence*, or to that Purpose: And recommended it to the Jury to go out, and reconsider of their Verdict.---In Answer whereto one of the Jury replied, My Lord, we have considered it as much as we could consider it.---The Deponent saith, He believes that thereupon the Judge read, or ordered to be read, the said third Count; and asked the Jury, *If they believed the Witnesses?* and some one or more of them answering, *they did*; the Judge said, Gentlemen, you must connect the whole Evidence together. Whereupon the Jury appeared to the Deponent to consider of what the Judge said to them; and in a short Time, as the Deponent apprehends, brought the Defendant in *guilty of the third Count in the Indictment*, and acquitted him as to the rest: And the Verdict recorded in that Manner.---The Deponent saith, That, after the Verdict so recorded, they were desired to hearken to it: The Associate said, Gentlemen of the Jury, you find the Defendant *guilty of the third Count in the Indictment*, and acquit him of all the rest.---In Answer to which, they some one or more of them answered, *Yes*; and withdrew from the Bar seemingly well satisfied.---Saith, He stood very near to the Jury, when they delivered their Verdict, and heard distinctly the Whole that passed on that Occasion: And the Deponent *does not remember, in his Conscience, that there was a great Croud or Noise in the Court at that Time.*---Saith, That the whole Transaction above related is impartially set forth, as the Deponent believes: And that, if the Deponent hath made any Mistake therein, positively saith, it is not by Design: And humbly submits the Truth thereof to the honourable Judge who tried the said Cause.

C. Norton.

Sworn before
Judge Foster.

These Affidavits of the Jury being obtained, another Application was made to the Court of *King's-Bench*; whereupon the Court was pleased to make a Rule for Mr. *Ashley* to shew Cause, why a *new Trial should not be granted?* Which being spoke to by *Nine* several Counsel, who took up the Court several Days in the Hearing, the Court was pleased to adjudge a *New Trial**.

Accordingly a second Trial came on for the same Fact, at *Chelmsford* Assizes, *July* 12, 1752, before Mr. Justice *Dennison*, by a Special Jury, on the same Indictment.

The Names of the *Special Jury.*

Walter Vane, Esq.
Thomas Smith, Esq.
Robert Andrews, Esq.
Samuel Savill, Esq.
Thomas Stubbing, Esq.
Joseph Clarke, Esq.
Thomas Sewell, Esq.
Matthew Howland, Esq.
Bennet Clere-Rand, Esq.
John Lawton, Esq.
Talesmen, *George Mead*, Esq.
Samuel Pilbrow, Carpenter.

* "Which (says *J. Ashley*) is the first Precedent of the Kind to any Person who had been convicted of a criminal Offence." *See* Ashley's Case and Appeal, *Page* 23. In the same Page he adds, "In the mean Time, Actions having been brought (by *Simons*) against me (*J. A.*) as the Prosecutor, *Isaac Hubbard* the Constable, *Richard* "*Taylor* and *John Newman*, on account of altering the Warrant, and thereby ignorantly detaining the said *Henry Simons* in Custody, till the Warrant was properly backed "(by a Justice of Peace for the County of *Essex*), this Cause was tried before the Lord Chief Justice *Lee*, at *Guildhall*, *London*, *July* 9, 1752; when the Jury gave a Ver-"dict for Two Hundred Pounds against me, (*J. A.*) *Richard Taylor*, and *John Newman*; and the Costs were taxed at 70*l.*

The Evidence for the Profecution was much the ſame as in the former Trial. And the Defendant called no Witneſs to invalidate what the Profecutor's Witneſſes had proved; but ſet up for a Defence, that *Aſhley* was ſeen in *Duke's-Place*, ſhewing ſome Ducats, and deſiring to know the Value of them; on which Mr. *Aſhley* was called, and ſwore he had not been in *Duke's-Place* for ſeven Years, had never ſeen a Ducat (till thoſe produced at *Chelmsford*), and contradicted what *Simons*'s Witneſſes had ſworn. Then ſeveral *Jews* were called to his Character; who ſaid, he was a very honeſt, religious Man; very poor, and obliged to pawn his Veil through Neceſſity. Upon the whole, on this ſecond Trial, the Jury acquitted *Simons*.

There were at this Time ſeveral Pamphlets and Paragraphs in the Newspapers publiſhed on both Sides about this *Myſterious Affair*, which has never yet been cleared up: However, it is certain, *Simons* found great Friends, who aſſiſted him in ſix Trials in leſs than a Twelvemonth, *viz.*

1. *Simons* againſt *Goddard*, for a Robbery, *Sept.* 1751.
2. *Goddard* againſt *Simons*, for Perjury, *Dec.* 10, 1751.
3. *James Aſhley* againſt *Simons*, for a Miſdemeanour, *March* 12, 1752.
4. *Simons* againſt *Thomas Aſhley*, for Perjury, *April* 1752.
5. *Simons* againſt *James Aſhley*, &c. for Falſe Impriſonment, *July* 9, 1752.
6. *James Aſhley* againſt *Simons*, (a ſecond Trial) for a Miſdemeanour, *July* 12, 1752.

The Expence of theſe Trials coſt *Simons*'s Friends about 1306*l.*

Four of theſe Trials were common ones, not worth inſerting here. The only two proper for this Work, would have been the Second for *Perjury*, and the Fifth for *falſe Impriſonment*; but we cannot find they were ever publiſhed, or even taken down in Short-hand.

LIII. The TRIAL of Stephen M'Daniel, John Berry, James Egan, (otherwiſe Gahagan) and James Salmon, at *Juſtice-Hall* in the *Old-Bailey*, on *Saturday* the 1ſt of *March*, 1755, before the Right Honourable *Stephen Theodore Janſſen*, Eſq. Lord-Mayor of the City of *London*; the Honourable Sir *Richard Adams*, Knt. the Honourable Mr. Juſtice *Wilmott*, *William Moreton*, Eſq. Recorder, and others of His Majeſty's Juſtices of *Oyer* and *Terminer*, for the ſaid City and County, for being Acceſſaries before a Felony committed by *Peter Kelly* and *John Ellis*, in the County of *Kent*; for which they were tried and convicted at the Aſſizes held at *Maidſtone*, *Auguſt* 13, 1754.

London Jury.

Richard Heavyſides,	*Ebenezer Gardner*,	*Henry Knight*,
Gamaliel Gardner,	*John Poperton*,	*William Baſſon*,
Nathaniel Norton,	*Randolph Baileys*,	*John Brewin*,
Samuel Neſbit,	*John Keen*,	*John Pricklow.*

STEPHEN *M'Daniel*, *John Berry*, *James Egan* (otherwiſe *Gahagan*) and *James Salmon*, were indicted, for that, at the Gaol-Delivery for our Sovereign Lord the King at the County Gaol at *Maidſtone* for the County of *Kent*, on *Tueſday* the 13th of *Auguſt*, in the twenty-eighth Year of our ſaid Sovereign Lord the King, *Peter Kelly* and *John Ellis* were, in due Form of Law, indicted for a Robbery on the King's Highway on *James Salmon*, by putting him in corporal Fear and Danger of his Life, in the Pariſh of *St. Paul, Deptford*, in the County of *Kent*, and taking from him one Linen Handkerchief, Value 4*d.* two Pair of Leather Breeches, one Claſp-knife, one Iron Tobacco-box, one Silver Pocket-piece, one Guinea, and one Half-crown; and that the ſaid *Peter-Kelly* and *John Ellis* were tried and convicted for that Robbery; and that the ſaid *M'Daniel*, *Berry*, *Egan*, and *Salmon*, on the 23d of *July*, 1755, in the City of *London*, were Acceſſaries before this Felony was committed; and feloniouſly and maliciouſly did aid, abet, aſſiſt, counſel, hire, and command the ſaid *Ellis* and *Kelly* to commit this Robbery, againſt the Peace of his Majeſty, his Crown and Dignity.

There was a ſecond Count in the Indictment, as an Offence at Common Law.

At the Deſire of *Berry*, the Witneſſes were examined apart.

Joſeph Cox ſworn.

(*He produced the Copy of the Record of the Conviction of* Peter Kelly *and* John Ellis.)

Q. Where had you this?——*Cox.* I had it of Mr. *Knap*'s Clerk.

Q. Is it a true Copy?

Cox. It is; the Clerk and I examined it with the Record; I looked over the Record on the File, while the Clerk read this; after that the Clerk read the Record, while I looked over this. (*It is read in Court, the Purport of which is*) "That *Peter Kelly* and *John Ellis* were tried on the "13th of *Auguſt*, 1754, at *Maidſtone* Aſſizes, before Sir *Dudley Ryder*, "Knt. and Sir *Michael Foſter*, Knt. for the ſaid Robbery on the De-"fendant *Salmon*, and found guilty."

Thomas Blee ſworn.

Thomas Blee. I have known the Priſoner *Berry* eight or nine Years, and *M'Daniel* twelve Months laſt *November*. I never had any great Acquaintance with *Salmon*, till through *Berry*, in the Month of *June* laſt. I have known *Egan* four or five Years, by his coming backwards and forwards to *Berry*'s.

Q. Did you know *Peter Kelly* and *John Ellis*?

Blee. I did; I believe they are now in *Maidſtone* Gaol; they were when I came away laſt *Monday*.

Court. Tell the Court the firſt Time you had any Converſation with them.

Blee. I lodged at *Berry*'s Houſe, and worked for him; *Berry* ſaid to me, in the Beginning of *July*, Go to Mr. *M'Daniel*, (he lived then in *Scrub's-Court*, *Holborn*) and tell him I want to ſpeak with him. I went, and he and I came back together to *Berry*'s Houſe. They both ſaid, *Tom*, Money grows ſcarce, you muſt give a ſharp Look-out for a Couple to go upon the *Scamp* now, and if you cannot get two, you muſt get one.

Q. What did they mean by going upon the Scamp?

Blee. That is, to go upon the Highway. I told them, as *Kidden*'s was ſo bad an Affair, I did not chuſe to be concerned more. He was convicted laſt *January* was Twelve-month, and executed at *Tyburn*. *M'Daniel* ſaid, D---n your Eyes, if you don't, it ſhall be the worſe for you. Then *Berry* ſaid, I might go about my Buſineſs; ſo I went away. The next Morning *Berry* called me into his Room.

Q. Where did he live?

Blee. At a Place called the *George-Yard*, at the upper End of *Hatton-Garden*. He then ſaid, Go up to Mr. *M'Daniel*'s Houſe, and deſire him to meet me in the Fields about Eleven o'Clock. I did, and we went into the *Spaw-Fields*, and *Berry* came to us. They both ſaid to me, Go and look about the Fields, and we will ſit down on the Graſs, and ſee if you can pick up a Couple of idle Fellows, that will do for the Purpoſe, and introduce yourſelf into their Company.

Q. What did they mean by that Purpoſe?

Blee. To go upon the *Scamp* were the Words they ſaid: Accordingly we three went into the Fields ſeveral Days, but could not meet with any body fit for the Purpoſe. I remember one Day in particular, it was *Monday* the 15th of *July*, that Day they ordered me to go into the Fields, and ſaid they would come, and I ſat there two Hours before they came nigh me: then *M'Daniel* came to the Top of the Hill, and bid me come to the Sign of *Sir John Oldcaſtle*, a Public Houſe, and ſaid, my Maſter was there; he and I went there, and down to the Bottom of the Yard; and, in the fartheſt Arbour but one, on the left-hand Side, there ſat *Berry* and *Salmon* the Breeches-maker. *Berry* bid me ſit down, which I did; there we all diſcourſed together about doing this Robbery: *M'Daniel* ſaid, We'll do the Thing ſomewhere towards *Blackheath*; then he and *Berry* had a ſort of a Wrangle whether they ſhould not have it done between *Newcroſs* Turnpike and *Deptford*, juſt facing the four-mile Stone.

Q. Was there any particular Reaſon to have it done in that Place?

Blee. Yes, they ſaid, there is a Reward of twenty Pounds, that is given by the Inhabitants of *Eaſt-Greenwich* for apprehending Highwaymen and Footpads: *Berry* ſaid, Suppoſe we have *Egan* concerned with us; then they talked about his being the *Fence*, as they call it.

Q. What did they mean by that Word?

Blee. That is, to buy the Goods after *Salmon* had been robbed of them: *M'Daniel* made an Objection to *Egan*'s being in, becauſe he thought five would be too many to be concerned in the Reward: *Berry* ſaid, We cannot cleverly do without him, and if there are five of us concerned, it will be pretty nigh twenty Pounds each, if a Conſtable ſhould come in: And they all three, that is, *Berry*, *M'Daniel*, and *Salmon*, concluded that *Egan* ſhould be concerned as a *Fence* in the Robbery: And *Berry* ſaid, he would go and let *Egan* know of it that Night; and ſaid to me, Now, *Tom*, you may go Home about your Buſineſs, we will not be ſeen to walk along the Streets together; ſo I went away and left them. The next Morning I went out again, to ſee if I could find any body for the Purpoſe, but I could not that Day; the next after, which was on a *Wedneſday*, Mr. *Berry* called me into his Room, and ordered me to go and tell *M'Daniel* to come to him to the *Bell* Inn in *Holborn*; I went, and *M'Daniel* and I went to the *Bell* together; there were *James Egan*, *James Salmon*, and *Berry*; we were all five together; they bid me come and ſit down, which I did, and drank Part of a Pot of Beer; then we all concluded that the Thing ſhould be done.

Q. Where is the *Bell* Inn?

Blee. It is in the City of *London*, juſt beyond *Bartlet's-Buildings*, on the right-hand Side.

Q. What Thing was to be done?

Blee. That if I could get a Couple to go on the Highway, that *Salmon* ſhould be the Perſon to be robbed; and *Berry* and *Salmon* talked about making two Pair of Breeches that *Salmon* was to be robbed of, and to mark them under the Pocket or Waiſtband with ſome particular Mark; to the beſt of my Knowledge it was to be *J. S.* Then *Berry* and *M'Daniel* ſaid, they muſt have a particular Handkerchief too: Then *M'Daniel* put his Hand into his Pocket, and pulled out this Handkerchief that I have now in my Hand: *James Salmon* ſaid, he had got a Handkerchief at Home, that he would mark ſo as to ſwear to it; which he was to mark with four Oilet-holes, one at each Corner. *Berry* ſaid, they ſhould want a Tobacco-box; *M'Daniel* ſaid, he had got a very remarkable one, that any body might ſwear to; which I have

fetched forty Halfpenny-worths of Tobacco in for *M'Daniel*, and I know it to be the ſame now; *(taking it in his Hand)* *M'Daniel* ſaid, he would give it to *Salmon* to be robbed of: Then they ſaid, they wanted a Halfpenny, and would have it mark'd; *M'Daniel* ſaid, he had got a Pocket-piece; which Piece I ſaw his Wife buy for Three-pence and a Halfpenny-worth of Gin ſome time before: He ſaid, that would do; and it ſhould be marked with a Shoemaker's Tool, and he gave it to *Egan* to mark it: *Egan* ſaid, he had got a Tool that he uſed to ſtamp the Shoes with, that he would mark the Piece with: Then they bid me go Home about my Buſineſs, which I did. The next Morning *Berry* called me up into his Room again, he gave me Three-pence, and ordered me to go down to the *Fleet-Market*, to ſee if I could pick up two Men or Lads there.

Q. Did he ſay any thing more at that Time?

Blee. He ſaid, to do the Thing. I knew what he meant; accordingly I went down to the Market, and met with *Peter Kelly* and *John Ellis*.

Q. Did you know them before?

Blee. I did; I knew them to be very bad Lads, that is, Pick-pockets. I gave them ſome Gin, but had no Diſcourſe with them that Day about the Thing: The next Morning *Berry* called me into his Room again, and gave me Three-pence more, and bid me go down to the *Fleet-Market* to them, and be ſure to have a little Talk with them, and told me what to ſay; and that was, to tell them, I knew where to get a brave Parcel of *Lullies*.

Q. What is the Meaning of that?

Blee. He meant, to get a Parcel of Linen, if they would go with me to *Deptford*. I went and met them there, and told them as *Berry* ordered me; that is, I told them I knew where to get a brave Parcel of *Lullies*, if they would go to *Deptford* with me.

Q. Did you tell them *Berry* told you ſo?

Blee. No, I did not; if I had, they would not have agreed to go; they both agreed to go with me any Time I thought proper; then I left them for that Day, and bid them a good Night.

Q. You ſay you knew *Kelly* and *Ellis* before; What are they?

Blee. *Ellis* is a Chimney-ſweeper, about twenty Years of Age; and the other about twenty-one, by their Looks. The next Morning *Berry* called me into his Room again; I came Home pretty late over-Night, ſo I had not ſeen him then: He ordered me to go and tell *M'Daniel* to come to him to the Sign of the *Plumb-Tree*, in *Plumb-Tree-Court*, *Shoe-Lane*, at the Bottom of *Holborn-Hill*; accordingly *M'Daniel* and I went there; there were *Berry* and *Salmon*. *Berry* told *Salmon*, I had got two Men, *Ellis* and *Kelly*, and they had agreed to go along with me any where, where I thought proper, as I had told him before, that Morning; *Berry* bid me drink once, and go about my Buſineſs.

Q. Did *Salmon* ſay any thing to it then?

Blee. No, he did not; the Reaſon they choſe I ſhould go by myſelf was, becauſe People ſhould not take Notice of me. I went away, and left them three all together.

Q. Did they ſay ſo?——*Blee.* They did.

Q. When did they ſay that?

Blee. When *Berry* and he gave me this Great-Coat I have now on, to diſguiſe myſelf.

Q. When was this?

Blee. It was on a *Friday*; I remember it was Market-day at *Smithfield*, and I had been there to *Kelly* and *Ellis*. I ſaw them in the *Fleet-Market* on a Pea-cart, betwixt Five and Six o'Clock: I aſked them, if they would have a Glaſs of Gin; and gave them each a Glaſs, and bid them Good-bye: About two Hours after I met them again in the Market, and aſked them, if they would go to *Deptford* or not? They ſaid, Yes. *Kelly* aſked me, if I had got ever a Bag to put the Linen in? I ſaid, we did not want a Bag, I would tell them more of that another Time; and left them then. At Night, it being *Saturday*, *Berry* called me into his Room, and aſked me, if I had ſeen them and talked with them? I ſaid, I had: He ſaid, that was very well. He ſaid, When you get up in the Morning, come into my Room before you go out, which was the *Sunday* Morning: I got up, and went in; he then gave me Six-pence to treat them with. I went out into the Brick-Fields, and found them, and treated them with ſome Gin and Beer; and we agreed to go to *Deptford* to ſteal ſome Linen, and I bid them a Good-bye for that Time; and ſaid to them, I would meet them on the Morrow Morning. I left them in the *Spaw-Fields*, and went to *M'Daniel's* Houſe and dined there. I told *M'Daniel* I had got two Lads that I believed would ſuit for the Thing, and told him who they were; and ſaid, I would let him know more of it on the Morrow, for I ſhould ſee them again To-night or To-morrow; he ſaid, that was very well. At Night I ſaw *Berry*, and told him what had paſſed between the Lads and I; he ſaid, it was very well, he ſhould ſee *Egan* To-morrow Morning; then I went to Bed. The next Morning, which was *Monday* the 22d of *July*, about Five o'Clock, *Berry* called me into his Room again, and bid me go and tell *M'Daniel* not to be out of the Way, and he alſo gave me Three-pence to go down to the *Fleet-Market* to treat *Ellis* and *Kelly* with ſome Gin. I went down, and there I met with them, and gave them each a Halfpenny-worth; and told them I would fix a Day when we ſhould go down to *Deptford*: Then I left them, and went to *M'Daniel's* Houſe. About Nine that Morning there came *Berry* and *Egan* up into his Room; *Berry* ſaid, G--d d--n you, *Mack*, you and my Lord mind nothing but that G--d-d--'d Tea-kettle; you don't mind to look after Buſineſs.

Q. What did he mean by my Lord?

Blee. He meant me; it was a Nick-name they gave me. *M'Daniel* anſwered, He is juſt come from the two Lads, as he tells me. I ſaid, If *Egan* has a Mind to go, he ſhall go and ſee them; he and I went down into the *Fleet-Market*, there were the two Lads ſitting on a Pea-cart; I put my Hand into my Pocket, and gave them a Halfpenny each to go and get ſome Gin. *Egan* ſtood not above three or four Yards from them at the ſame Time, leaning againſt a Poſt; then he went one Way, and I another; I went through *Plumb-Tree-Court*, and met *Egan* in *Shoe-Lane*; then he went to *M'Daniel's* Houſe again. *Egan* ſaid there to *M'Daniel* and *Berry*, By G--d they'll do very well, they are two pretty Lads.

Q. from Berry. Where was this?

Blee. You know well enough, it was at *M'Daniel's* Houſe: Then *Berry*, *Egan*, and I came down Stairs; we parted with *Egan* at the End of the Court. *Berry* and I went over to the *Plumb-Tree*; and, as we went by *Salmon's* Door in *Shoe-Lane*, *Berry* beckoned him out, and he went with us. I ſtayed and drank Part of one Pint of Beer, and then went away by *Berry's* Order, and left them together. On the *Tueſday* Morning *Berry* and I went to the *Plumb-Tree* Alehouſe again; he bid me go over, and tell *M'Daniel* he wanted to ſpeak with him; I went and told him, and he came: Then I went out of the Houſe, to ſee if I could find the two Lads again; I found them in the *Fleet-Market*, and diſcourſed with them; they ſaid, they were going to Work (as they called it) in the *Artillery-Ground*.

Q. What Work?

Blee. It was picking of Pockets. I came back and acquainted *Berry* and *M'Daniel* with it. *Berry* gave me Three-pence in Halfpence, and they bid me go out directly to them, and keep them Company: *Berry* always found the Money. They both ſaid, they would come into the *Artillery-Ground* about Two o'Clock to ſee the Lads: The *White* Regiment marched that Day: I went and walked up and down with them. About half an Hour after two I ſaw *Berry* in the *Artillery-Ground*; (I was to take no Notice to *Berry* and *M'Daniel*, or they to me) and preſently after, walking round by the *Artillery-Houſe*, I ſaw *M'Daniel*; after that I left the Lads, and went to *Berry*, as He ſtood at the *Artillery-Gate*, and ſaid to him, Mr. *Berry*, do you think they will do?

Q. from Berry. What Time of the Day was this?

Blee. It was about Three o'Clock.

Q. What was *Berry's* Anſwer to that?

Blee. He ſaid, Do! d—n me, I have done leſs than they over, for *March* and *Newman* were leſs: He put his Hand in his Pocket, and gave me Six-pence; and bid me be ſure not to leave them.

Berry. Here is a Man in Court will contradict that *(pointing to one that ſtood near him)*.

Court. Don't you know, at your Requeſt, all the Evidences for the Proſecution were put out of Court, to be called in one at a Time; at which Time yours were put out alſo? How came this Witneſs in again? He muſt go out, and come in when he is called. *(He went out, but did not come in again to give Evidence on* Berry's *Defence.)*

Blee. I went with the Six-pence round the *Artillery-Ground*, and met with *M'Daniel*; he ſaid he was going to *Berry*. I aſked him if he thought the two Lads would do? He ſaid, D--n your Eyes, I have done leſs than they over at *Kingſton*.

Q. Had he a Sight of them?

Blee. He had, as we paſſed him before; he and *Berry* went into the Ground, on Purpoſe to ſee them. Then I left *M'Daniel*, and went and gave the Boys Part of a full Pot of Beer; then I bid them Good-bye, and told them I would ſee them again the next Morning, which was the 24th. I went Home, and got up in the Morning, and told *Berry* I was going to them; he gave me Three-pence. Then I went down into the *Fleet-Market*, and told them, I believed the Thing would be done on the *Friday*; this was on the *Wedneſday*: If not, I would let them know farther. Then I left them, and at Night I went Home, and told *Berry* I had been again along with *Ellis* and *Kelly*. He ſaid, D—n you, don't go to deceive us; do you come up to the *Bell* in *Holborn* by-and-bye, and tell *M'Daniel* I want him. I went to *M'Daniel's* Houſe, and left Word what *Berry* ordered me; for *M'Daniel* was not at Home. Then I went to the *Bell*, and *Berry* met me juſt at the Door: Juſt as I was going into the Houſe he ſaid, Here is Three-pence; go away to the *Artillery-Ground*, be ſure to be there about Two o'Clock: This was on *Thurſday* the 25th, in the Morning. He ſaid, Don't come in, for Mr. *Bagley* is there; I don't deſire he ſhould ſee you.

Q. Who was that Mr. *Bagley*?

Blee. He was a Neighbour of *Berry's*. I went away to the *Artillery-Ground* at the Time; and walked about an Hour and a half before I ſaw either *Berry* or *M'Daniel*; but walking by the *Artillery-Ground*, I ſaw *M'Daniel*; he told me he had been at Dinner along with Somebody in the *Artillery-Houſe*, and ſaid, Where the D--l is *Berry*? I ſaid, I never ſaw any thing of him. About half an Hour after that, there was Hue-and-Cry after a Pick-pocket. *M'Daniel* came to me, and ſaid, G--d d--n me, the chief Perſon is a-ducking in the *Pyed-Horſe* Yard; follow him, and give him ſome Gin, for they have almoſt killed him. I followed him (it was *Ellis* the Chimney-ſweeper, the biggeſt of the two Lads) croſs *Moorfields*; I ſaw the People go from him, and there were but two or three People behind him; I gave him a Penny or Three-halfpence, I don't know which. Then I went back to *M'Daniel*, and told him he was very ſafe; then he and I came out of the *Artillery-Ground* together: As we were coming out of the Ground, we met one they call *Plump* (his Name *Brebrook*) and another Fellow they call *Doctor*, that was Turnkey at *Clerkenwell* Bridewell. *Plump* ſeeing *M'Daniel* and I together, ſaid to me, G--d d--n you, you Raſcal, you deſerve to be hanged for that Affair of *Kidden*. *M'Daniel* ſaid to me, Come along, don't be afraid of any body. We went over *Moorfields* together. He ordered me to go to his Wife, which I did; and after that I went down the *Fleet-Market*, to ſee if *Ellis* was ſafe; I found them both, and told them I would meet them the next Morning: They ſaid, they had no Money to pay for their Lodging; I ſaid, Here is Three-halfpence for you, go and lie in the Brick-Field To-night. Then I went Home to Mr. *Berry's*; he told me he had been at the other End of the Town about ſome Buſineſs, and he could not come into the *Artillery-Ground*. If this Affair of *Ellis's* being ducked had not happened, the Robbery of *Salmon* was to have been committed on the *Friday*.

Q. When was it fixed to be on the *Friday*?

Blee. That was determined to be on the *Wedneſday*.

Q. By who?

Blee. *Berry* and I pitched upon the Thing in the Morning, and he was to go and let the reſt know.

Q. Where did you conſult this?

Blee. We did it in his Room, before we went out to go to the *Bell*.

Q. What did he ſay to you about it then?

Blee. He bade me tell the Lads we ſhould go to *Deptford* to ſteal the Linen on the *Friday*.

Q. Who did he mean by the reſt, which he ſaid he would let know it?

Blee.

Blee. He meant *Egan*, *Salmon*, and *M'Daniel*. On the *Thurſday* Night I told *Berry* of *Ellis*'s being ducked; he ſaid, *M'Daniel*, *Egan*, *Salmon*, and he had agreed, that it ſhould not be done on the *Friday*, leſt the Lads ſhould be apprehended on the *Saturday*, and kept all Day on *Sunday* in the Watch-houſe; and Somebody might come to them, to whom they might tell ſomething about my being concerned with them, and ſo by impeaching me I might be apprehended; ſo he ſaid they had fixed it to be on the *Monday*. On which Morning I got up by Mr. *Berry*'s Orders; he gave me Two-Pence or Three-Pence (I cannot be poſitive which) to go to the *Fleet-Market* to meet them, and bid them ſtay till Nine o'Clock, and ſay I would come to them again; which I did, and returned, as *Berry* ordered me, to him at the *Plumb-Tree* Alehouſe: There was *Salmon* and he; he ſent me out for *M'Daniel*; I went to him, and he bid me tell *Berry* he was ſhaving himſelf, and he would come when he had done. I went, and told *Berry*; he changed a Guinea, and gave me five Shillings, and bid me not to be extravagant: He gave me that, as he ſaid, to *ſmuſh* to the Boys; to ſhew it to them, and ſay, I made that laſt Night: I was to pull it out all at once. He gave *Salmon* Half-a-Crown to be robbed of.

Q. Was it in one Piece?

Blee. No; it was two Shillings and Six-Pence.

Q. Who were preſent at this Time?

Blee. There were *Berry*, *M'Daniel*, and *Salmon*. Then *Berry* ſaid to me, Now go away as faſt as you can; and I ſaid, At what Place ſhall I ſtop for you, to ſee you are going, that we may be both ſure? I ſaid, I will ſtop at the *Bell* in the *Borough*, and call for a Glaſs of Gin; then you may know and be ſure that we are going to *Deptford*. I left them, and went to the two Boys.

Q. About what Time was this?

Blee. It was about half an Hour after Nine in the Morning. I went with the Boys to a Houſe in *Little-Britain*; there I called for ſome Beer, and Bread and Cheeſe; and pulled off my Coat, and ſaid, I muſt go to the *Fence* to get ſome Money, for the Woman has not paid me all. Then I left my Great-Coat, and went to *Berry*; and told him to haſten away, for the Boys wanted to go. *Berry* bid me return to them directly, and ſaid, he would be over the Water Time enough for us. I went to the Boys again, and called for another Pot of Beer, to delay the Time. After we had drank that, we went out, to go to *Deptford*. When we came to the *Bell* in the *Borough*, we went in; and in the right-hand Box there ſat *Berry* and *Salmon*; there I gave the Boys each of them a Half-penny-worth of Gin; I was not to take Notice of *Berry* or *Salmon*. After we came out, *Kelly* ſaid, D—n your Eyes, there is that old Thief-catching Son of a B—h, your old Maſter. Said I, Never mind it, I don't belong to him now. Then we went down the *Borough* Market; they bought a Breaſt of Lamb for their Dinners, and we went to the *Black Spread-Eagle* in *Kent-Street* (which was the Houſe the Priſoners and I had appointed for them to come to the next Day). We had the Lamb fried for our Dinners; from thence we went to *Deptford*.

Q. What Time did you ſet out from *Kent-Street*?

Blee. We ſet out from thence about half an Hour after Twelve o'Clock: I had made them almoſt drunk. After we went from thence, it was too ſoon in the Day; we could do nothing till it was dark, I told them, ſo we would go over into the Fields, and go to Sleep: So, to prolong the Time, we went into the Fields, and all three of us went to Sleep: They ſlept pretty heartily. When I thought it proper Time to awake them, I did; and away we went for *Deptford*.

Q. What Time did you ſet out after this Sleep?

Blee. I cannot tell the Time.

Q. Was it dark?

Blee. No, it was not. We were in *Deptford* an Hour before Dark. I went with them to the Sign of the *Ship*, the Houſe that *Berry* and *Salmon* had appointed to come to. I called for a Pint of Beer at the Door, and bid them ſtay there; and ſaid, I had a Relation in the Town, near the *Water-Gate*, which I wanted to ſee: I left them, and went to ſee for *Berry* and *Salmon*. I found *Berry*; he and I went into a Public Houſe, I think it is the *Duke William*'s *Head*; he called for a Pint of Beer, and bid me return to the two Boys, and *Salmon* ſhould come to the Houſe. I went to them (they were ſtill at the Door); I ſaid, Come, let us go into the Houſe; I expect my Couſin to come to me.

Q. Had you let the Boys into any Knowledge of this Affair, before you came to this Place?

Blee. No, I did not: Only I had told them it was to ſteal ſome Linen; they went for no other Intent. Then I went in, and called for a Pot of Beer, and Bread and Cheeſe; we eat the Bread and Cheeſe, and drank the Beer; and called for another Pot of Beer: In the mean Time in came *Salmon*. He firſt went and leaned againſt a Dreſſer for about half a Minute, and then came and ſat down in the Box near us, and began to diſcourſe about going to *London* (it was then duſk). I ſaw *Berry* go by the Window; he beckoned his Finger, and I went out to him. He ſaid, Be ſure follow *Salmon* when he comes out. I went in again, and *Salmon* preſently went out. I changed Half-a-Crown, and aſked the Lads if they would have any Gin. When *Salmon* firſt came in, *Kelly* ſaid, There is that old Blood of a B—h, the Breeches-Maker in *Shoe-Lane*; his Son and I have been picking of Pockets together many a Time. I ſaid, Never mind that; what is that to us? I knew the Place where he was to ſtop at; it was juſt by the four-mile Stone: This was agreed upon before. The two Boys and I went on; and by the four-mile Stone, by a Gate, *Salmon* ſtood making believe he was making Water. D---n me, ſaid *Kelly*, there is the old Breeches-Maker; he is *ſuckey*, let's *ſcamp* him.

Q. What Reaſon did you give *Kelly* and *Ellis* for your going after *Salmon*?

Blee. I ſaid, We will take a Walk, till it is Time to ſteal the Linen.

Q. Was it light or dark?

Blee. The Moon ſhone. *Kelly* ſaid, when he came up to *Salmon*, G---d d---n you, what have you got there? *Salmon* ſaid, Gentlemen, take what I have got, don't uſe me ill. He had the Breeches under his Arm, and he gave them to me; they were in a blue and white Handkerchief, and I gave them to *Kelly*; I ſaid to *Kelly*, What Money have you got? *Salmon* ſaid, Here, Gentlemen, what Money I have got is in my left-hand Waiſtcoat Pocket, in a Tobacco-box. (He had told me before what Money he had got would be there.) *Kelly* put his Hand into his Pocket, and took the Tobacco-box out, and a Claſp-Knife and Fork; then away we walked on for *London*, and came into *Kent Street* as faſt as we could, and lodged there all Night, at a Houſe where I paid the Lodging-Money at going down, by *Berry*'s Order, to induce the Lads to come there again.

Q. What Time did you get to *Kent-Street* after the Robbery?

Blee. I believe we got there about Eleven o'Clock; the People had no Clock in the Houſe.

Q. What Money did you take from *Salmon*?

Blee. We looked at that coming along; I knew what was in it before: There were two Shillings and Six-Pence, and a Pocket-piece with *Skilion* on it, or ſome ſuch Name, and a punch'd Mark in the Middle of it (*Mr.* Cox *produced the Things mentioned*).

Court. Look at this Tobacco-box.

Blee. This is the very ſame, it is riveted within-ſide; I have had this Box a hundred Times in my Hand before.

N. B. *The Box was an oval Iron Box, with a Roſe, and Garter round that; and a Lion and Unicorn (as on the King's-Arms) in Baſſo-Relievo on the Lid.*

Court. Look at this Pocket-piece.

Blee. This is the ſame Piece which I mentioned before.

Court. Look at the two Pair of Breeches and Handkerchief.

Blee. Theſe are the ſame Breeches and Handkerchief.

Court. Look at this Knife.

Blee. It is the ſame Knife.

N. B. *The Claſp-Knife and Fork were made to faſten together in the Handles.*

Q. What was done the next Morning, when you lay in *Kent-Street*?

Blee. We got up the next Morning about Seven o'Clock, and went over the Way to the Sign of the *Black Spread-Eagle* (the Houſe that *Berry* ordered me to go to). I called for ſome Beer, and ſaid to *Kelly* and *Ellis*, Sit down, and I will go get you ſomething for Breakfaſt. I went out with that Pretence, and went to the *White Bear* in the ſame Street, where *Berry* ordered me to come to let him know. There ſat *Berry*, *Egan*, and *Salmon* at the Door on the Bench. *Berry* ſaid, That Son-of-a-Whore *M'Daniel* is not come yet; now we muſt wait for him: Go you back, and *Egan* ſhall come after you directly. *Egan* and I walked up the Street a little Way together. I ſaid, Stop there a Bit, while I go over to that Shop to buy a Lamb's Liver for Breakfaſt; he ſaid, he would go on. He went on before, and called for a Pint of Beer; I came after with the Liver. I ſaid to *Ellis* and *Kelly*, as I was going to cut the Liver, That Man deals in *Rag-Fair* (meaning *Egan*); at the ſame Time I knew he did not: But I was to ſay ſo when he came in. I ſaid, May-be he will buy the Breeches; ſhall I aſk him? Yes, ſaid they, with all our Hearts. I ſaid to him, Maſter, will you buy ſome Leather Breeches? He ſaid, Let me look at them; if you and I can agree, I will buy them. After he had looked at them, he ſaid, What will you have for them? I ſaid, Six Shillings. He ſaid, I will give you Five. He put his Hand into his Pocket, and gave *Kelly* a Shilling Earneſt; and ſaid, he had not ſo much Money about him, but he would come in an Hour or two, and pay the reſt of the Money; and he would leave the Breeches in our Care till he came back. I ſaid, My Friend, will you eat a Bit of Liver and Bacon before you go? He ſaid, I don't care if I do. He ſat down by the Fire-Side, and ſaid, Landlord, let us have a Halfpenny-worth of Tobacco; and ſaid, God bleſs me, I don't know what I ſhall do; I have loſt my Tobacco-box. (This he was to ſay, to get the Tobacco-box of them.) I ſaid to *Kelly*, Let us ſell him the Box, may-be he will buy it, *Kelly* ſaid, No, let us *ding* it; it is ſuch a remarkable one, may-be it may be known.

Q. What did he mean by dinging it?

Blee. He meant to fling it away; I ſaid, No, let us ſell it: Then *Kelly* ſaid, Maſter, I will ſell you a Tobacco-box, if you will buy it; Said he, Let me look at it; he looked at it, and aſked, What he would have for it? *Kelly* aſked Six-Pence for it; he ſaid, No, he would not give it. I ſaid, We will not have dry Money, we will have ſome Beer: Then *Egan* ſaid, He would give a full Pot of Twopenny for it; then *Kelly* ſaid, he ſhould have it: After he had eat his Breakfaſt, he went out, and goes to *Berry* and *Salmon*. I went backwards with the two Boys to play at Skittles to detain them, but the Ground was ſo wet we could not play; ſo we found another Paſtime, called The Devil and Taylors. I kept them there an Hour and half; then I ſaid, If the Man does not come, let us ſell the Breeches. I ſaid, I will go and be ſhaved; and I left my Great-Coat, and went to the *White Bear*; but when they came there, they did not like the People or the Houſe, becauſe when *M'Daniel* came they did not like him. I went out of the Houſe, and ſaw *Berry* come out of the *Elephant and Caſtle*; they beckoned me over; I went and called for a Pint of Beer; *Berry* ſaid to me, You may drink with us; and ſaid, D---n you, where is your Great-Coat? (which is the ſame I have now) He bid me turn back and fetch it, and ſaid, *M'Daniel* and *Egan* ſhall go.

Q. Who were there?

Blee. There were all the four Priſoners there, ſitting in the Box going in on the left-hand Side, drinking: I went back again to *Ellis* and *Kelly*, and ſaid, The Barber is buſy, and cannot ſhave me, I muſt come again in five or ſix Minutes. I ſaid, The Weather is cold, I muſt put my Great-Coat on; I put it on, and went to the *Elephant and Caſtle* to them again, *Berry* bid me go to the *Bell* in the *Borough*, and ſtay there till he came, and to get ſhaved. I went away; and, as I was going, *Egan* and *M'Daniel* went out: I got ſhaved, and went to the *Bell* in the *Borough*, and called for a Pint of Beer, and drank it. About an Hour after *Berry* came in, and we had another Pint; then he and I went Homewards together: We went as far as *Ludgate-Hill*, there we ſaw one Mr. *Rogers* coming along; ſo he ſaid, Leave me, don't be ſeen with me; and I left him. At Night, when *Berry* came Home, I ſaid to him, Maſter, be ſo good as to lend me ſome Money to go to the Fair To-morrow. He ſaid, That is right, *Uxbridge* Fair is To-morrow, the 31ſt; he lent me Eighteen-Pence, ſaying, it was to go to *Billingſgate* to buy Shrimps with; I went to the Fair,

Fair, and came back again on the 1ſt of *Auguſt*. *Berry* bid me not be afraid; ſaying, he would always keep a good Look-out: And they always ſaid, if I was taken up, *Salmon* ſhould never appear againſt me.

Q. You ſay you went to the *White Bear* in Expectation of ſeeing the Priſoners, and after that to the *Elephant and Caſtle*; when you came in there, what did you ſee?

Blee. I ſaw Mr. *Berry*, *Salmon*, and *Egan*; *M'Daniel* was down in the Yard at my firſt going in, but he came in before I went away.

Q. Recollect yourſelf, whether you ſaw them eat or drink?

Blee. I drank Part with them, but I had breakfaſted before I got there; I know *Berry* told me they had a Raſher of Bacon; and he ſaid I had had a better Breakfaſt than they.

Q. Where did he tell you this?

Blee. He told me ſo at the *Bell* in the *Borough*.

Q. Was you at the Trial of *Kelly* and *Ellis* in *Kent*?

Blee. No, I was not.

Q. Where was you at the Time of the Trial?

Blee. I was taken up on the *Friday* before, being the 8th Day of the Month.

Q. What Day was the Robbery committed?

Blee. It was on the 29th of *July*.

Croſs-Examination.

Q. You have given an Account of ſeveral Meetings and Converſations you had with *Kelly* and *Ellis* before the Robbery was committed; was not the Converſation about ſtealing Linen?—*Blee.* It was.

Q. Was there any Mention made about a Robbery on the Highway?

Blee. No, none; I ſaid what *Berry* ordered me to tell them.

Q. for Berry. You ſay *Kelly* and *Ellis* went with you under a Notion of ſtealing of Linen, and *Kelly* accidentally pitched on *Salmon*, and propoſed to you to commit a Robbery on him?

Blee. No, he did not till we juſt got up to him; then he ſaid, There is the old Breeches-maker, let us *ſcamp* him.

Q. Before that, had you propoſed to him to commit a Robbery upon *Salmon*?—*Blee.* No, Sir.

Q. Whether Mr. *Berry* had any Converſation with *Kelly* or *Ellis*?

Blee. No, none at all; he did not chuſe to be ſeen in it.

Q. Nor none of the other Priſoners?——*Blee.* No, they had not.

M'Daniel. He mentioned that he had been four or five times up in *Holborn*; I never was there with him in my Life.

Blee. He was ſeveral Times.

M'Daniel. He mentions he was at the *Plumb-Tree* in *Shoe-Lane*; I never was there with him in my Life.—*Blee.* Yes, he was ſeveral Times.

Q. from Berry. What Lodging did you lie in at my Houſe?

Blee. Sometimes in *Berry*'s Hay-loft, and ſometimes in the Room adjoining to his: I lay in that Room till all the Money was gone of *Kidden*'s Reward, then I was forced to lie in the Hay-loft.

Q. from Berry. He ſays I lent him one Shilling and Six-pence to go to *Uxbridge* Fair; what Time was that?

Blee. It was on the *Tueſday* Night, the Day after the Robbery; *Uxbridge* Fair is on the 31ſt.

Berry. *Uxbridge* Fair is always the 20th Day of the Month.

Blee. That is Old Stile.

Q. from M'Daniel. Aſk him, if he has not had a Quarrel with me, and ſwore he would be revenged on me.

Blee *to the Queſtion.* No, never; *M'Daniel* once got a long Knife, and threatened to cut my Throat.

Berry. Becauſe I took his Brother, that was tranſported, he always ſwore he would be revenged of me.

Blee. I never ſwore ſo; he did not take him.

Salmon. I have never been at the *Bell* in *Holborn* theſe five Years.

Blee. He was there, as I have mentioned.

Q. from Egan. I want to know, if it can appear by any Man or Woman that I have been in a Houſe with *Blee*?

Blee. There are ſeveral will prove that.

George Holewright ſworn.

George Holewright. I live in *Scroop's Court*, facing *St. Andrew*'s Church, *Holborn*.

Q. Do you know either of the four Priſoners at the Bar?

Holewright. I know three of them.

Q. Which are they?——*Holewright.* *M'Daniel*, *Salmon*, and *Berry*. I do not take upon me to know *Egan*.

Q. Do you know *Blee* the Evidence?—*Holewright.* I do.

Q. How came you to know *M'Daniel*?

Holewright. I have known him and *Berry* ſome Years; *M'Daniel* kept the Sign of the *Angel* in *Scroop's Court*.

Q. Where did he lodge about *July* laſt?

Holewright. He and his Wife, as he calls her, came into my Houſe on *Aſh-Wedneſday* was Twelve-month. He gave me a Crown Earneſt, and they continued there about four Months; he lodged there till he was taken up at *Maidſtone*.

Q. Did you ever ſee the Evidence *Blee* coming to him amongſt the reſt?

Holewright. Yes, many Times; he was a very handy Man amongſt them, and a very willing Fellow.

Q. Have you ſeen him often with *M'Daniel*?

Holewright. I have ſeen them together many Times. *Blee* uſed to come there to waſh the Houſe, and clean the Diſhes; and he uſed to come often to aſk for his Maſter *Berry*. They uſed to be generally together.

Q. He has ſaid, in *July* laſt he was at *M'Daniel*'s Lodgings in *Scroop's Court*; do you recollect yourſelf that he was there in that Time?

Holewright. The laſt Time I ſaw *M'Daniel* was on the *Friday* Night; and on the *Saturday*, the Day after, he was gone down to *Maidſtone*; but then I thought he was gone down to *Coventry*: And I ſaw *Blee* at my Houſe much about that Time. They were very buſy together; but I never did expect to be called upon in Court about theſe Things, and have made no Account of this; I cannot be exact as to the laſt Time *Blee* was there.

Q. Was you ever in the *Artillery-Ground*?

Holewright. I was, and ſaw *Blee* there, running backwards and forwards; that was, I remember, on a *Tueſday*: I don't know in what Month; but it was when the *White* Regiment marched.

Q. In what Manner did *Blee* appear there?

Holewright. I think he had a Great-Coat on; running backwards and forwards; I ſaid, *Tom*, what are you at? He ſaid, Hold your Tongue, hold your Tongue; I ſaw him croſs ſeveral Times.

Q. Did you ſee either of the Priſoners there?

Holewright. I did not ſee any of them, as I remember.

Q. You ſay *M'Daniel* went down to *Maidſtone* Aſſizes; did he tell you he was going there?

Holewright. No, he never mentioned a Word to me of that; he ſaid he had taken a Man in *Smithfield* for a Murder, and he expected to have the Reward; and ſaid, he ſhould go to *Coventry* one Day or another.

Q. Did you know the Priſoners at the Bar were acquainted together?

Holewright. I have ſeen *M'Daniel* and *Berry* together eſpecially, *Salmon* the leaſt: I have ſeen them all together, except *Egan*; him I never ſaw, to my Knowledge.

Q. Have you ſeen *Blee* with them?

Holewright. I have ſeen him with all three of them; he was a Sort of a Runner to them, as I thought.

Q. Did they appear as of one Company when you have ſeen them together?

Holewright. Very often; and if any thing was to be done, *Blee* uſed to run backwards and forwards; and there was whiſpering together, but it was nothing to me.

Q. Had you ever an Opportunity of hearing their Diſcourſe?

Holewright. No, I never had.

Q. from Berry. Where have you ſeen us drinking together?

Holewright. At *M'Daniel*'s, when he kept the *Angel* in *Scroop's Court*.

Q. How long is that ago?—*Holewright.* It is about five Years ago.

Q. from Berry. Have you ſeen me lately?

Holewright. I have ſeen you lately at the *Union-Arms* in *Union-Court*, I have ſeen them all three there.

Q. from Berry. How long is that ago?

Holewright. That may be about ſeven or eight Months ago.

Berry. We have been in Gaol ſeven Months.

Q. from Berry. Did you ever ſee me up at your Houſe where *M'Daniel* lived?

Holewright. No, I never ſaw you within my Door; I have ſeen you about the Door in the Court, once, twice, or three Times.

Anne Pattey ſworn.

Anne Pattey. I know *Egan* and *Salmon*. I live Servant at the *Plumb-Tree* in *Plumb-Tree Court*.

Court. Look about the Court; do you ſee them?

A. Pattey. I don't ſee them.

Court. Go down, and look about till you find them out.

A. Pattey. *Egan* is lame on his right Leg. (*She goes down and looks at* Egan, *but ſaid ſhe did not know that to be him.*)

N. B. *He is a lame Perſon.*

Q. Do you know *Blee*?

A. Pattey. I think I do; he was once at our Houſe; he came and had two half Pints of Beer, my Maſter drew him one, and I another; he ſtood with his Back towards me.

Q. Did you ever ſee *Blee* and *Salmon* together?

A. Pattey. No, I cannot ſay I have.

James Kirby ſworn.

James Kirby. I live in *Croſs-Street*, *Hatton-Garden*.

Q. Do you know any of the Priſoners at the Bar?

Kirby. I know three of them; *Berry*, *M'Daniel*, and *Salmon*.

Q. Where have you ſeen them?

Kirby. I have ſeen *Berry* and *M'Daniel* at the *Two Brewers* on *Saffron-Hill*; on the 8th of *July* they were drinking at the Door.

Q. Did you ſee any of the others in Company together?

Kirby. I have ſeen *M'Daniel* and *Salmon* at the *Union-Arms* in *Union-Court* drinking together; I believe it was in the ſame Week, may-be a Day or two after the other; they were buſy together in Diſcourſe.

Q. Did you ever ſee *Blee* in Company with them?

Kirby. *Blee* came in that Evening at the *Union-Arms* juſt as *Salmon* went out, and ſtayed there ſome ſmall Time; *M'Daniel*'s Wife came in, and they ſettled ſomething that *Blee* had ſold for her.

Q. Did you ever ſee them together after that Time?

Kirby. I ſaw *M'Daniel*, *Berry*, and *Blee* ſmoaking at the *Union-Arms* in a Trifle of Time after; may-be the next Week after the 8th Day of *July* laſt.

Q. From any thing that you ſaw paſs, do you think they were acquainted together?

Kirby. They were very well acquainted; *Blee* appeared to me to be *M'Daniel*'s Man.

Q. By what do you think he was *M'Daniel*'s Man?

Kirby. I have ſeen him come ſeveral Times to the *Union-Arms* to fetch Beer for his Maſter.

Q. Did he uſe to appear as if he ſhaved often?

Kirby. No, his Beard was very long moſt of the Time I knew him.

Q. How was his Beard at that Time you ſaw him laſt at the *Union Arms*?

Kirby. It was very long at that Time.

Q. Did you ever ſee them three together any other Time?

Kirby. No, never but once; but I have ſeen two of them together, by Turns, ſeveral Times.

Q. Did you hear of *Salmon*'s being robbed?

Kirby. No, not a Word of it, till I was told of it by the Conſtable.

Q. from Salmon. How many Times have you ſeen me at the *Union-Arms*?

Kirby. I ſaw *Salmon* once in the Kitchen with *M'Daniel*, and another Time ſitting at the Door, and *Blee* came while he was with *M'Daniel* drinking, and fetched both away in a great Hurry: Before *Blee* came, they had got three Dogs, and were talking about them; this was a little after the 8th of *July*.

Q. from Berry. What Month was this in?

Kirby. It was in the Month of *July*.

Q. from Berry. Was it in the Middle or the Beginning of the Month?—*Kirby.* I cannot ſay within a Fortnight.

Q. What Apparel was *Blee* in when you ſaw him there?

Kirby. In his uſual Apparel.

James

James Price sworn.

James Price. I know *John Berry*; he lived in *George-Yard*, where I now live. I have seen *M'Daniel* frequently with him there. I have also seen *Egan* with him there

Q. Do you know any thing of *Salmon?*

Price. Salmon came into the Yard in *August* last, and asked me if I had seen *Berry*; I directed him to the *Hat and Tun*, where I had seen him go.

Q. Do you know *Blee?*

Price. I had a Warrant against him and young *Berry*. *Berry* kept *Blee* from me in his House.

Q. At what Time was that?

Price. I believe it was about a Year ago; I believe I had the Warrant in the latter Part of *February*. I remember about the Beginning of *August* I saw *Berry*, *M'Daniel*, and *Egan*, at the *Two Brewers*, at the Bottom of *Saffron-Hill*.

Q. Have you often seen them together?

Price. I have often seen *M'Daniel* and *Berry* together.

Q. Did they seem to be acquainted?

Price. They appeared to me to be very well acquainted, for they were almost always together.

Q. from Berry. How many Times may you have seen *M'Daniel* and I together?

Price. I believe a hundred Times and more, I dare swear; they were seldom ever apart; you would seldom see one without the other.

Q. How long had you a Warrant in your Hands to search after *Blee?*

Price. I believe I had it six Months; I could not get at him: This was about the Time that *Kidden* was taken up, and they were afraid of bringing the Affair out.

John Samms sworn.

John Samms. I know *Berry*, *M'Daniel*, *Egan*, and *Salmon*.

Q. Do you know any body at your left Hand?

Samms. Yes, that is *Tom Blee*.

Q. Do you know whether any of them were acquainted together, and who?

Samms. I have seen *Berry*, *M'Daniel*, and *Egan* together, at the *George* on *Saffron-Hill*.

Q. At what Time?---*Samms.* For these two Years past.

Q. When was the last Time?

Samms. I cannot say in particular; I saw them, I believe, in *February* or *April*.

Q. Did they appear to be tolerably intimate?

Samms. Egan has come and asked me many a Time, whether *Berry* was at Home.

Q. Did you ever drink with them?

Samms. I have two or three Times; *M'Daniel* has come and asked me many a Time, whether I had seen *Berry*, (my Stable was opposite to *Berry*'s) I have directed *M'Daniel* where to find him.

Q. Have you any Reason to think they were acquainted with *Blee?*

Samms. I have; *Blee* lodged in *Berry*'s House; they all seemed to know *Blee*. I have seen *Blee* with them all together, except *Salmon*.

Q. Where have you seen them?---*Samms.* In *George-Yard*.

Q. When have you seen them there?

Samms. I cannot say the Times when; I have seen them divers Times together.

Q. What were they doing?---*Samms.* They were talking together.

Q. from Berry. Was you ever up Stairs in my House to see what Beds I had?

Samms. I know my Lord (that is, *Blee*) always went up Stairs; and when *Berry* turned his Wife out, *Blee* used to lie there.

Q. from Berry. When he had neither Shoe or Stocking to his Foot, was he fit to lie with me?

Samms. I know, when *Berry* has turned his Wife out, he has took *Blee* in, and locked the Door.

Q. to Kirby. Look at this Tobacco-Box; did you ever see this before?

Kirby. Yes, I have, I am pretty sure of it.

Q. Whose Property is it?

Kirby. I think it belongs to *M'Daniel*; I remember the Time when *Salmon* and he were drinking at the *Union-Arms* together; when *Salmon* was gone, there was some Tobacco left upon the Table; this Box was taken out by *M'Daniel* to put the Tobacco in; it is a very remarkable one. I am pretty positive it is the same.

Q. When did you see it?

Kirby. I believe it was the same Week the 8th of *July* was in.

John Brayder sworn.

Q. Look at this Pocket-piece; do you know it?

John Brayder. (He takes it in his Hand.) I sold a Piece once pretty much like this; there was on one Side of it wrote *Skilling*; but there was not this Mark on it when I sold it (*meaning the Mark which* Blee *said* Salmon *made in the Middle*).

Q. Do you take it to be of the same Specie of that you sold?

Bray. Yes, it was; there was the same Writing on one Side of it.

Q. Who did you sell it to?---*Bray.* I sold it to a Woman.

Q. Was any body with that Woman when she bought it?

Bray. Yes, one *Blee* was.

Q. Should you know him if you was to see him again?--*Bray.* I should.

Court. Turn about, and see if you can find him.

Bray. This is the Man (*pointing to him*).

Q. to Blee. Was you by when this Man sold such a Pocket-piece as this?

Blee. I was; he sold it to *M'Daniel*'s Wife, or Company-keeper; she gave him Three-pence, and a Halfpenny-worth of Gin for it.

Q. Where was she when she bought it?

Blee. It was by the *Two Blue-Posts* in *Holborn*, in the Beginning of *July*.

Q. to Brayder. What Time was it you sold that Piece you mention?

Bray. I don't know the Time, but I believe it was in the Cherry Season.

Q. What did you sell it for?

Bray. The Woman gave me Three-pence and a Half-penny Dram for it.

Joseph Cox again.

Joseph Cox. I have known *M'Daniel* two or three Years; I never saw the other till I saw them all together at *Maidstone* Assizes; I went down on the 14th of *August*.

Q. What was your Business there?

Cox. I am chief Constable of the lower Half-hundred of *Black-Heath*; and I had an Information about the 3d, or the Beginning of *August*, that a Breeches-maker had been robbed in the Parish of *Deptford*, where I live, by three Footpads, and that two of them were taken by *M'Daniel* and others, and sent to *Maidstone* Gaol; and the third Person, whose Name was *Thomas Blee*, I was informed kept Company with *M'Daniel*; and after two or three Days searching, I very fortunately took that third Person, with the Help of a Constable of *Greenwich*, on *Friday* the 9th of *August*, in *Newgate-Street*, very early in the Morning. I took him directly to the Water-side, in order to carry him to *Greenwich*. When we got him into the Boat, he said he would discover all he could concerning the Robbery on the Breeches-maker. I bid him not do it then, because of the Watermen in the Boat, till we came to a Magistrate. We took him before a Justice of Peace; there he made an Information: This is it. (*Produced one.*)

Q. Do you know whose Writing it is?

Cox. The Name is *Thomas Blee*'s Writing, I saw him write it; the other is Justice *Bell*'s Writing.

Q. Was it read over to him before he signed it?

Cox. He read it over, and I myself read it over to him before he signed it.

Q. When was it taken?

Cox. It was taken on the 9th of *August*, but not sworn to till the 13th; it was read over to him before the Justice; and the Justice and *Blee* signed it in my Presence.

It is read to this Purport:

Kent, to wit. } *The Information of* Thomas Blee, *of the Parish of* St. Andrew, Holborn, *Breeches-maker, taken upon Oath*, &c.

" This Informant saith, that about four Weeks or upwards ago, " *Stephen M'Daniel* and *John Berry* desired him to look out, and they gave " him Money to that Intent, to get into Company with two Lads, or " Men, which he should afterwards betray, by getting them into a " Robbery, and they share the Reward given upon their Conviction; " and in order thereto, they did go frequently with the Informant into " the adjacent Fields, but could not meet with any. And this Deponent " saith, that he has met *Stephen M'Daniel*, *John Berry*, *James Salmon*, " Breeches-maker, and *James Egan*, of *Drury-Lane*, Cordwainer, in " order to concert and put this their said Scheme into Execution; and " that he the said Deponent met with *John Ellis* and *Peter Kelly* (now " Prisoners in the County Goal at *Maidstone*) in the *Fleet-Market*, and " as he knew them to be Persons of bad Life and Conversation, in- " troduced himself into their Company; after treating them, he asked " them to go with him to *Deptford* to steal some Linen, which they " agreed to do on the *Thursday* following; but after that put them off " till the *Monday* following, by the Direction of the said *M'Daniel*, " *Berry*, *Salmon*, and *Egan*, who had all at different Times seen the " said *Ellis* and *Kelly*, and approved of them for that Purpose; and judged " it most fit to have the Robbery committed on the *Monday* Morning, " lest they should be detained near *London* on the *Sunday*, and some Cir- " cumstances might render their Schemes abortive; and that they met at " the *Bell* in *Surry* as they went.

" And this Deponent saith, that it had been concerted between them, " that the intended Robbery should be between *New-cross* Turnpike " and *Deptford*, to intitle them to the Reward offered by the said Parish: " That he took the said *Ellis* and *Kelly* to a Public-House, known by " the Sign of the *Ship*, where they had promised to come to him: And " after staying there some Time, he left *Ellis* and *Kelly* at the *Ship*, and " went out to look for *Berry* and *Salmon*; he found *Berry*, who coun- " selled this Deponent to return to *Ellis* and *Kelly*, and said, that *Salmon* " should follow him immediately; that he returned, and *Salmon* did come " into the House at the Sign of the *Ship*, and stayed there near an Hour. " During which Time, he, this Deponent, treated them with Bread, " Cheese, Beer and Gin; and *Salmon* going away in the Evening, they " followed, and agreed to rob him in the first Place that *Salmon* stopt at, " which was the four-mile Stone, under a Pretence to urine, but it was " in order that they might overtake him, that being thought the most " convenient Place; that they came up with the said *Salmon* there: And " this Informant, without his, or either of the said *Ellis* and *Kelly* pro- " ducing any Weapon, took from under the said *Salmon*'s Arm two " Pair of Leather Breeches, which had been purposely marked, particularly " on the Waistband or Pocket; and that he took out of his Pocket a " Clasp-Knife, and a Tobacco-box, which Tobacco-box was, he says, " *M'Daniel*'s; but as it was a particular and very remarkable one, he " lent it to the said *Salmon* on this Occasion, which had in it two Shil- " lings and Six-pence in Silver, and a Silver Pocket-piece, which he " had submitted himself tamely to be robbed of; and after they had left " this said *Salmon*, they went and lodged in *Kent-Street*, and in the Morn- " ing he took them to the *Spread-Eagle*, where he had agreed with the " said *M'Daniel*, *Berry*, *Salmon*, and *Egan*, to take them; that about " Seven in the Morning, the said *Egan* came in accordingly; and " that this Deponent told the said *Ellis* and *Kelly*, *Egan* dealt at " *Rag-Fair*, and he asked the said *Egan* if he would buy the said Leather " Breeches, and he agreed to pay five Shillings for them; that he " gave them a Shilling in Part; after that he called for a Pipe of To- " bacco, and said that he had lost his Box, with Intent to buy that " which they had taken from *Salmon*; that he bought it of them for " a Pot of Twopenny; then he went out to get the Remainder of " the Money for the said Breeches, and went to another Ale-house " in *Kent-Street* to *M'Daniel*, who immediately went with *Egan*, and " secured the said *Ellis* and *Kelly* with all the Things, except the said " Tobacco-box, which *Egan* had purchased of them, as he believes. " And this Deponent farther saith, that he has several Times been " in Company with the said *M'Daniel*, *Berry*, *Salmon*, and *Egan*, and " they have all severally encouraged him, and said, If he should be " impeached, they would say nothing against him; and they pro- " mised to share the Reward and Subscription-Money raised, between the " said

" ſaid *Berry*, *Salmon*, *M'Daniel*, *Egan*, and this Deponent; and that " this was contrived to convict the ſaid *Ellis* and *Kelly* on Purpoſe to get " the Reward.

" *Sworn before me*, —— BELL."

Cox. As ſoon as this was taken, the ſame Night I obtained a Warrant againſt *M'Daniel*, another againſt *Berry*, another againſt *Salmon*, and another againſt *Egan*. I was adviſed to attend the Trial of *Ellis* and *Kelly*, and not to diſcover that I had *Blee* in Cuſtody till after the Trial; and in order that he did not make his Eſcape, *Thomas Warren* went down to aſſiſt me. When I came to *Maidſtone*, I informed myſelf as ſoon as I could, who was on the Back of the Bill of Indictment of *Ellis* and *Kelly*. Their Trial came on the 15th of *Auguſt* at Night: I came into Court very ſoon after the Trial began; *Blee* was then in my Cuſtody, but Nobody knew it then at *Maidſtone*; he was brought down in the Night, and ſtopped ſhort of the Town. When I came in, I heard *Salmon* giving Evidence againſt *Ellis* and *Kelly*; he ſaid, that he went in at the *Ship* at *Deptford*, and had a Pint of Beer; that he ſaw three Men drinking in a Box, and *Ellis* and *Kelly*, the then two Priſoners at the Bar, were two of the three Perſons, and the other was a carroty-bearded Fellow; that after he had drank his Pint of Beer, in the Duſk of the Evening he went out, in order to go Home to *London*; and having got as far as the four-mile Stone, oppoſite to which, at a Gate, he ſtopped to make Water, in the mean Time the three Men came up, and one of them d---d him, and aſked, where he was going? He ſaid, he deſired him not to ſwear, and ſaid he was going to *London*; upon that one of them, the carroty-bearded Fellow, ſnatched the Bundle from under his Arm, and punched him on the Breaſt. The Judge was pleaſed to aſk him, if it was light enough to ſee their Faces, and whether he was ſure the Priſoners were two of the Men? Yes, he ſaid, it was light enough to ſee their Faces, and he was ſure they were two of the People that robbed him. Then he went on, and ſaid, that *Kelly*, one of the Priſoners at the Bar, drew a Knife, and ſaid, D---n him, let us ſearch him; and took out of his Pocket an Iron Tobacco-box, in which was a Guinea in Gold, two Shillings and Six-pence in Silver, and a Silver Pocket-piece, and likewiſe a Claſp-knife and Fork out of his Pocket: He ſaid, the Bundle contained two Pair of Leather Breeches marked with *J. S.* and a Figure of 4 under the right Pocket; and that the Handkerchief had an Oilet-hole at each Corner; and all thoſe Goods were produced in Court, and he looked at them, and ſaid, they were the Goods he was robbed of, and that they were his Property.

Q. Are theſe produced here the ſame?

Cox. Theſe are the ſame Goods; they were delivered into my Care, and have been ever ſince. The Judge was pleaſed to aſk him, how he knew the Pocket-piece? He ſaid, by a particular Mark it had in the Middle. His Lordſhip was pleaſed to aſk to ſee it, and it was delivered to him by the Conſtable of *Greenwich*.

Court. Look at that Pocket-piece and Tobacco-box.

Cox. I am ſure they are the very ſame Things he ſwore he was robbed of. I aſked the Judge what he was pleaſed to have done with the Things? His Lordſhip bid me take Care of them till the Perſons were tried. He was pleaſed to aſk the Priſoners, if they would aſk *Salmon* any Queſtions? *Kelly* deſired *Salmon* might be aſked, whether he ſaw him draw a Knife? *Salmon* ſaid, Yes, you did draw a Knife; but I ſuppoſe you will deny all the reſt preſently. *Kelly* ſaid, That cannot be, becauſe he had never a Knife. There was one Circumſtance which I had forgot: When the Judge had aſked him, if it was light enough to ſee their Faces, he alſo aſked him, if he could know the carroty-bearded Man, and if he had ever ſeen him before? He ſaid, No, he had not, to his Knowledge.

Q. Did you ſee either of the other Priſoners there?

Cox. I ſaw *M'Daniel*, *Salmon*, and *Egan*.

Q. Did they all give Evidence?

Cox. They did.

Q. from Berry. Did you ſee me in Court?

Cox. I did not; I ſaw him at *Maidſtone* in the Time of the Aſſizes. After *Salmon* had done, *Egan* was the next Evidence: He ſaid, he dealt in old Cloaths; that on the 30th of *July* he went into *Kent-Street* to the *Lock-Hoſpital*, to ſee if they had any old Cloaths to ſell; but they not being up, he went into the *Black Spread-Eagle* to get him a Pint of Beer; that he obſerved three Men ſitting in a Box drinking, and as he was telling the Landlady his Buſineſs, one of them, a carroty-bearded Fellow, not taken, (for they did not know he was taken then) aſked him, if he would buy two Pair of Breeches? He ſaid, Yes, if they could agree for the Price; and that they did agree for five Shillings; and that he gave *Kelly* one Shilling Earneſt to bind the Bargain, till his Wife ſhould come with more Money, or ſomething of that Sort; and he was aſking the Landlady for a Halfpenny-worth of Tobacco; and as he was ſaying he had loſt his Tobacco-box, one of the Men offered to ſell him one (I have forgot which of the Priſoners he ſaid that was). He ſaid, he bought it of him for a Pot of Two-penny (indeed they ſell no other Liquor at that Houſe): He ſaid, as he was looking at the Breeches, he knew them to be *Salmon*'s Property, having heard that *Salmon* was robbed over-night; and after ſome Time he went out, under Pretence to get the reſt of the Money, but meeting with Mr. *M'Daniel*, an Acquaintance of his, and knowing him to be an Officer, he told him the Story, and *M'Daniel* ſaid, he need not give himſelf the Trouble to look for an Officer, for he could do as well as a Conſtable; and ſo he returned back with him, and took *Ellis* and *Kelly* at the *Black Spread-Eagle*; and upon ſearching them, took out of *Kelly*'s Pocket a Silver Pocket-piece, the ſame that was then produced, and a Shilling, and a Claſp-knife. The Judge was pleaſed to aſk him, how he knew the Breeches belonged to *Salmon?* He ſaid, by a particular Mark they had. He was aſked, how he knew the Mark? He ſaid, he had bought Breeches of him for himſelf, and, I think, his Son, twelve Years, and knew his Mark particularly well. The Judge aſked the Priſoners, if they would aſk that Witneſs any Queſtions? And *Kelly* deſired he might be aſked, if the carroty-bearded Man and he did not wink at each other before he offered to ſell him the Breeches? And *Egan* alſo ſaid, what gave him the greateſt Suſpicion that the Breeches were ſtolen was, becauſe he had ſeen one of the two Priſoners ducked for picking of Pockets in the *Artillery-Ground*. *M'Daniel* was the next Witneſs; he ſaid, he met *Egan*, an Acquaintance of his, and *Egan* knowing him to be an Officer, told him the Story; and he went with him and took *Ellis* and *Kelly*; and upon ſearching *Kelly*, he found upon him a Silver Pocket-piece, the ſame that is now produced in Court, a Shilling, and a Claſp-knife (I ſuppoſe the Fork was then loſt). He ſaid, that was all he had to ſay, only there was a Drummer in the Room when he was taken, whom he ordered to aſſiſt him, which he did.

Q. Did he ſay any Thing about the Tobacco-box?

Cox. I don't remember that he did. The Moment the People were called into Court to give Evidence, I had fixed my Eye pretty ſteadily on Mr. *Berry*, whom I aſked to go with me to drink a Glaſs of Wine, (he was in the other Court) which he did, and I ſecured him at the *Bell*; then I went to ſecure the others according to my Warrants. As ſoon as they had given their Evidence, the Cryer ordered them to go out. We ſecured them. Upon ſearching *M'Daniel*, I found this Knife upon him *(produced in Court a ſingular long-ſheathed Knife of the* Dutch *Sort)*; I was told of it before. As ſoon as they were ſecured, I was forced to get Leave to put them in the Mayor's Gaol. I aſked *Salmon* in particular, if he knew one *Thomas Blee?* He did, as he had done before in Court, ſay he knew no ſuch Man. I ſaid to him, I am ſure you muſt know him; he as poſitively denied it again: The next Day when he was carried before the Juſtices, (I believe there were twenty or thirty of them) *Blee* was brought Face to Face to him; he looked at him, and then declared he never ſaw that Man in his Life before. I aſked *M'Daniel* that Night, if he knew *Tom Blee?* He denied he knew any ſuch Perſon. I aſked *Egan* the ſame, and he as poſitively denied it as the reſt, at the Time *Berry* was in Cuſtody at the *Bell*. I remember, as we were going along to the *Bell* to drink a Glaſs of Wine, he aſked me what I thought would be the Fate of *Ellis* and *Kelly*, and who was to pay the Expence of the Proſecution, for it was very conſiderable; upon that I could not help obſerving, that if they were convicted, there would be ſufficient to pay the Expence very handſomely; and if they were acquitted, the Proſecutors, I ſaid, I believed muſt bear the Expence themſelves; he ſaid he knew that, and for that Reaſon if this Affair was well over he never would be concerned again; by that Time we had got to the *Bell* the Diſcourſe dropped, and I took him in Cuſtody. When I had ſecured the others in the Mayor's Gaol, I went and fetched *Berry* from the *Bell*; after I had got him into that Gaol, I aſked him, if he knew *Tom Blee?* He ſaid, he did not know any ſuch Perſon. I put them in ſeparate Rooms that Night, and ſet a Man in each Room with them. The next Day, when *Berry* had been carried before the Juſtice and was committed, he and I walked together from the *Bell* to the Gaol; in going along he ſaid, he hoped the Gentlemen would not admit *M'Daniel* an Evidence, (for at that Time it was thought he would get to be an Evidence) becauſe he had ſaved himſelf once before by the ſame Means; but ſaid he, If the Gentlemen will admit me an Evidence, I can do for *M'Daniel* and another Man, (whom he named) that is not in Cuſtody; whom I know not whether I ſhould name.

Court. Name that Perſon.

Cox. It is *Ralph Mitchel*. I aſked him, if he would tell me any Particular that he would alledge againſt him? He ſaid, he could write to me in a few Days; but he never did. As to *M'Daniel*, the next Morning after he was apprehended, he deſired to ſpeak with me in the Room where he was confined; I took Mr. *Warren*, one of the Conſtables of *Greenwich*, with me, and went to him. He ſaid, he had rather ſpeak to me by myſelf; with that Mr. *Warren* withdrew: He there cried a good deal, and begged of me to be his Friend, and get him committed for farther Examination; for he ſaid he could make a very great Diſcovery relating to the Public, and could put five hundred Pounds into my Pocket. I told him I would acquaint the Gentlemen with what he ſaid. Accordingly I did, and uſed my Endeavour to prevent his being committed for farther Examination; he was afterwards committed upon the Warrant.

Q. from Berry. Did you ſee me any Way buſy about the Affair?

Cox. *Berry* kept *M'Daniel*, *Salmon*, and *Egan* Company; and becauſe it was to be my Place to take them, I kept Company with them all four for two Hours.

Q. from Berry. Was I buſy in preferring the Bill?

Cox. I don't know that he was.

Q. from Berry. Was I not ſitting in *Niſi Prius* Court to ſee the Trials there?

Cox. Yes, he was. When I talked with *Berry* afterwards, he denied knowing *Blee*, and pretended to be a Stranger to them all; and ſaid, he came down into that Country about Horſes. As for *Egan*, he denied he knew *Blee*, or ever ſaw *Berry*. Some Time after, I had ſome Talk with him again; then he declared he never ſaw *Berry* in his Life till he ſaw him in the *Graveſend* Boat.

Q. Can you recollect whether there were any Enquiry made by the Judge, whether they knew one another upon their Oaths?

Cox. There was nothing ſaid of that Sort, that I remember.

Q. from M'Daniel. Whether or no I did not go to 'Squire *Bell*, to charge *Blee* with a Robbery after he was taken?

Cox. I know but little of that; but here will be an Evidence that can give a very good Account of that.

Elizabeth Pragnell ſworn.

Elizabeth Pragnell. I live at the *Ship* in the *Broad-Way*, *Weſtminſter*. I remember ſeeing *Blee* at our Houſe on the 29th of *July* in the Evening, in Company with two Lads, each of them dreſſed in blue-and-white ſtriped Waiſtcoats very dirty; and I ſaw thoſe two Lads at our Houſe the next Day, being the 30th; I have heard ſince one was named *Kelly*, the other *Ellis*. On the 29th, in the Evening, they came and ſat down at the Door, and called for a Pint of Beer; I believe they were there the beſt Part of an Hour. The Evidence *Blee* inquired for Somebody, I don't know who it was. He went out, and came in again in a little more than Half an Hour. Then the two Lads ſaid to him, Will you pay for this Pint of Beer? He ſaid, Yes, come in, and we will have a Pot of Beer; then they came in, and called for a Pot of Beer; one of them went over the Way to a Shop for ſome Bread and Cheeſe; he

he brought some in, and they eat it; they stayed, I believe, about an Hour and half, and went away when it was dark. *Salmon* also came in, with a Bundle under his Arm in a Handkerchief, when they were there; he called for a Pint of Beer, and pitched himself against the Dresser, facing them, and looked at them, then went and sat down in a Box with his Back toward them: He went out a little before them; I remember *Blee* went out two or three Times.

Q. What Liquor had *Blee* and the Lads?

E. Pragnell. They had two Pots and a Dram; I cannot say whether it was a Quartern or not: *Blee* changed Half-a-Crown, and paid for the Liquor. On the Forenoon the next Day, the two Lads that were with *Blee* were brought in again by a Constable, and a Drummer, named *Cornack*, to assist him. The Man that I took to be the Constable, which was *M'Daniel*, called for a Pint of Beer; he asked me, whether I knew them two Boys to have been there over-night? I said, Yes. Then he asked me, if I knew that Man at the Door? I said, Yes; he had a Pint of Beer at my House the last Night (that was *Salmon*).

Q. Did he mention *Salmon*'s Name, or say he knew him?

E. Pragnell. No, he did not.

James Cornack sworn.

James Cornack. I am a Drummer; I was quartered at the *Black Spread-Eagle* in *Kent-Street*. On the 30th of *July* last, I came down Stairs between Eight and Nine in the Morning; I observed three Men sitting together in a Box, one of them had a carroty Beard, which was *Blee*; they had had some Victuals, and there was some Drink before them.

Court. Look about, and see if you see *Blee* here.

Cornack. There he stands *(pointing to him)*; his Beard is now much about the Length it was then, (it might be six Weeks Growth) the other two were the two Prisoners that were cast at *Maidstone*. *Blee* said, I think I will go out, and get shaved; he went out. In about eight or ten Minutes after that, in came *M'Daniel*, with a darkish-coloured Coat on; he laid hold of *Kelly*, and said, Come out, you Blackguard Dog. I said, What makes you abuse the Lad in this Manner? He said, D--n him, I have got a Warrant against him, I am an Officer; they have robbed a Man just against the four-mile Stone near *Deptford*; I desire you would aid and assist me. I said, If that is the Case, I will. He took a Piece of Rope out of his Pocket, and tied them together. Now, said he, I will take care of them; do you step down to the *Elephant and Castle*, you will see two Men, one in a light Surtout Coat, and his own curled Hair; I will pay you for your Trouble. I went there; there sat *Berry* the Prisoner, and *Salmon* was coming in from making Water. I said to *Salmon*, I believe you are the Gentleman that I want; there is a Gentleman at my Quarters that wants to speak with you: *Berry* said, Go along with him. *Salmon* went with me; coming along the Street, I said, What is the Matter? What has happened? Said he, I happened to be at *Deptford-Yard* last Night, and had taken some Money, and had some Breeches with me; there were three Chaps stopt me, and robbed me of a Guinea in Gold, Half-a-Crown in Silver, a Tobacco-box, and two Pair of Leather Breeches tied up in a Handkerchief; and if the Breeches are mine, they are marked with *J. S.* and a Figure of 4 on the right Pocket; and the Handkerchief has an Oilet-hole at each Corner. We went in; there stood the Bundle on the Table, and *Egan* sitting in a Box opposite the Lads. *M'Daniel* asked *Egan*, what he had in that Handkerchief? He answered, it was no Business of his, for the Handkerchief and the Things in it were his; for he had bought them of the Lads. I made him open the Handkerchief, we found it marked at each Corner as *Salmon* had said, and the Breeches *J. S.* 4. *M'Daniel* searched *Kelly*, and I saw him take a Clasp-knife out of his Pocket, a Shilling, and a Silver Pocket-piece; he gave him the Shilling back again, and said the Pocket-piece was marked in the Middle, and shewed it me, and desired me not to be mealy-mouthed when I came before the Justice; this he said once or twice. They tied the Things all up in a Handkerchief, and we set out with them to a Justice of the Peace at *Greenwich*.

Q. Did you see ever a Tobacco-box?—*Cornack.* No, I did not.

Court. Look at this Pocket-piece.

Cornack. I think this is the same; it has much the same Mark; it is hard for me to swear it, but I believe it is the same. Going along, *M'Daniel* said to the Lads, You have made a good Hand of it, if you have spent the Guinea already; the Lads said, they never took a Guinea from him. *M'Daniel* said to me, One of them has got Money in his Stocking, but let them keep it, poor Things, they'll want it; he wanted them sadly to confess the Robbery, and told them, if they would not, they would certainly be hanged.

Q. What were his Words, as near as you can recollect?

Cornack. He said, You Dogs, I would have you confess when you come before the Justice, it will be the better for you; and tell me where the other Fellow is gone to: They said, they could not tell any thing about it, and would give him no Answer: they said to him they wanted to go to some *Bridewell*, which I do not know. He said to them, if they would confess, he would do all in his Power for them, and he would untie them when they came into *Deptford*, and they should go by Water. We came to the *Five Bells* at the End of *Deptford* Road, there *M'Daniel* called for a Pint of Beer; the People brought the Beer out. *M'Daniel* asked the Lads, if that was the House they had been drinking at the Night before? They said, No, but they had been drinking at the Sign of the *Ship*; we drank the Beer, and then set out again: *Egan* and *Salmon* followed at a Distance. When we came to *Deptford*, *M'Daniel* took the Lads in, and desired *Egan* and *Salmon* to stay at the Door; he called for a Pint of Beer.

Q. How came *Egan* to follow you?

Cornack. I don't know; he came from my Quarters.

Q. Did *M'Daniel* charge him to assist?

Cornack. Not a Word as I heard. When he and *Salmon* were at the Door, *M'Daniel* asked the Landlady if she saw them Lads there the Night before? She said, Yes, they were there the Night before, and had some Bread and Cheese; then he said to her, Did you see that Man that is now at the Door? (meaning *Salmon*) She said, Yes, he was here at the same Time, and they went out about ten or twelve Minutes Distance one of another. Said *M'Daniel* to me, Take Notice of what this Landlady says, and don't be mealy-mouthed when you come before the Justice. Then we set out and went to *Greenwich*; and in the Clerk's Office they wanted *M'Daniel* to be bound over to prosecute; *M'Daniel* said he could not, for he had a Bit of an Estate left him in the Country, and he could not be there at the Time of the Assizes; then the Justice's Clerk was pleased to bind me over. We stayed at *Greenwich* and had some Beer, and were pretty merry till almost Nine at Night; coming Home all together, they let me and *Egan* go before. *Egan* swore by the Great G--d and the Sweet Jesus, he would not appear against them at the Assizes. Said I, You are bound over as well as I, and I cannot see you can be off from going down. He said, O! by J---s it is only changing my Parish; it has cost me three Shillings To-day, and the Breeches may go to the D--l, for I will never appear against them. We parted about Ten that Night; I went to my Quarters; *M'Daniel* told me to come to his House in *Union-Court*. I went in about a Week after, but could not hear of such a Person; I went to the *Union-Arm*, and found the Landlord knew something of him, and I found he lived in *Scroop's-Court*; I went and asked there for him, but never could find him at Home, although I went there three or four Times; his Woman always told me he was gone into the Country. I saw him once, but that was by mere Chance; he was then dodging me, or somebody else, at the End of *Parliament-Street*.

Q. Was you at the Assizes at *Maidstone?*

Cornack. I was; when I came there, I could not find any of them; they kept out of my Sight, I imagined, for fear I should come in for Part of the Reward. At last I happened to meet *Egan* in the Street: I said, What, have you done the Thing? (I meant, found the Bill:) He said, No, we shall not do it this Day or two; thinks I, I'll watch you: I did, and by-and-bye came *Salmon* and *M'Daniel*, and, I think, *Egan*, and one *Sergant*, a Constable; they and I went into the Clerk's Office to get the Bill of Indictment drawn, *Berry* did not go in, I followed them. When they came in, the Clerk said, Are you all here? Yes, said *M'Daniel*, we are all here. Said the Clerk, There are six of you. There are but five of us, said *M'Daniel*. Said the Clerk, Is there not a Drummer? Oh! said *M'Daniel*, I had forgot him. After we had prepared the Bill of Indictment, I went to the *Cock* at *Maidstone*, there sat *Berry*; I did not recollect him at that Time; said he, How do you do, Drummer? I said, You have the Advantage of me, I cannot say I know you. No, said he, don't you know that Morning when you went to the *Elephant and Castle* in *Kent-Street* for *Salmon?* Then I said, I believe you are the Gentleman that sat there in the Box. Yes, said he, I am: Then he asked me, what I thought of those Lads, will they be convicted? I said, It appears very plain against them. Then he said, If they are not, I must either beg my Bread, or go upon the Highway myself.

Q. from Berry. Were there any Company by at this Time?

Cornack. No, there were not; *Berry* was sitting by himself; he generally was by himself, except he was with his Companions.

Q. Are you certain he said these Words to you at that Time?

Cornack. I am positive of it he did.

Mary Hussey sworn.

Mary Hussey. I live at the *Elephant and Castle* in *Kent-Street*, I am Servant there; my Mistress's Name is *Jane Smith*. There came three Men into our House, and after that came in *M'Daniel*; they had a Rasher of Bacon for Breakfast. I don't know the others Faces.

Q. When was this?

M. Hussey. It was in the last Summer-time.

Thomas Sergant sworn.

Thomas Sergant. (He is shewn the Tobacco-box). I have seen such a one; I made a Remark that the Unicorn's Horn was broke off the Box, when *M'Daniel* shewed it me above a Year ago; this I see is broke as that was. His Box has been sent to my House many a Time, to be filled with Tobacco; it is near a Year ago since I saw it; this is like it, but I cannot tell this is it.

Q. How came *M'Daniel* to shew it you?

Sergant. He shewed it me as a Piece of Curiosity; saying, Here is an old Thing, a curious Thing. I said, It is not perfect now, here wants the Horn to the Unicorn.

Henry Sergant sworn.

Henry Sergant. I know all the Prisoners very well; I was at the taking them all at *Maidstone* Assizes last.

Court. Give an Account what you know of them.

Sergant. M'Daniel said I was a young Constable, and I should have my Share of the Reward; he should take the Money, and he would see me paid.

Q. What Reward did he mean?

Sergant. The Subscription-Money of our Parish, for the two Lads that were tried, *John Ellis* and *Peter Kelly*; I carried them down.

Q. Did you produce these Goods there?——*Sergant.* I did.

Q. Where had you them?

Sergant. I had them of Justice *Bell*, who sent for me, I being a Constable.

Q. What passed when he said, You are a young Constable?

Sergant. The Prisoner *Berry* said, We shall have a good Supper if the Prisoners are convicted; and if they were not, he thought he must beg his Way home. As I was going along the Road with *Ellis* and *Kelly* to *Maidstone*, they told me there was one *Tom Blee* concerned with them in the Robbery; and also where he lived, and what Sort of Cloaths he wore. I took it down in Writing; the Justice desired me to go and take him; I said, I would give Directions to a Thief-catcher, which I did to *Ralph Mitchel*; but he refused to act in it.

Q. Was you upon the Trial?

Sergant. I was.

Q. Was *Salmon* a Witness?

Sergant. He was; he swore he lost these Things. Also *Egan* and *M'Daniel* were both examined upon it.

Q. from

Q. from Berry. Did you ſee me concern myſelf at all in the Affair, or was I upon the Back of the Bill?

Sergant. No, he was not on the Back of the Bill; he had no Buſineſs there, if he could have truſted his Friends with the Money. I heard *M'Daniel* and him both ſay, they would ſhare the Reward.

Q. from Berry. Did not you ſee me ſitting at the *Cock* all the while?

Sergant. No, he walked about with us.

Q. to Blee. You ſay *Berry* gave you a Crown, what Money was it?

Blee. He gave me a Half-Crown and two Shillings and Six-pence that Day I went with the Lads to *Deptford*.

Berry's *Defence.*

On the 25th of *July* I was out of Town all Day, and returned the *Sunday* following; and ſtayed at Home all Day the *Sunday Blee* tells you he was with me, and I gave him a Crown. If your Lordſhip will indulge me to put it off till next Seſſions, then I can bring Witneſſes to prove he falſly accuſes me. I went out on the 5th of *Auguſt* to *Bromley* Fair; I ſaw *Blee* with a Saddle on his Back; he is a pilfering Sort of a Fellow. I went and took him by the Collar, and ſaid, I would chaſtiſe him; he ſaid, Mr. *Berry*, I can tell you a great deal, if you will not hurt me. I ſaid, If you can tell me a great deal, tell me where my Goods are. I heard on the 12th of *Auguſt* that he was taken up at *Greenwich*; I went there, and took *M'Daniel* over there, to ſee if he was taken, on purpoſe to have charged him with my Goods. My Son is gone, he has puſhed him away, and I have never ſeen him ſince, and they would never give me any Anſwer that they had got him. I aſked Mr. *Sergant*, if he had got him? He would not tell me. They never took him to give any Evidence before the Juſtice. People may go a-thieving for ever, if they may get off in this Faſhion.

M'Daniel's *Defence.*

I was called out about the 30th of *July* to go over to the *King's-Bench*; I met this Man *Egan*; he deſired me to go and take a Couple of Thieves in *Kent-Street*; I ſaid, What have they done? He ſaid, I believe they have broke open ſome Houſe, and ſtole theſe Things. I went with him to the *Elephant and Caſtle* in *Kent-Street*, and ſtayed there ſome time, till we ſent for Mr. *Salmon*; and when he came, *Egan* came with him to me. I ſaid, Is the Man come? He ſaid, Yes; then I went with *Egan* to the *Black Spread Eagle*; there were theſe two Men ſitting; one of them ſaid, I believe I have done now. I turned him about, and ſearched him, and took theſe Breeches from under their A—s, and alſo from one I took this Pocket-piece. After this I ſaid to *Salmon*, The only Way to ſave Expence is to examine them before Colonel *Bell*. In carrying of them down, the leaſt of the two ſaid, I wiſh I could be admitted an Evidence, I would be glad; I ſaid, You Dog, where is the reſt of you? where is the other Fellow, what is his Name? This Lord *Blee* lived along with me ſix or ſeven Months, I never knew his Name; when he told me my Lord, I gueſſed directly; one of them wanted to be admitted an Evidence before Juſtice *Bell*, and he would not admit either of them. After that I heard my Lord was taken, I goes down to *Greenwich*, and went to *Mitchel* at *Deptford*; and ſaid, Here, *Cox* has taken the other Fellow, *Ralph*, will you come up, and ſee if he has got him? He was afraid of being taken upon ſome Warrants, and would not go; ſo I went to the Colonel myſelf, the Clerk was there, and he was very ill; he ſaid to me, Mr. *M'Daniel*, he is not taken, if he was, he would be brought to me. After that I ſtopped a Man that had murdered another at *Coventry*; I brought him to *Hicks's-Hall*, the Juſtices committed him to *New-Priſon*. The Gentlemen told me, I muſt go down to *Coventry* along with him. I went down to *Maidſtone*; there I ſaid I could ſay nothing to the Robbery: The Drummer could ſay as much as I could as to the Pocket-piece and Tobacco-box. As God Almighty is in Heaven, I know no more of them than your Lordſhip there; I have taken a great many Thieves, and have ventured my Life, and been ſhot at by them. I never had my Name brought in Queſtion; I have been offered Money to let Priſoners go, but I never would do it: I could have had threeſcore Pounds to have done it.

Salmon's *Defence.*

That Fellow that ſwore I had been at the *Bell* in Company with him has ſwore falſe; I never was in Company with him in the whole Courſe of my Life, nor I have not been in that Alehouſe theſe five Years.

Egan's *Defence.*

Pleaſe to aſk where the *Bell* is? I do not know where it is; I have no Knowledge of that Man in the World (*looking towards* Blee).

Q. to Berry. Have you any Evidences to call to your Character?

Berry. Call *Henry Warrington.* (*He was called, but did not appear.*)

Berry. I lived ſeventeen Years in the Yard where this Man lives, that is, *James Price*; will you pleaſe to call him?

James Price again. I have known *Berry*, I believe, five Years.

Court. He calls upon you for a Character; what Character can you give him?

Price. A very bad one, my Lord.

Berry. Pleaſe to aſk him, what he can ſay as a Stain upon my Character?

Price. It will hurt you, if you inſiſt upon it.

Q. to M'Daniel. Will you call any Witneſſes?

M'Daniel. There is a Man that has known me theſe nine or ten Years, and that I have the beſt of Characters; that is Mr. *Holewright*.

Court. Do you chuſe he ſhould be examined to your Character?

M'Daniel. Yes.

G. *Holewright* again. I believe I have known *M'Daniel* eight or nine Years, or longer; he never did me any Injury in his Life-time; but as for the reſt of it, I believe he is bad enough.

Q. to Salmon. Have you any Witneſſes to call?

Salmon. No, my Lord; I have not had Time to ſend for any.

Q. to Egan. Have you any Witneſſes to call?

Egan. No, my Lord; none of my Acquaintance know that I am in Trouble.

The Jury found them all four guilty of all the Facts charged againſt them in the Indictment; but whether the Facts charged were within the Statutes of the 4th and 5th of *Philip* and *Mary*, and the 3d and 4th of *William* and *Mary*, they knew not *; and therefore prayed the Aſſiſtance of the Court. Whereupon the following ſpecial Verdict was found:

" We find the Record of the Conviction of *Peter Kelly* and *John Ellis* " prout.

" We find, That before the committing the ſaid Robbery, the Defen- " dants, *M'Daniel*, *Berry*, *Egan*, (alias *Gahagan*) and *Salmon*, and *Thomas* " *Blee*, did maliciouſly, and felonioufly, and with Intention to procure " themſelves the Rewards allowed by the Statute for the apprehending of " Robbers on the Highway, and ſome further Rewards offered by the In- " habitants of the Pariſh of *Greenwich*, and other adjoining Pariſhes, all met " at the *Bell Inn* in *Holborn*, in *London*; and that they all agreed *Blee* ſhould " procure two Perſons to commit a Robbery on the Highway upon the " Defendant *James Salmon*, in the Pariſh of *St. Paul*, *Deptford*, in *Kent*, " which is an adjoining Pariſh to the ſaid Pariſh of *Greenwich*; and for " that Purpoſe did maliciouſly and felonioufly contrive and agree, that the " ſaid *Blee* ſhould inform ſuch Perſons, that the ſaid *Blee* would aſſiſt " them to ſteal ſome Linen in the ſaid Pariſh of *St. Paul*, *Deptford*.

" That the ſaid *Blee*, in purſuance of the ſaid Agreement, and with " the Privity of the ſaid Defendants, did engage and procure the ſaid " *Peter Kelly* and *John Ellis*, in the ſaid Indictment named, to go with " him to *Deptford* to ſteal Linen, but did not at that Time tell the ſaid " *Kelly* and *Ellis*, or either of them, of the ſaid intended Robbery on *Sal-* " *mon*, nor at any other Time before the ſaid Robbery was committed; " and in conſequence of ſuch Agreement, and with the Privity of all the " ſaid Defendants, the ſaid *Ellis* and *Kelly* did go with the ſaid *Blee* to " *Deptford*.

" And that the ſaid *Blee*, *Ellis*, and *Kelly*, being at *Deptford* aforeſaid, " and the ſaid *Salmon* being then and there waiting in the King's High- " way, in purſuance of the Agreement aforeſaid; they, the ſaid *Blee*, " *Ellis*, and *Kelly*, did all felonioufly aſſault the ſaid *Salmon*, and did " take from his Perſon the ſaid Goods mentioned in the Indictment, on " which the ſaid *Ellis* and *Kelly* were ſo convicted as aforeſaid.

" And we find, that none of the ſaid Defendants ever had any Conver- " ſation with the ſaid *Kelly* and *Ellis*, or either of them, before the ſaid " Robbery was committed: But we find, that before the ſaid Robbery " was committed, the ſaid *M'Daniel*, *Egan*, and *Berry*, ſaw the ſaid *Kelly* " and *Ellis*, and told the ſaid *Blee* that they would do very well for the " Purpoſe of robbing the ſaid *Salmon* as aforeſaid: But whether the De- " fendants, or any of them, are guilty of felonioufly and maliciouſly com- " forting, aiding, abetting, aſſiſting, counſelling, hiring, or commanding " the ſaid *Kelly* and *Ellis*, or either of them, to commit the Felony and " Robbery above-mentioned, or whether the ſaid Defendants, or any of " them, are guilty of felonioufly and maliciouſly moving, procuring, abet- " ting, or counſelling the ſaid *Kelly* and *Ellis*, or either of them, to commit " the ſaid Felony and Robbery, in Manner and Form as in the ſecond " Count of the ſaid Indictment is charged againſt them, we know not, " and pray the Advice of the Court. And if the Court is of Opinion " they are Guilty, we are of Opinion they are Guilty; but if the Court " are of Opinion that they are Not Guilty, then we are of Opinion they " are Not Guilty."

Richard Heavyſides,	*Rand. Bayleys*,
Gam. Gardner,	*John Keen*,
Nathaniel Norton,	*Henry Knight*,
Samuel Neſbit,	*William Baſſon*,
Ebenezer Gardner,	*John Brewin*,
John Poperton,	*John Pricklew.*

TRINITY VACATION, 28 *Geo.* II.

June 19, 1755.

At Serjeant's-Inn-Hall, *in* Chancery-Lane, *before all the Judges.*

The Special Verdict argued †.

The King againſt *M'Daniel*, *Berry*, *Egan*, and *Salmon.*

CASE.

PETER Kelly and *John Ellis* were indicted for a Robbery on the Highway, committed near *Deptford*, in *Kent*, on *James Salmon*; on which Indictment they were tried, and were capitally convicted.

The Defendants were indicted as *Acceſſaries before the Fact*, to the Robbery committed by *Kelly* and *Ellis*.

The Judges at the *Old-Bailey* directed a Special Verdict to be found on the laſt-mentioned Indictment.

Which Verdict firſt finds the Record of the Conviction of *Kelly* and *Ellis* prout.

It alſo finds, " That the Defendants, *M'Daniel*, *Berry*, *Egan*, and " *Salmon*, together with one *Blee*, with an Intention to procure to them- " ſelves the common Reward given by Act of Parliament, and an addi- " tional Reward offered by the Pariſhes of *Greenwich* and *Deptford*, for " apprehending Highway-men, met together at the *Bell* in *Holborn*; and " there they agreed, that *Blee* ſhould procure two Perſons to rob, and " that he ſhould inform them that he would aſſiſt them in ſtealing ſome " Linen in the Pariſh of *Deptford*."

It finds alſo, " That *Blee* did procure and engage, with the Privity of " the Defendants, the ſaid *Kelly* and *Ellis* to ſteal the ſaid Linen; but " that he did not acquaint them of any Intentions to rob *Salmon*."

* 4 and 5 *Phil.* and *Mar. c.* 4. which ſays, Every Perſon that ſhall maliciouſly *command*, *hire*, or *counſel*, any Perſon or Perſons to commit or do any Robbery in or near any Highway in this Realm of *England*, and be thereof convicted, ſhall not have the Benefit of Clergy.

3 and 4 *Will.* and *Mar. c.* 9. That all and every Perſon and Perſons that ſhall *comfort*, *aid*, *abet*, *aſſiſt*, *counſel*, *hire*, or *command* any Perſon to rob another, ſhall be excluded from the Benefit of the Clergy.

† Theſe Notes were communicated by a Gentleman of the *Temple.*

It finds alſo, " That the Defendants never had any Converſation with " *Ellis* and *Kelly* before the Commitment of the Robbery; but that the " Defendants ſaw them, and ſaid they would do: And if, upon this " Caſe, the Judges ſhall be of Opinion they are ſo, then the Jury find " them ſo, *&c.*"

Mr. HUME CAMPBELL.

I have the Honour to attend your Lordſhips on this very ſolemn Occaſion, as Counſel on the Part of the Crown, againſt the Defendants, *M'Daniel*, *Berry*, *Egan*, and *Salmon*; and as this is a Caſe which concerns the Lives of four unhappy Subjects, and the public Safety in general, I hope I ſhall be excuſed, if I obſerve a Minuteneſs ſomewhat ſingular before this Aſſembly.

That I may obſerve ſome Degree of Method, I ſhall conſider the Charge againſt the Defendants under two Heads:

I. Whether all or any of them are *Acceſſaries before the Fact* in the Felony for which *Ellis* and *Kelly* have been convicted?

II. If they are, whether they are deprived of their Clergy?

The firſt of theſe includes three Propoſitions:

1. That a Robbery was committed, in which *Kelly* and *Ellis* were Principals.
2. That the Principals, which is ſufficient to draw the Acceſſaries to Trial, have been convicted.
3. That ſuch Things have been done by the Defendants, as will make them *Aiders*, *Commanders*, and *Abettors* in the Robbery.

The firſt of theſe is ſufficiently eſtabliſhed by the finding the Record of the Conviction: For wherever a Deed operates by way of *Eſtoppel*, and the Jury find it *prout*, your Lordſhips muſt conſider it as an *Eſtoppel*. In the preſent Caſe the Jury have found the Record *prout*; and by that it appears, that a Robbery was committed by them on *Salmon*, one of the Priſoners. The Verdict finds likewiſe, that *Salmon* agreed at the *Bell* that *Blee* ſhould procure Perſons to rob him. It finds too, that *Ellis*, *Kelly*, and *Blee* did felonioufly aſſault, and in the Highway take from the Perſon of *Salmon*, the Goods mentioned in the Indictment. Upon this Point, nothing in the Verdict appears contrary to the Record of Conviction; and you cannot conſtrue the latter Words of the Verdict, ſo as to deſtroy the firſt *. This appears from the Caſe of *Monſon* v. *Weſt*, *Moore's Reports* 431. (N. B. *S. C.* in *Popham* 110.) The Caſe was this: In Aſſize, the Tenant pleaded no Tenant to the Freehold, and ſo no Diſſeizin, *niſi les parols entiel volunt*, gives the Tenant Title; upon which Verdict there was Judgment for the Demandant, and Error brought and aſſigned, that the Jury did not find the Demandant ſeized, and that the Tenant diſſeized him, as the Cuſtom is, as appears from the Book of Entries, which ſays, that the Aſſize ſhall find Seizin and Diſſeizin; alſo that the Verdict was imperfect, by reaſon of the *Niſi*, &c. After divers Arguments, the Judgment was affirmed; for finding the Diſſeizin implies Seizin alſo; and the *Niſi* the Court looked upon as nugatory, becauſe the Verdict is complete before upon the Point on which the Jury were charged, *viz.* the *Seizin* and *Diſſeizin*. *Vaughan* 77. *Rowe* v. *Huntington*.

If a Jury, by their Verdict, ſhall take upon them to collect the Contents of a Deed, and yet by the ſame Verdict find that Deed *in hæc Verba*, the Court is not to regard the Collection they have made of the Subſtance of the Deed, but the Deed itſelf †.

2. *Bulſtrode* 56. *James* v. *Harris*. Action for Words. The Jury found, that the Defendant ſpoke theſe Words of the Plaintiff, *viz. Thou art a Thief, and I will prove thee ſo*; but that they were ſpoke in the Abſence of the Plaintiff. *Sed per tot Cur.* the latter Part of the Verdict ſhall not ſtand, for the Iſſue is the Words, and that they have found. *Brooke* Tit. *Verdict*, pl. 96. abridged from 11 *H.* VI. 42. *N. H.* brought a Writ of Error againſt *A*, and aſſigned for Error, that the Wife of the ſaid *A*, who had obtained a Judgment againſt him upon a Writ of Maintenance, died ſuch a Day at *C*, pending the Writ and before the Judgment. The Defendant pleaded, that his Wife was ſtill alive at *W*, *&c.* The Inqueſt was taken at Bar, and the Wife appeared in Evidence, declaring herſelf to be the ſame Woman who was ſaid to be dead, and was known by others in the Court. The Jury found, that the Wife was dead, as the Plaintiff had aſſigned for Error: And all the Court were aſtoniſhed at this Verdict, which found the Woman dead, when ſhe appeared at the Bar alive; and the Record of the Writ of Maintenance was viewed; and by that it appeared, that at the Day of *Niſi Prius* in the ſaid Writ of Maintenance, the Wife appeared in her proper Perſon, which Day was four Days after the Day the Verdict finds ſhe died. *Cheine*.

It is proved by this Record, that the Wife was alive four Days after the Verdict ſays ſhe was dead: It ſeemed to him, that this Verdict is nothing to the Purpoſe, but is a Jeofail, to try a Thing which is contrary to the Record.

Afterwards *Cheine* aſſembled all the Judges; and their Opinion was, that the Verdict was nothing to the Purpoſe, and is a Jeofail: For a Matter of Record before the Juſtices ſhall not be put in Averment, but ſhall be tried by the Record itſelf; and though the Verdict has found contrary to that which is proved by the Record, it is nothing to the Purpoſe; for the Verdict cannot defeat the Record, nor is it of ſo great Force as the Record: And if the Court had been apprized of the Record before Inqueſt taken, the Inqueſt ought not to have been taken, becauſe of the Record; and ſhe was proved to be alive four Days after ſhe was alledged to be dead: But if the Record had not proved her alive, then the Plaintiff would have been intitled to Judgment.

But in the preſent Caſe, no Contradiction is here found, not even by Implication: For, though it may be ſaid, that here was no Robbery, becauſe *Salmon* was conſenting, yet in all Robberies there is ſome Degree of Aſſent, and that is to avoid the Injury which is threatened the Perſon robbed. If a Man is felonioufly aſſaulted, and made to ſwear to bring Money to ſuch a Place, and he does it; this is determined to be a Robbery, though done with the Aſſent of the Perſon robbed. And your Lordſhips cannot, without ſhaking the Principles of Law, ſay there is no Robbery committed, when it is found by the Jury that there is.

I apprehend, my Lords, it is a Rule in Law, that Acceſſaries ſhall not be tried till the Guilt of the Principals is eſtabliſhed, and the Reaſon is, to avoid contradictory Verdicts upon the ſame Fact. [Vide *Brooke Coron.* 117. 40 *Aſſ. p.* 8. *Fitz. Coron.* 33.] There would be a Subverſion of all Law, if Acceſſaries, who cannot be tried till the Guilt of the Principals is eſtabliſhed, ſhould upon their Trial be allowed to controvert whether there has been a Robbery or no. I hope, therefore, it is plain that there was a Robbery committed upon *Salmon*; for as to the putting in Fear, the Common Law did not require it, only required a taking by Violence. It is found, that *Salmon* was aſſaulted, and he might be put in Fear.

I come now, my Lords, to the ſecond Part of the firſt General Queſtion, *viz. That the Principals have been convicted.* This is found by the Verdict; it is alſo found, that *Blee* was one of the Robbers. It may be ſaid, perhaps, that the Defendants were only Acceſſaries to *Blee*, and he to *Kelly* and *Ellis*; whereas they are indicted for being Acceſſaries to *Kelly* and *Ellis*. But I apprehend that by the Law, a Man may be acceſſary to one or more. 'Tis found, that the Agreement was, that *Kelly* and *Ellis* ſhould commit the Fact, and *Blee* procure them: Therefore it does not follow, that the Defendants were Acceſſaries to *Blee*. I admit, that, if the Defendants had been indicted as Acceſſaries to *Blee*, not to *Kelly* and *Ellis*, there might have been ſome Doubt, but now there can be none: For when the Principals are convicted, the Defendants cannot ſay, We were Acceſſaries to Three; but the Queſtion is, Were you not Acceſſaries to Two?

'Tis found, that the original Fact was committed by *Kely* and *Ellis*; and, as to the Pretence of ſtealing Linen, that was the Artifice by which theſe poor Lads were to be entrapped; it was not the Fact intended to be committed, nor was it the Fact which was committed: For the Agreement at the *Bell* was, that *Blee* ſhould procure two Perſons to rob *Salmon*, and that he ſhould inform them, he would aſſiſt them in ſtealing ſome Linen in the Pariſh of *Deptford*.

There are many Caſes in *Keyling* where theſe Pretences have been rejected, particularly *p.* 44. where ſome Rogues influenced a Conſtable to break open the Door of a Houſe, and thereupon they entered and rifled it; this was adjudged Burglary; and it was re-determined in 1730, in the Caſe of the King and *Cornwell* ‡.

I come now to the third and laſt Part of the firſt general Queſtion: Whether all the Defendants, or any of them, have committed ſuch Things as will make them *Aiders*, *Commanders*, and *Abettors* of the Robbery?

Under this Head I intended to inquire,

1. Into the Nature of Acceſſaries before the Fact: And,
2. Whether there is any material Difference in the Caſe of *Salmon* from any of the reſt?

But as I have already taken up ſo much of your Lordſhips Time, I ſhall leave that which relates to *Salmon*, to the learned Gentleman who is to ſpeak next.

As to the firſt, the Nature of Acceſſaries:

By the Common Law, the Perſon alone who committed the Fact was deemed the Principal, and thoſe who procured it to be done *qualicunque Modo*, who contrived it, *plotted* it, *counſelled*, and *aſſiſted*, were Acceſſaries before the Fact; and the Trial was poſterior in reſpect of the Commiſſion, becauſe the Exiſtence of the Crime was to be firſt examined into; for before then it could not be known, whether they had been guilty of a Crime or no. But when the Fact was eſtabliſhed, they proceeded *inverſo Ordine*, and he that firſt counſelled was laſt tried, as appears from *Bracton*, *B.* 3. *cap.* 19. *p.* 138. *ſect.* 4, 5. and *p.* 139. *ſect.* 10, 11. where he makes uſe of the Words,

Fortia, *Præceptum*, *Auxilium*, } Which three Sorts include all Sorts of Perſons who contribute to, or in any wiſe aſſiſt to the Commiſſion of the Fact.

In *Sect.* 5. he has the particular Form of an Appeal. *Staunford*, in his *Pleas of the Crown*, *B.* 1. *c.* 45. *p.* 40, 41. which is an Abridgment of *Bracton*, ſays, That in an Appeal of Felony all the Principals and Acceſſaries muſt be joined; and there he deſcribes Acceſſaries thus: " *Qui venit, vel* " *tenuit, vel vinxit eum, vel fuit in Auxilio vel Conſilio qualicunque modo,* " *vel Præcepto vel Mandato, quo magis ipſe* C. *interfectus fuit.*" [This is *verbatim* from *Bracton*.]

Theſe Words are general, but prove what the Law at that Time was; he was Acceſſary, of whom it might be ſaid, *qui fuit in Conſilio*; and

* When an Act inflicts a Penalty for a ſecond Offence, the Indictment for the ſecond Offence muſt recite the Record of the firſt Conviction; and upon the Evidence, the Record of the firſt Conviction muſt be proved: But the Matter of the firſt Conviction ſhall never be re-examined, but muſt ſtand for granted. 1. *H. H.* 686. *Burn's Juſtice*, in Introduction, *p.* 27.

† For that Collection derives its Authority from the Deed; and therefore muſt of itſelf fail and come to nothing, when it is oppoſite to the Deed of which it is a Collection. *Gilbert's Law of Evidence*, p. 98.

‡ This *Joſhua Cornwell* was Footman to *Nicholas Fenwick*, Eſq. and in *October* Seſſions, in Sir *Richard Brocas*'s Mayoralty, 1730, " He, and *Thomas Rivers*, of *St. Botolph Aldgate*, were indicted at the *Old-Bailey*, for *burglariouſly breaking the Houſe* of the ſaid *Nicholas Fenwick*, and ſtealing divers Pieces of Plate, to the Value of 85*l.* and " Holland Shirts to the Value of 20*l.* and other Goods, on the 8th of *September*. The Loſs of the Goods was proved by Mr. *Fenwick* and others, though no breaking open " the Houſe appeared; but he found Part of his Plate by the Direction of *John Girſt*, an Accomplice, who ſwore, That after divers Conſultations with *Cornwell*, one *Sunday* " Evening, about robbing Mr. *Fenwick*'s Houſe, it was agreed, that he and *Rivers* ſhould do it on the *Tueſday* following. Accordingly, *Girſt* and *Rivers* came to Mr. *Fenwick*'s Houſe about Two o'Clock in the Morning, and found *Cornwell* ſtanding in his Shirt, with the Door open, peeping out for them; that they went in, and *Cornwell* " opened the Door of the Beaufet, and there was a Candle burning in a Silver Candleſtick, and *Cornwell* took out the Plate, and ſet it on the Carpet on a Table, and then " went and fetched the Napkins and Linen out of a Bureau, and the Lady's laced Head, the Tea-Equipage, and two Silver Caſters; *Rivers* bundled them up. He and " *Rivers* carried all to *Rivers*'s Lodgings, and *Rivers* afterwards pawned them to one *Grub*, who ſwore he took in fifty-ſix Ounces of the Plate of *Rivers*." The Fact being plainly proved, the Jury found *Rivers* Guilty, *Death*: But as to *Cornwell*, it being a new Point, the Court directed the Jury to find a Special Verdict.

In *December* Seſſions following, the Court ordered *Joſhua Cornwell* to the Bar, and told him, *That the opening the Door of his Maſter's Houſe in the Night-time, and letting in two Perſons to rob him* (on which the Jury brought in a Special Verdict laſt Seſſions), was referred to the Twelve Judges, who adjudged his Caſe to be Burglary, and he received Sentence of Death.

Rivers was executed at *Tyburn*, *Monday*, *Nov.* 16, 1730; and *Joſhua Cornwell* was hanged at *Tyburn*, *Wedneſday*, *Dec.* 23, following. He owned, " That by the Perſuaſion of *Rivers* and *Girſt*, while in Mr. *Fenwick*'s Service, he conſpired with them to rob his Maſter; which accordingly he did, by opening the Back-door, and letting " them in, and then ſuffering them to take away the Goods mentioned in the Indictment, with many others: But ſaid, he did not hand out the Goods, as *Girſt* ſwore, " but only ſhewed them where they were; and then *Rivers* bundled them up, and they carried them off to his Lodgings."

he alone was not an Acceſſary, whom the Jury found to be *nullo modo in Conſilio*, which is only the Negative. So *Fleta*, *B.* 1. *c.* 23. *p.* 33, 34. Theſe Days had not arrived at that critical Skill; they thought it was the Participation of Guilt which conſtituted the Crime.

The Story of * *Tarquin* in *Livy* is a ſimilar Caſe; and no one can doubt, but that he was Acceſſary before the Fact, though he ſpoke not, though he ſaw not his Son *Sextus*. There is a like Story of *Thraſibulus* and *Periander* of *Corinth*, related in *Herodotus* and *Ariſtotle*.

The *Mirror*, *cap.* 1. *ſect.* 13. *page* 42. is more particular, and recites nine Kinds of Acceſſaries:

1. Thoſe who command.
2. Thoſe who conceal.
3. Thoſe who allow or conſent.
4. Thoſe who ———
5. Thoſe who aid.
6. Thoſe who are Partners in the Gain.
7. Thoſe who knew it, and did not diſturb it by Defence or Excuſe.
8. Thoſe who received them knowingly.
9. Thoſe who are in the Force.

Thus *Coke's Inſtit.* 182. in the Comment on the Statute of *Weſtminſter*, *c.* 14. Acceſſaries before the Fact are divided into three Branches, *Commandment*, *Force*, and *Aid*.

Præceptum. Under this are underſtood all thoſe that incite, procure, ſet on, or ſtir up any other to do the Fact, and are not preſent when the Fact is done.

Fortia is a Word of Art, and properly ſignifies the furniſhing a Weapon of Force to do the Fact, by Force of which the Fact is committed, and he that furniſheth is not preſent when the Fact is done; and cites *Bracton*, *B.* 3. *page* 139. "*Ubi Factum nullum, ibi Fortia nulla, nec Præ-*" *ceptum nocere debet*;" and again, "*Vulnus, Fortia, et Præceptum gene-*" *rant unicum Factum*; *non eſſet Vulnus forte, ſi non adfuiſſet Fortia*; *nec* " *Vulnus, nec Fortia, niſi Præceptum præceſſiſſet.*" And ſometimes, in a large Senſe, for any that is Acceſſary before the Fact.

Auxilium. Under this Word are to be comprehended all Perſons *counſelling*, *abetting*, *plotting*, *aſſenting*, *conſenting*, and *encouraging* to do the Fact, and are not preſent when the Act is done; for, if preſent, they are Principals. Before the Time of *Henry* the Fourth, there was no Diſtinction between preſent and not, but only he who ſtruck the Stroke was Principal; the others, who were preſent, were Acceſſaries, *Plowden* 98 and 100. *Fitz. Coron.* 33. *Brooke Coron.* 118. The Word *Procure* is often uſed by *Brooke Coron.* 19, 104, 188. *Fitz. Coron.* 33.

The View of the Common Law was to prevent, if not prevent to puniſh, all thoſe who ſhould ſtir up any one to commit a Felony: And the Law reſpects the Intention.

The Law of *England* is not a Cobweb, which Offenders may ſlip thro' by being greater Villains than are allowed of by the Laws of other Nations; and I hope this Kind of calm and deliberate Villainy ſhall not eſcape by a Criticiſm.

But it may be ſaid, that the Verdict has not found *any Communication* by expreſs Words. But this will make no Difference, whether they did it by *Blee*, or by Letter, or by any Sign; for, by whatever Method it is done, they did it: And, though there were no Words, they ſhall be Acceſſaries.

Suppoſe a Perſon ſhould plot High Treaſon, and employ another to kill the King: Here he is not Principal; but is he not Acceſſary? Certainly he is. It would be very ſingular, after all the Encomiums that have been given to the Common Law of *England*, if this ſhould not be the Law of the Land, when it is the Law of all the Nations in the World. *Julius Clarus*, in his *Practica Criminalis*, *B.* 5. *Q.* 89. puts this caſe: If a Meſſenger is employed by *A*, to convey a Letter to *B*, which Letter adviſes *B* to commit a Felony, and the Felony is committed, they are all three to be puniſhed with the ſame Puniſhment. But there is, my Lords, a Caſe of the higheſt Authority, that is, that of *Ahab* and *Naboth*, 1 *Kings*, *c.* 24. (*and very artfully recited it before he mentioned the Authority.*) Can any one ſay, that *Ahab* was not an Acceſſary, though he ſpoke not at all? I need not cite Caſes from Hiſtories of other Nations, when Sir *Thomas Overbury*'s Caſe, I. *State Trials*, *page* 331. is ſo applicable to the preſent Caſe. There was only one Principal convicted, though there were ſix Acceſſaries; and five convicted, though the Poiſon paſſed through three or four Hands; and *Franklin* was executed.

Where then is the Reaſon of the Law, that ſays, this Conſent muſt be in expreſs Words? The Conſent is the Crime, and That the Jury have found; and that *that* is ſufficient, appears from *Plowden* 473, 4. *Saunders* and *Archer*'s Caſe. Where *Archer* counſelled *Saunders*, who wanted to get rid of his Wife, to give her Poiſon in a roaſted Apple, which he accordingly did; and the Wife was going to give ſome of it to their Child, whom *Saunders* was very fond of: Whereupon he endeavoured to diſſuade her from giving it, ſaying, It is not good for Children; but the Wife anſwered, It is better for it than for me, and gave the Child ſome: But the Wife lived, and the Child died. Here *Saunders* was guilty of Murder, though he intended none to the Child; becauſe his Intention was to murder. But as to *Archer*, the Queſtion was, Whether he was *Acceſſary*? And though the Judges in this Caſe were of Opinion that he was not, yet they thought it more proper that he ſhould be delivered by a Pardon than otherwiſe, and accordingly they kept him in Priſon from one Seſſions to another, till he procured a Pardon: And *Plowden*, the Reporter, ſays, it was his Opinion, that whoever *counſels* or *commands* an evil Thing, ſhould be judged acceſſary to all which follows from that evil Action, but not from any diſtinct Thing. If I command one to ſtrike or rob another, and he kills him, I am Acceſſary to the Murder, becauſe it is done in conſequence of my Command. The ſame, if I command one to burn a particular Houſe, and he does it purſuant to my Command; but if he burns another Houſe, this is not in conſequence of my Command.

I come now, my Lords, to the ſecond general Queſtion, which is, Whether the Defendants are deprived of their Clergy? And if the firſt Propoſition is eſtabliſhed, I apprehend they are. This Queſtion depends on the Conſtruction of the Acts of the 4th and 5th of *Philip* and *Mary*, *cap.* 4. and the 3d and 4th of *William* and *Mary*, *cap.* 9.

The 4th and 5th of *Philip* and *Mary* is for the due Puniſhment of ſuch as *command*, *counſel*, or *hire* any Perſon to commit any Felony, and deprives them of their Clergy.

The 3d and 4th of *William* and *Mary* deprives thoſe of Clergy, who ſhall *comfort*, *aid*, *abet*, *aſſiſt*, *counſel*, *hire*, or *command* any Perſon to commit Felony.

Theſe Acts conſtitute no new Offence; they follow the Common Law, and are ſuppletory, and ſpeak of an Offence known at Common Law; and I ſubmit it, that if your Lordſhips determine theſe Men to be Acceſſaries *before the Fact*, unleſs the King interpoſes his Mercy, they muſt be executed. If a Statute ſpeaks of Matters known at Common Law, it muſt, as to that Matter, be conſtrued and extended according to the Common Law. *Hobart* 98. *Coke Lit.* 381. 6 *Modern* 143.

This is no new Caſe; for in a ſimilar Caſe it is determined, that if a Statute is made ſuppletory to the Common Law, and taking away the Clergy, it muſt be conſtrued liberally, *Jenkins*, 2 *Cent.* 97. The Statutes 23 *H.* VIII. and 27 *Edw.* III. which take away Clergy, are *pro bono publico*; therefore to be taken by Equity.

But it may be ſaid, that the Words *excite*, *procure*, &c. are not in the Acts of *Philip* and *Mary*, and *William* and *Mary*: But this will make no Difference; for, 1 *Anderſon* 194. the Words of the Indictment were, *excitavit*, *movit*, *et procuravit*: Reſolved, That the Indictment was good, though the Word *counſel* was out; for it is not poſſible to *excite*, *move*, and *procure*, without counſelling.

Mr. MADAN, *on the ſame Side*,

States the Queſtion as Mr. *Hume* did.

I ſhall take Notice of the Word *Aid*; and I apprehend, my Lords, that the Defendants will certainly fall within the Senſe of *Aiding*. In *Hale's Pleas of the Crown*, page 616. there is a Definition of Acceſſaries, *viz.* That which makes an Acceſſary before the Fact, is *Command*, *Counſel*, *Abetment*, or *Procurement*, by one to another, to commit a Felony, when the Commander or Counſellor is abſent at the Time of the Felony committed; for if he be preſent, he is Principal. But in the Caſe of Poiſoning, a Man may be Principal, though abſent, as in *Vaux*'s Caſe, 4 *Coke* 44, 6. *Hale's P. C.* If a Man is indicted as Principal, and acquitted, he ſhall not be indicted as Acceſſary before the Fact, *Stamford* 105. and 2 *Edw.* III. 150, 282. *Fitz. Coron.* So that *Salmon*, it may be ſaid, is no Acceſſary before the Fact (and if he is to be looked upon as a Principal, he will not come under this Indictment), becauſe he was preſent when the Fact was done. This is abſurd; for the Fact could not have been done, if he had not been preſent. Becauſe he was at *Deptford* when the Fact was committed, therefore not at the *Bell* when contrived; this is a plain *non ſequitur*.

I ſhall now conſider,

1. Whether your Lordſhips can conſider it to be a Robbery on *Salmon*, as the Indictment is for putting in Fear, which could not have happened, if he purpoſely put himſelf in the Way?
2. Whether the Priſoners, as they never ſpoke to *Kelly* and *Ellis*, are guilty of being Acceſſaries?
3. Whether, as the Priſoners agreed that *Blee* ſhould tell *Kelly* and *Ellis* that he could aſſiſt them to ſteal Linen, this will alter the caſe, as *Blee* enticed them to commit one Felony, and they committed another?

1. The Jury have found the Record of the Conviction of *Kelly* and *Ellis prout*, and your Lordſhips and the whole World are eſtopped to ſay the contrary, *viz.* That a Robbery has not been committed: For to ſay that *Salmon* was not robbed, is to ſay againſt that Record, which the Jury have found to be true. The Record lies before your Lordſhips, as Part of the Special Verdict, and Records cannot be contradicted, *Coke Lit.* 117. *b.* *Id.* 260.

In Lord *Lovat*'s Caſe, the Crown called Mr. *Murray* as Evidence againſt him: Lord *Lovat* objected to him, as he ſtood attainted of High Treaſon: It was there ſaid, he had been proceeded againſt in the *King's Bench* for not ſurrendering within the Time limited. Mr. *Murray* pleaded, he did ſurrender himſelf within the Time limited by the Act of Attainder; and the Attorney-General confeſſed his Plea to be true: How did he prove this? By the Record of the Admiſſion of his Plea to be true. And if your Lordſhips determine this to be no Robbery, it is not only overturning the original Conviction of *Kelly* and *Ellis*, but alſo the Finding of the preſent Jury.

The Matter now to be conſidered is not, whether a Robbery was committed by *Kelly* and *Ellis*, but whether the Priſoners are guilty of *counſelling* them to do it. The Parts of the finding of the Jury, ſubſequent to the finding of the Record, are now to be looked upon, as upon private Knowledge, *Plowden* 83. *b.* The Jury cannot find the Record in one Part, and contradict it in another.

Whoever *counſels* a Felony or Robbery to be done, is Acceſſary *before the Fact*: The Defendants *counſelled*, &c. *ergo* Acceſſaries *before the Fact*. That they did *counſel*, is found in the Special Verdict; and the third Propoſition follows from the Premiſſes.

But it is ſaid, that the Defendants counſelled *Blee* to counſel *Kelly* and *Ellis*.

1. What is *Counſelling*, within the Meaning of the Statutes? *Procuring*, *Moving*, are only Species of *Counſelling*, and ſhall be good in an Indictment, though the Word *Counſelling* is left out, 1 *Anderſon* 194. And I inſiſt, that by the Word *Counſel*, is not meant *Counſelling* by Word of Mouth only, though the ſecond Count of the Indictment does not conclude with a *contra Formam Statuti*; but having the Word *Counſel* in it, it will be ſufficient, 1 *H. P. C.* 525. A Man may be

* The *Gabii*, who had met with ſome Succeſs againſt the *Romans*, unanimouſly choſe *Sextus Tarquinius* for their Governor: *Itaque poſtquam ſatis virium collectum ad omnes conatus videbat*, (*ſc.* Sextus Tarquinius) *tum è ſuis unum ſciſcitatum Romam ad patrem mittit, quidnam ſe facere vellet? quandoquidem ut omnia unus Gabiis poſſet ei Dii dediſſent. Huic nuncio, quia credo dubiæ fidei videbatur, nihil voce reſponſum eſt. Rex, velut deliberabundus, in hortum adium tranſit, ſequente nuncio filii, ubi inambulans tacitus, ſumma papaverum capita dicitur baculo decuſſiſſe. Interrogando expectandoque reſponſum nuncius feſſus, ut re imperfecta, redit Gabios: quæ dixerit ipſe, quæque viderit, refert; ſeu ira, ſeu odio, ſeu ſuperbia inſita ingenio, nullam eum vocem emiſiſſe. Sexto ubi, quid vellet parens, quidve præciperet tantis ambagibus, patuit; primores civitatis, criminando alios apud populum, alios ſua ipſos invidia opportunos interemit; multi palam; quidam, in quibus minus ſpecioſa criminatio erat futura, clam interfecti.* Liv. lib. 1. cap. 54.

acquitted

acquitted upon an Indictment which concludes *contra Formam Statuti*, and found guilty of simple Felony at Common Law.

Kelly and *Ellis* were seen and approved of by all the Prisoners. As far as I can find, this Indictment is the same as all Indictments for Accessaries. The Gist of the Indictment is the *Counselling*.

A General Malice is transferable to any one a Man meets with; as Particular Malice to one Person may be transferable to another: As in *Saunders*'s Case, *Plowden* 473. The Indictment is, *ea intentione felonicè præbuit*, and reached to one not intended; so *ea intentione felonicè percussit*, will reach one who did not strike at all; for the Stroke of one extends to all that were present and abetting, *Plowden* 98.

2. If the Defendants had never seen *Ellis* and *Kelly*, the general Command to *Blee*, to procure two Persons to rob, would, by Operation of Law, *operate* against the Defendants, as soon as *Ellis* and *Kelly* were procured.

Counsel even against one not *in rerum natura*, if when the Person is in being, the Counsel is followed, it will make the Counsellor accessary, *Dyer* 186. *a*. *Blee* did nothing, said nothing, without the Advice and Consent of all the Prisoners.

3. *Blee* was directed to tell *Kelly* and *Ellis*, that he could help them to steal some Linen at *Deptford*, which he did; but told them nothing of the robbing *Salmon*.

I admit, if I *counsel* one to commit one Species of Felony, and he commits another, I am not accessary, *H. P. C.* 616. So in *H. P. C.* 618. If a Man, after having counselled another to commit Murder, and, before the Fact is done, he repents, and forbids and countermands it, he is not accessary if the Murder is committed. So in the present Case, if the Defendants intended that *Kelly* and *Ellis* should only steal Linen, and they met with *Salmon* by Chance and robbed him, the Defendants would not be accessary to that Robbery: But it appears by the Record to the contrary; their Intention was to get the Rewards offered by Act of Parliament and the Inhabitants of *Deptford*; and, from the Nature of the Action, *Blee* could not tell them the Design, for it would have been absurd to have told them; for how could *Blee* know *Salmon* would be there? This must have struck them upon his first mentioning it.

A Robbery was *counselled*, a Robbery was committed, and a Robbery was committed as counselled.

But if all these Arguments should fail, the Argument *ab inconvenienti* is often allowed to be of great Weight, and it would deserve in no Case more than the present. Had I been asked my Opinion upon such a Case as this, I should not have hesitated in my Opinion: But if, after your Lordships Determination to the contrary, I should have the same Case put to me; I should tell my Client, That provided *he saw not, nor spoke not to him that committed the Murder*, he might ride in his Coach, and laugh at his Friends, while they went to be hanged. The Defendants cannot be said to be accessary to an Accessary; for that is, by Construction of Law, one who receives another before the Fact, knowing him to be an Accessary.

But it may be said, after all, that I have produced no Case in Point; I must confess, after a long and diligent Search, I cannot find one: But there will be one; there will be a Report of this Case, and the King and *M'Daniel* and others will be a Case in Point hereafter.

Trinity Vacation, 28 *Geo.* II.

July 28, 1755.

The King against *M'Daniel* and others.

The Judges met again at Serjeant's-Inn *Hall, to hear the Arguments in Favour of the Defendants.*

Mr. *Hume* begged Leave to mention a Case which he had met with since his Argument, which seemed to be applicable to the present: That was the Case of *William Belchier*, who was tried at the *Old-Bailey*, in the Mayoralty of *Robert Alsop*, Esq; in *June* Sessions 1752. No 345. *Page* 209. and recited the Case at large from the *Sessions-Paper*, viz.

" *William Belchier* was indicted, for that he, on the King's Highway, on " *William Norton* did make an Assault, putting him in corporal Fear and " Danger of his Life, and taking from his Person five Shillings, *June* 3.

" *William Norton.* The Chaise to the *Devizes* having been robbed two " or three Times, as I was informed, I was desired to go in it, to see if " I could take the Thief, which I did on the 3d of *June*, about half " an Hour after One in the Morning. I got into the Post-Chaise: The " Post-Boy told me, the Place where he had been stopped was near the " *Half-Way House*, between *Knightsbridge* and *Kensington*. As we came " near the House, the Prisoner came to us on Foot, and said, *Driver*, " *stop*: He held a Pistol Tinder-Box to the Chaise, and said, *Your* " *Money directly, you must not stay, this Minute your Money.* (He pro- " duced the Tinder-Box). I said, Don't frighten us; I have but a " Trifle, you shall have it. Then I said to the Gentlemen, (there " were three in the Chaise) Give your Money, *&c.* I took out a Pistol " from my Coat Pocket, and from my Breeches Pocket a five-shilling " Piece, and a Dollar, and held the Pistol concealed in one Hand, and " the Money in the other. I held the Money pretty hard: He said, " Put it in my Hat. I let him take the five-shilling Piece out of my " Hand: As soon as he had taken it, I snapped my Pistol at him; it " did not go off: He staggered back, and held up his Hands, and said, " O Lord! O Lord! I jumped out of the Chaise; he ran away, and " I after him, about six or seven hundred Yards; and there took him. " I hit him a Blow on his Back; he begged for Mercy on his Knees. I " took his Neck-Cloth off, and tied his Hands with it, and brought him " back to the Chaise: Then I told the Gentlemen in the Chaise, That " was the Errand I came upon, and wished them a good Journey; and " brought the Prisoner to *London*.

" *Q.* Did you lose Sight of him in the Pursuit?

" *Norton.* No, I did not, my Lord; it was a very clear Morning.

" *Q. from the Prisoner.* Ask him how he lives?

" Norton *to the Q.* I keep a Shop in *Wych-Street*, and sometimes I " take a Thief.

" *William Messenger.* I drove the Post-Chaise. I took Mr. *Norton* in " the Chaise at *Hyde-Park* Corner; and told him, if we did not meet the " Highwayman between *Knightsbridge* and *Kensington*, we should not meet " him at all. I saw him coming, and said, *He is coming, get the Pistol* " *ready.* He came up to the Chaise, and said, *Your Money, make Haste,* " *your Money.* I heard the Pistol snap. The Prisoner said, O Lord! " and ran away, and *Norton* after him, and took him.

" *Q.* Did you ever lose Sight of him in the Pursuit?

" *Messenger.* I did, for a little Time: The Pursuit was not above " three Minutes. I heard the Prisoner cry, O Lord! the Moment he " was taken.

" *Prisoner's Defence.*

" I leave it to your Lordship and the honourable Court. Guilty, " *Death.*"

Mr. Serjeant Davy.

I have the Honour of attending your Lordships as Counsel for the Prisoners; and I must own, that I could not have been prevailed upon to have been Counsel for such a Sett of Rogues, had I not been appointed by your Lordships.

I shall consider the Question under two general Propositions:

I. Whether, upon the State of the Verdict, it does appear, that any Robbery was committed by *Ellis* and *Kelly*?

II. If there was a Robbery committed by them, Whether they are Accessaries in such a Manner as to be liable to any Judgment against them?

I shall first take Notice of the Objections which have been raised against the Defendants. And I find it is chiefly insisted on, That the Jury having found the Record *prout*, is sufficient Proof that there was a Robbery; and that the Defendants are thereby estopped to say the contrary.

I admit, that the Rules laid down relating to Estoppels shall prevail at Law. But it is as to the Extent of those Rules which I contend for; and I insist that they do not extend to Parties that are not Privies to the Record. The Reason of the Rules of Law in this Case, is, that there may be an End of Strife; for the Witness to the Record might be dead; and therefore Records shall bind Parties and Privies, but shall not bind Strangers. There is another Reason: Parties to the Record may have an Attaint for a false Verdict, or the modern Method of moving for a new Trial, but Strangers cannot.

And this appears from *Lock* and *Norbonne*, 3 *Modern* 141. Trial at Bar in Ejectment for Lands in *Wiltshire*. The Case was this:

" *Mary Philpot*, in 1678, made a Settlement, by Lease and Release, to " herself for Life, then to Trustees to support the contingent Remain- " ders; then to her first, second, and third Sons in Tail Male, *&c.* " then to *Thomas Arundel* in Tail Male, *&c.* It was objected at the " Trial, that she had no Power to make such a Settlement; because, " in the Year 1676, her Husband had settled the Lands in Question " upon her for Life, and upon the Issue of his Body, *&c.* and for Want " of such Issue, then upon *George Philpot* in Tail Male, with several " Remainders over, Remainder to *Mary Philpot* in Fee; proviso that, " upon a Tender of a Guinea to *George Philpot* by the said *Mary*, the " Limitations as to him should be void. *George Philpot* having after- " wards made a Lease of this Land to try the Title, the Trustees brought " an Ejectment; but because the Tender of a Guinea could not be " proved, there was a Verdict for the Defendant."

And now Mr. *Philpot* would have given this Verdict in Evidence at this Trial, but was not suffered by the Court; for if one Man hath a Title to several Lands, and if he should bring Ejectments against several Defendants, and recover against one, he shall not give that Verdict in Evidence against the rest: because the Party, against whom the Verdict was had, may be relieved against it if it is not good, but the rest cannot, though they claim under the same Title, and all make the same Defence.

So if two Tenants will defend a Title in Ejectment, and a Verdict be had against one, it shall not be read against the other, unless by Rule of Court.

But if an Ancestor hath a Verdict, the Heir may give it in Evidence, because he is privy to it; for he who produceth a Verdict must be either Party or Privy to it; and it shall never be received against different Persons, if it doth not appear that they are united in Interest.

Therefore a Verdict against *A* shall never be read against *B*; for it may happen that one did not make a good Defence, which the other may do.

If upon the Writ of *contra formam collationis* a Recovery is had against the Abbot, and a *scire facias* issue against the Terre-Tenant, he is not concluded by any Trial had against the Abbot, 2 *Inst.* 488. [N. B. *I have looked into the Authorities quoted, but cannot find any thing in Point.*]

If this Doctrine which the Gentlemen have laid down relating to Estoppels, and that Accessaries upon their Trial cannot controvert the Robbery, should be admitted,

It would,

1. Encounter the known Principles of natural Justice.
2. Be contrary to the Principles of Law, and the Practice in Trials.
3. Contrary to Authorities.

Suppose *A* is indicted and convicted of the Murder of *B*, and *C* is afterwards tried as Accessary to *A*, and upon the Trial the Prosecutor brings the Record of the Conviction of *A*, to prove the Murder: *C* admits that he did give such Counsel, but that it was never executed, for *B* is still alive, and offers to bring Proof of it: No, say the Gentlemen, here is a Record, which says he was murdered, and Records cannot be contradicted; therefore *C* must be hanged. If this is the Law of *England*, it is contrary to the Law of God. But it may be said, that in such a Case the Crown would pardon: But that is a Favour. Mercy is the King's Privilege, and the brightest Diadem he wears; Justice is the peculiar Attribute of the Law.

The same Doctrine with that I have laid down holds with those who are to bring a Writ of Error; for none can bring a Writ of Error, but, 1. Parties; 2. Privies; 3. Those who may receive any Advantage from the Reversal of the Judgment: But it is contrary to the Rules of Law, to assign Error contrary to what appears upon the Face of the

Record, 1 *Rolle's Abridgement*, 747, 1, 2, 3, 4. *Dyer* 90. 5 *Coke* 39. *b. Godbolt* 377. 1 *Leon.* 261.

The great object of the Law is to protect the Innocent; the Punishment of the Guilty is only so far observed, as it tends to protect the Innocent; every thing, therefore, which tends to destroy the Innocent, is against Law. So Records are often the Effects of Perjury; and those who are guilty of Perjury may be tried, notwithstanding the Record is not reversed. As for Instance, *A* is indicted for assaulting *B*. To prove the Assault, *J. S.* is called as a Witness, and he swears he saw it: Afterwards *B* indicts *J. S.* for Perjury, which Indictment sets forth, that there was such an Indictment found against *A*, &c. and that he was found guilty upon it, *&c.* Upon this Trial the first Thing produced is the Record of *A*'s Indictment, which sets forth, that *A* was indicted and found guilty. It would be impossible therefore, according to the Doctrine the Gentlemen have laid down, that *J. S.* could be tried; for here is a Record which says, that *A* was convicted.—So in *Canning*'s Case, (*p.* 223.) a Case which has lately happened, and has made a great deal of Noise; I was concerned in it; and upon her Trial, the Record of the Conviction of *Mary Squires* was produced, and it remains still, and *Squires* is subject to all the Disadvantages attending it.

'Tis said, that Records cannot be contradicted; but they often are, as in the Case put. A Record is no Evidence in some Cases; as suppose the above Case, and afterwards *B* brings an Action for the same Assault against *A*, who has been already indicted and convicted, the Record is no Evidence. I speak this with great Deference to your Lordships: I think it is not Evidence, but I am sure it is not conclusive.

The Reason why Accessaries cannot be tried till the Principal is convicted, is this: The Principal best knows, whether he is guilty or no; and therefore is best able to make his Defence.

I must own, the Case cited from *Brooke*, Tit. *Verdict*, *pl.* 96. by Mr. *Hume*, has an ugly Aspect; but upon looking into the Year-Book from whence it is abridged, I find it will answer no Purpose at all; and as it is a Case somewhat curious, I beg Leave to mention it (*and then recited the Case*, quod vide).

It was insisted, That it was sufficient to say that the Principal was convicted, not that the Principal Felony was convicted: The Reason is, because, upon the Face of the Record, the Conviction is a presumptive Proof of it, and the Accessary may endeavour to acquit himself either by denying the Counsel or the Principal Felony.

I apprehend it is a Maxim, That in all Special Verdicts, the Judges will only judge of what the Jury find in their Verdict, and so it was resolved in 2 *Siderfin* 8. *Street* v. *Roberts*.

The Jury finding the Record, is no Proof that it is true. Their finding is of the Fact of the Existence of the Record: And your Lordships can only from thence judge that the Principals were convicted, sufficient to bring the Accessaries to their Trial. The Question then is, Whether this Special Verdict finds, that any Felony was committed by *Kelly* and *Ellis?*

There are some Words in the Verdict which I consider as only descriptive, and chuse to lay out of it: *Feloniously robbed.* The Office of the Jury is to find the Fact, and leave the Law to the Judgment of the Court. In 9 *Co.* 69. *Mackally*'s Case, Exception was taken, because it was not found by the Verdict that the said *Mackally felonicè percussit*, but *percussit* only; *sed non allocatur*, for the Reason above. If then the omitting the Word *felonicè* will not hinder the Fact from being a Felony, the putting it in will not make it a Felony. Having stripped the Verdict of these unnecessary Words, which the Jury had no Right to put in, I shall consider the Nature of a Robbery; and here, in order to constitute a Robbery, two Things are necessary:

1. Violence, and putting in Fear.
2. A taking against the Will.

If either of these are wanting, there is no Robbery. 3 *Inst.* 68. Fear constitutes the Difference between a Robber and a Cut-purse.

2. The taking against the Will; for *Volenti non fit injuria.* So *Bracton*, *b.* 3. *fol.* 150. *b. Furtum est contrectatio rei alienæ fraudulenta, cum animo furandi, invito illo domino, cujus res illa fuerit* *.

Let a Man, when he parts with his Money to a Robber, be asked, If he gives it willingly? No; he chuses the lesser Evil to avoid the greater, and had rather suffer the Loss of his Money than Death.

As to the Case of swearing to put Money, *&c.* the Answer to that is given in the Book. 'Tis the Fear and the Oath continuing, which make it a Robbery: Suppose a Man did not think the Oath obligatory, and had no Fear upon him, then I apprehend, my Lords, it would be no Robbery.

But suppose that *Salmon* was put in Fear, the Defendants must be acquitted. As to *Salmon*, the Jury are silent as to his being afraid: They have in Fact found that he was not afraid, because they have found the Fact was done according to his Agreement. But the putting in Fear ought to be found positively, or to appear from the Words of the Verdict.

'Tis insisted by the Gentlemen on the other Side, that this was a Felony to which *Salmon* was Accessary before the Fact; they might have gone a little further, and made him Principal, as *aiding* that *Counsel* which he had given. If Principal, he might have been indicted as Principal: Where there are many Principals, each is a separate Offence, and each may be separately indicted: If so, *Salmon* might be indicted alone (*and then recited Part of the Indictment as it would stand against him, to shew the Absurdity of it*).

Whether *Salmon* consented or not to *Blee*, he certainly did not to *Kelly* and *Ellis*; their Intent was to rob a Man against his Will, and if *Salmon* did consent to be robbed, it could be no Robbery.

Mr. *Hume* insisted, that nothing appeared in the Verdict contrary to the Record of Conviction. But there certainly is, for it first finds a Robbery, and afterwards finds such Circumstances as make it impossible there should be a Robbery. And *Hobart* 53. *Foster* and *Jackson*, Wherever a Jury begin with a Direct and end with a Special Matter, which is either contrary to their Verdict or to Law, the Special Matter shall over-rule the General.

1 *Inst.* 227. *a.* and 4 *Co.* 53. *Rawlin*'s Case. The Court held, that the Jury being sworn *ad veritatem dicendam*, must leave the Matter of Law to the Court; and if the Jury find an Estoppel, the Court will not regard it, but will judge upon the Special Matter.

Every Fact found by the Jury ought to be attended to, your Lordships see, even in Disputes relating to Property; God forbid, that in Favour of Life any should be neglected.

If the Conviction of *Ellis* and *Kelly* be any Proof of a Robbery, then the Jury have found the Record one Way, and the Fact another.

I come now to the second Question; which is, Whether, supposing a Robbery to have been committed, the Defendants are Accessaries in such a Manner as to be liable to any Judgment against them?

If *Blee* was no Accessary, the Defendants cannot. In Reality this was a Felony committed by *Ellis* and *Kelly* spontaneously, and without any Accessary at all. In order to make this a Robbery by Procurement, these three Things are necessary to be proved:

1. That this was the very Robbery which *Blee* undertook to procure *Kelly* and *Ellis* to commit.
2.

3. Whether the Defendants are within the Statutes of *Philip* and *Mary*.

The Question is, whether *Blee* procured *Kelly* and *Ellis* to commit this Robbery? And here I must observe, that the Word *Procure* is the most general of all those applied to Accessaries: But it is plain, he did not procure them to commit this Robbery, but to steal Linen; and whatever was intended by *Blee*, cannot fall under Consideration.

There is a Distinction between procuring an Act to be done, and procuring the Persons to commit it. As for Instance, If I am walking in the Street, and designedly let my Handkerchief hang out of my Pocket, in order that it may induce Somebody to pick it; here I could not be said to procure the Persons to commit this Felony, but the Felony to be committed. The Act intended to be committed must be communicated to the Parties who are to commit it. And whether the Defendants intended that *Kelly* and *Ellis* should steal Linen or no, they were originally acted by such a Disposition, and this Robbery was committed without any previous Intention of *Kelly* and *Ellis*, and therefore there can be no Accessaries; as in Manslaughter there are no Accessaries before, because the Nature of it implies that it was done without Premeditation or Design: Therefore if, upon an Indictment for Murder, the Principal is convicted of Manslaughter, the Accessary is *ipso facto* discharged, *Moore* 461. *Goose*'s Case. 4 *Co.* 44. 1 *Hale's P. C.* 437.

But let us consider, whether the Defendants are within the Statutes of *Philip* and *Mary*.

The Word *Procure* is put into the second Count; and if the Defendants are at all guilty, they are guilty of all.

The Word *Procure*, which is not in the Statutes, is added to some Words which are in the Statutes, and if the Defendants merely *procured*, no Judgment can be given against them upon this Indictment: For, if they *procured* without *counselling*, they will not come within the Statute.

[Judge *Foster* observed, That the Word *Procure* was in all the Precedents of Indictments.]

Mr. Serj. *Davy.* I admit the Case which was laid down relating to the Construction of Statutes, which being made for the public Good, should be construed for the public Good.

But Statutes now shall have a very particular Construction.

It is going a great Way to extend Penal Statutes to operate capitally.

Greville's Case, 1 *Anderson* 194. is different from this; the Words there were *Excited*, *Moved*, and *Procured*; and the Judgment was, that it included *Counsel*. Suppose *Excited* and *Moved* had been out, the Court would not have given the same Opinion on the Word *Procure*. Counselling is but one Species of Procuring, which is the Genus; and therefore, by this Way of Reasoning, he that is guilty of the Species is guilty of the Genus.

There are many Ways of Counselling without Procuring; *Blee*'s Procuring cannot be extended to mean the Defendant's Procuring.

It will be proper to review the Facts as they stand to each Count.

The general Question is, Who moved? The Defendants did not; for they had no Communication with either *Kelly* or *Ellis*, by any Way whatsoever. If *Kelly* and *Ellis* had been asked, By whose Advice are you doing this Felony? the Answer would have been, By *Blee*, not by the Defendants. *Blee* advises them to steal Linen, and the Defendants advised *Blee* to be an Accessary.

I admit all Mr. *Hume*'s Doctrine relating to Signs, Messages, *&c.* The Meaning of the Counsellor must be conveyed to the Perpetrator of the Fact, and the Consent must be in consequence of the Advice, in order to make him a *Commander*, *Adviser*, and *Counsellor*: So that *Tarquin*'s Case does not come up to this Case. The Slave was the passive Instrument to convey *Tarquin*'s Mind; but here *Blee* gave *Blee*'s Advice. Who did procure? The Answer is, *Blee*. If a Stranger had advised *Tarquin*, would he have been Accessary to *Sextus?* There is a Difference between *advising* a Thing to be done, and *procuring* it to be done. The Words of the Statute are applied to advising any Person to commit a Felony, not any Felony to be committed. The Defendants *counselled*, before any Persons were fixed upon.

The Act of Forgery is, Whoever shall forge, or procure to be forged, or assist [in procuring] to be forged; if procured the Forgery, he is a Principal; if procured a Person to commit the Forgery, an Accessary.

Jenkins only means the Receiver.

If all the intermediate Persons are to be considered as Accessaries, then it will be proper to consider, whether the Defendants did advise any Felony to be committed. The Agreement was, that they should rob *Salmon*, who agreed that it should be done. *Salmon* could not be robbed by his own Consent. This does not refer to the Record: But if there was a Robbery, the Felony exceeds the Agreement, for no Felony was agreed to be done; only the Appearance of a Felony, which those who did it should apprehend was a Felony; and that they might avail themselves of

* *Bracton* adds, *Cum animo dico, quia sine animo furandi non committitur*, sc. *furtum.* Q. Whether the *Animus furandi*, which is agreed on all Sides to have been in *Kelly* and *Ellis*, will not constitute this *Furtum?*

that Appearance, either the Goods taken from *Salmon* were taken againſt his Will, or not.

If againſt his Will, it was different from the Agreement, which was, that he ſhould part with them willingly: If not againſt his Will, there could be no Felony. I admit that *Salmon* might be in Fear, if they had taken more than he agreed to part with; but *eo inſtante* that his Will departed from him, there was a Departure from the Agreement; this extends to all the Defendants.

As to the Caſe of *Ahab* and *Jezebel*, which my learned Friend cited, however guilty they may have been deemed, they are certainly not Acceſſaries according to the Law of *England*; according to which Law the Defendants are to be tried.

Mr. Aston, *on the ſame Side.*

I alſo have the Honour of being appointed by your Lordſhips as Counſel for the Defendants; and here I cannot but obſerve, how tender the Law is in Favour of the worſt of Men, that it allows them to make uſe of Subtilties before ſuch an auguſt Aſſembly.

Before I conſider the Argument made uſe of by the Gentlemen on the other Side, I ſhall juſt mention an Objection upon the Face of the Indictment.---By the Common Law, an Acceſſary in one County could not be tried in another: But by 2 *Edw.* VI. *c.* 24. Acceſſaries may be tried in that County where the Offence of Acceſſary was committed, 9 *Co.* 118. *a.* It is not ſet forth in the Indictment, that the Fact was committed in *Kent*, only that the Party was indicted there; and the Defendants are to be tried by this Jury, not by the Jury of *Ellis* and *Kelly*.

I ſhall conſider three Things:

Firſt, it is ſaid, That the Defendants muſt be Acceſſaries to the Offence which was committed. In Anſwer to which,

1. This Verdict does not find any Felony or Robbery, which can make the Defendants Acceſſaries to any Felony or Robbery charged in the Indictment.
2. The Defendants were not eſtopped from controverting the Fact of the Robbery.
3. Suppoſing the Felony and Robbery ſufficiently found, it is not ſufficiently found to make the Defendants Acceſſaries.

The *Aiding* and *Abetting* is a Matter of Fact, which this Jury ought to find, which they do not here find.

I admit that the Jury have properly found the Record *prout*. The Jury muſt proceed to ſtate the Facts, which make the Defendants Acceſſaries, and the Finding muſt be of the actual Felony laid in the Indictment. There is no Time found when *Kelly* and *Ellis* committed the Robbery on *Salmon*; it may be after the Robbery on which they were convicted. *Pulton, de Pace* 128. defines a Robbery to be the felonious taking away any Thing from the Perſon of another againſt his Will. *Fitz. Coron.* 115.

The Caſe of the King and *Belchier*, which Mr. *Hume* mentioned, was put out of Doubt by the Jury finding him Guilty; therefore he was put in Fear, which is eſſential to conſtitute it a Robbery, as appears 1 *Hawkins* 96, 97. *Hale P. C.* 534. *Dyer* 224. *Keyling* 70. 3 *Inſt.* 68. *Pulton* 128. By the Omiſſion, the Nature of the Offence is varied; it muſt be expreſsly found that he was put in Fear, otherwiſe it will be no Robbery.

As to the Caſe of ſwearing to put Money, *Pulton* 128. *ſect.* 28. gives the Reaſon why it is deemed a Robbery; becauſe (ſays he) it is againſt his Will.

The Verdict cannot be helped by any Intendment, 2 *Hawkins* 47, 9. King and *Plummer*. *Keyling* 111. But it is ſaid, that the Jury having found the Record, it operates by Way of Eſtoppel. But the Record found, and the Fact found, may ſtand conſiſtent with the ſubtle Doctrine of Eſtoppels. Therefore I will lay all that out of the Queſtion; for nothing can be implied in this Caſe. The Jury have found Facts which muſt ſpeak for themſelves: The Jury have only found the Record. The Record of Conviction is not falſified; but the Charge upon the Fact is not ſufficiently proved, and the Acceſſary has a Right to controvert the Robbery; and there are Inſtances where Acceſſaries have been executed before the Conviction of the Principal, and upon the Principal's coming Home, found Innocent, 9 *Co.* 119. *b.* *Pulton* 140, 1. gives the Reaſon, becauſe the Party has waived that Privilege the Law gives him. Acceſſaries may be indicted with the Principal, and in the ſame Indictment; and then the Jury is firſt aſked, Whether the Principal is guilty or no? But they may be indicted ſeparate; and *Plowden* 100. ſays, might have ſeparate *Venires*.

The Conviction of the Principal is only to ſubſtantiate and warrant the Court to proceed to the Trial of the Acceſſary: In the preſent Caſe, this Indictment ſtating this Conviction is no more than a *Mode* neceſſary to found this Trial: It proves no Guilt, only is intended to try Guilt. There muſt be Proof of the Procurement of the Act, and of the doing the Act in conſequence of that Procurement.

The Defendants, in general, may give every Thing in Evidence which will ſhew them to be not guilty of the Charge: What then is ſo proper as to ſhew there was no Felony committed, and therefore not guilty of being Acceſſaries?

Wherever a Plaintiff brings an Action to defeat a Record, he is not eſtopped by the Record. Whenever a Record is made uſe of to found a Charge, the Defendant may make uſe of, and give Evidence againſt it. 6 *Mod.* 216. *Cro. Car.* 531.

Verdicts may be defeated in their Operation.

Suppoſing this Felony is ſufficiently found, yet it is not found ſo as to make the Defendants Acceſſaries. This will depend on the Nature of Acceſſaries, and what Privity there muſt be between the Principal and Acceſſary, and how far it is neceſſary the Act agreed to be done ſhould be done. In order to make an Acceſſary before the Fact, the Aſſent muſt be expreſs and ſhewn, *Cro. Eliz.* 540. *pl.* 4.

All the Caſes of *Tarquin* carry the Communication home to the Principal. And ſo in *Saunders* and *Archer*'s Caſe, *Plowden* 475. the Judges ſaid, that *Archer* was not guilty of being acceſſary to the Death of the Child, as there was no Communication by Words between him and *Saunders* concerning the Child, only concerning the Wife.

And that the Felony intended muſt be communicated, appears further from *Pepham* 143.

Suppoſe a Man ſends a Letter to *A*, counſelling him to kill *B*; but *A* does it before he receives the Letter; here there is no Communication, and ſo he is not guilty of being Acceſſary.

2. The Act committed muſt be the ſame as was agreed to be done, or in conſequence of that Agreement, as in *Saunders*'s Caſe, *Plowden* 475: There was no Perſuaſion to induce *Ellis* and *Kelly* to commit the Robbery on *Salmon*; for the Verdict ſays, they were never told of that being the Robbery intended.

The *Procurement* then was only to commit Larceny; and it was contingent, whether Grand or Petit Larceny; for it depended on the Value of the Goods they took. As to what Mr. *Hume* ſaid, that ſtealing Linen was the Artifice by which *Ellis* and *Kelly* were to be entrapped; it is not found, that it was the Artifice.

But laſtly, There is a Caſe founded on very great Authority, 2 Lord *Raymond* 1574; 1586. the King againſt *Huggins*, (*Vide State Trials*, *Vol.* IX.) where it is ſaid; that the Aiding and Abetting is a Matter of Fact, and muſt be found by the Jury, and not left to the Court: Same Caſe, 2 *Strange* 885, 6. The Court there ſaid, We are to determine upon Facts, not upon the Evidence of Facts: It muſt be expreſsly found that they have *aided* and *abetted*.

When a Perſon is ouſted of Clergy by Act of Parliament, two Things are neceſſary:

1. That the Indictment preciſely brings the Party within the Statute; otherwiſe, though poſſibly the Fact itſelf may be within the Statute, and it may ſo appear upon the Evidence; yet, if it be not alledged in the Indictment, the Party, the Convict, ſhall have his Clergy.
2. If the Fact laid in the Indictment does come within the Statute, yet, if upon the Evidence, though it is a Felony, it appears not to be ſo qualified as laid in the Indictment, the Jury ought to find him guilty of the Felony only, but not in the Manner laid in the Indictment; as for Inſtance, Guilty of the Felony, but not of the Robbery; and thereupon the Priſoner ſhall have his Clergy, 2 *Hale P. C.* 236.

Mr. Hume's *Reply.*

'Tis now, my Lords, incumbent upon me, in this Caſe, of ſo great Importance to the Defendants, the Law, and the Public, to offer ſomething to your Lordſhips by Way of Reply. I ſhall beg Leave, therefore, firſt of all, to lay two Objections, which were ſtarted by Mr. *Aſton*, out of the Caſe:

1. To the Form of the Indictment, becauſe the Queſtion now is not in Arreſt of Judgment.
2. The laſt Objections from the Caſe of the King and *Plummer*, and the King and *Huggins*.

I admit that the Jury are to find Facts. The Jury find that they *Aided*; this is finding that they *were Acceſſaries*, and ſo there was no Need of a Special Verdict. The Special Verdict is only, that the Judges may determine, whether what they have found will make them Acceſſaries or no.

I ſhall firſt conſider what is to be the Effect of the Record of Conviction. It may have two:

1. It may be deciſive and concluſive, in reſpect to all the Defendants, of the principal Felony exiſting, and ſaid to be committed.
2. It may be Evidence, on the Part of the Crown, of the Fact, ſufficient to prove the Fact, *&c.* thereby rendering it neceſſary for the Defendants to prove the contrary.

I lay out of the Caſe all that was ſaid of the Caſes where Records are no Evidence at all; for here the Record is Evidence legal and neceſſary.

Mr. *Aſton* ſeemed to contend, that the Record might be Evidence, but ſuch as to throw the *onus probandi* on the Defendants.

1. As to the Principal's being convicted firſt; all the Indictments are in the preſent Form.

The Defendants muſt give that in Evidence, according to the Nature of Evidence, and ſuch as the Law will admit. If the Record of the Conviction is ſufficient to ſupport the Charge, the Defendants cannot give parol Evidence againſt it.

2. Whether it does not operate on the Part of the Crown, unleſs any Evidence be given againſt it.

If the Defendants had given any Evidence, and the Jury had been of Opinion, that it appeared that there was no Robbery, the Judges would have directed a General Verdict. The Defendants ought to ſhew, that there was no Robbery committed in this Verdict. Let us ſee then, whether or no there is a Robbery found. It is found, that the Goods were taken by Aſſault, and feloniouſly: 'Tis not found, that he conſented to deliver the Goods. How can *Salmon*'s Agreement at the *Bell* be taken to go to an after-time in the High Road, that he did aſſent to be robbed? This would be contradictory to the Verdict.

Your Lordſhips are to take the Robbery at the Time of the Commitment of it in the High-way, and to conſider whether it is found, that *Salmon* was robbed voluntarily, ſuppoſing there was a Robbery committed by them. All the Defendants ſaw *Kelly* and *Ellis*, but *Salmon* did not. If *Salmon* was put in Fear, ſays the learned Serjeant, it was not what he agreed to; for the Agreement was, that he ſhould be robbed voluntarily. Now the Fact was, that not knowing the Perſons who were to rob him, upon being uſed a little roughly by them, he trembled, and ſaid, *Take what I have got, Gentlemen; don't uſe me ill.* Vide *Trial, p.* 421.

The Caſes cited by the Serjeant and Mr. *Aſton* prove, that *Salmon* could not be a Principal to a Robbery upon himſelf; yet he may be an Acceſſary to that Robbery which was plotted at the *Bell*.

If *Kelly* and *Ellis* had ſtolen the Linen, the Defendants would not have been Acceſſaries, becauſe that was not the Felony plotted.

There may be Acceſſaries without Communication by *Privity*, *Aſſent*, and *Conſent:* Are theſe Defendants Acceſſaries, *Auxilio, vel Præcepto, vel Mandato?* And though *Delegatus non poteſt delegare*, yet, *qui facit per alium, facit per ſe.* And ſo all the Links of this Chain are found: The whole Chain hangs together, and your Lordſhips cannot ſeparate it. If *Plotting* makes a Man Acceſſary, did they not plot? If *Conſenting* is neceſſary, did they not conſent?

In *December* 1755, at the *Old-Baily* Seſſions, Juſtice *Foſter* pronounced the Judgment of the Court in the Caſe between the King and *M'Daniel* and others, to the Effect following:

THE Indictment chargeth, that at the General Gaol-delivery held at *Maidſtone* in the County of *Kent*, on the 13th of *Auguſt*, in the twenty-eighth

eighth Year of the King, *Peter Kelly* and *John Ellis* were by due Courſe of Law convicted of a Felony and Robbery committed by them in the King's Highway in the Pariſh of *St. Paul, Deptford*, in the County of *Kent*, upon the Perſon of *James Salmon*, one of the Priſoners at the Bar; and that the Priſoners *Stephen M'Daniel, John Berry, James Egan*, and *James Salmon*, before the ſaid Robbery, did, in the Pariſh of *St. Andrew, Holbourn*, in this City, feloniouſly and maliciouſly Comfort, Aid, Aſſiſt, Abet, Counſel, Hire, and Command the ſaid *Peter Kelly* and *John Ellis* to commit the ſaid Felony and Robbery.

On this Indictment the Priſoners have been tried, and the Jury have found a Special Verdict to this Effect:

"That *Kelly* and *Ellis* were by due Courſe of Law convicted of the ſaid "Felony and Robbery.

"That before the Robbery, all the Priſoners and one *Thomas Blee*, in "order to procure to themſelves the Rewards given by Act of Parliament for apprehending Robbers on the Highway, did maliciouſly and "feloniouſly meet at the *Bell-Inn* in *Holborn* in this City; and did then "and there agree, That the ſaid *Thomas Blee* ſhould procure two Perſons "to commit a Robbery on the Highway in the Pariſh of *St. Paul, Deptford*, upon the Perſon of the Priſoner *Salmon*.

"That for that Purpoſe they did all maliciouſly and feloniouſly contrive and agree, that the ſaid *Blee* ſhould inform the Perſons ſo to be "procured, that he would aſſiſt them in ſtealing Linen in the Pariſh of "*St. Paul, Deptford*.

"That in Purſuance of this Agreement, and with the Privity of all the "Priſoners, the ſaid *Blee* did engage and procure the ſaid *Ellis* and *Kelly* "to go with him to *Deptford* in order to ſteal Linen; but did not at *any* "*Time before the Robbery inform them, or either of them, of the intended Robbery*.

"That in conſequence of the ſaid Agreement at the *Bell*, and with the "Privity of all the Priſoners, the ſaid *Ellis* and *Kelly* went with the ſaid "*Blee* to *Deptford*.

"That the ſaid *Blee, Ellis*, and *Kelly* being there, and the Priſoner *Balmon* being likewiſe there waiting in the Highway in purſuance of the "ſaid Agreement, the ſaid *Blee, Ellis*, and *Kelly* feloniouſly aſſaulted "him, and took from his Perſon the Money and Goods mentioned in the "Indictment.

"They further find, that none of the Priſoners had any Converſation "with the ſaid *Ellis* and *Kelly*, or either of them, previous to the Robbery. But they find that, before the Robbery, the Priſoners *M'Daniel*, "*Egan*, and *Berry* ſaw the ſaid *Ellis* and *Kelly*, and approved of them as "Perſons proper for the Purpoſe of robbing the ſaid *Salmon*."

But whether the Priſoners are guilty in Manner as charged in the Indictment, they pray the Advice of the Court.

This Special Verdict hath been argued before all the Judges of *England*, and two Queſtions have been made.

Firſt, Whether it appeareth from the Facts ſtated in the Special Verdict, that any Robbery was committed by *Ellis* and *Kelly* on the Perſon of *James Salmon*?

Second, Suppoſing that *Ellis* and *Kelly* were guilty as Principals in the Robbery, whether the Facts found will warrant the Court in paſſing Judgment upon the Priſoners, or any of them, upon this Indictment?

The ſecond Point ſeemeth to have been the Doubt on which the Jury pray the Advice of the Court; and I have Reaſon to believe, that when it firſt came to be conſidered, it was Matter of great Doubt with ſome Gentlemen of the Profeſſion, whoſe Abilities were never yet called in Queſtion.

For which Reaſon, and becauſe the Law touching Acceſſaries before the Fact is a Matter of great and very extenſive Conſequence to the Juſtice of the Kingdom, and ought to be well underſtood, I will deliver my Thoughts upon the ſecond Queſtion, before I come to that which will finally govern the preſent Caſe.

As to the Priſoner *Salmon*, the Judges, upon Conſideration of this Special Verdict, are unanimouſly of Opinion, that he cannot be guilty within this Indictment: For unleſs he was Party to the Agreement at the *Bell*, there can be no Colour to involve him in the Guilt of *Ellis* and *Kelly*.

And on the other hand, if he did part with his Money and Goods in Conſequence of that Agreement, it cannot be ſaid that in legal Conſtruction he was robbed at all; ſince it is of the Eſſence of Robbery and Larceny, that the Goods be taken *againſt the Will of the Owner*.

There was a late Caſe (*Belchier* and *Norton*'s) cited in the Argument on the Part of the Crown, which I ſhall conſider by and bye, and diſtinguiſh from the preſent.

It hath been held, (*Cromp. Juſt.* 41. *b. pl.* 4, 5.) and I think rightly, that a Man may make himſelf an Acceſſary after the Fact to a Larceny of his own Goods, or to a Robbery on himſelf, by harbouring or concealing the Thief, or aſſiſting in his Eſcape.

And under ſome Circumſtances a Man may be guilty of Larceny in ſtealing his own Goods, or of Robbery, in taking his own Property from the Perſon of another. *A* delivereth Goods to *B*, to keep for him (1 *Hale* 513.) and then ſtealeth them, *with Intent to charge* B. *with the Value of them*, (*Stanf.* 26. *A.* 3. *Inſt.* 110.) this would be Felony in *A*. Or, *A* having delivered Money to his Servant to carry to ſome diſtant Place, diſguiſeth himſelf and robbeth the Servant on the Road, *with Intent to charge the Hundred*, this, I doubt not, would be Robbery in *A*.

For in theſe Caſes the Money and Goods were taken from thoſe who had *a ſpecial temporary Property* in them, with a wicked, fraudulent Intention; which is the antient known Definition of Larceny, *Fraudulenta Obtrectatio Rei alienæ invito Domino*. But I never did hear, before this Time, of any Attempt to charge a Man as Acceſſary before the Fact to a Robbery committed on his own Perſon.

As to the Priſoners *M'Daniel, Berry*, and *Egan*, the Judges are unanimouſly of Opinion, That ſuppoſing a Robbery was committed on *Salmon*, the Facts found by the Special Verdict are ſufficient to charge them as Acceſſaries in the Manner they are charged in this Indictment.

For the Verdict findeth, that every Circumſtance attending the Fact, the Place where, and the Perſon on whom it was to be committed, the Means by which it was to be effected, and the Perſons by whom it was to be done; all theſe Circumſtances were ſettled and agreed upon by the Priſoners previous to the Fact: And in conſequence of this Conſult and Agreement the Fact was committed.

It is indeed found, that none of the Priſoners had any Converſation with *Ellis* and *Kelly* previous to the Robbery; and that *Blee* did not acquaint *Ellis* and *Kelly* with his Intention to commit any Robbery, but drew them to *Deptford* under Pretence of ſtealing Linen.

Theſe Circumſtances ſeem to have been the Foundation of the Jury's Doubt; and the Priſoner's Counſel have laid great Streſs on them.

As to that Circumſtance, that *Blee*'s true Deſign was not made known to *Ellis* and *Kelly*, it appeareth manifeſtly by the Facts found, that it was Part of the original Agreement at the *Bell*, that the *true Deſign ſhould be concealed from them*; and that they were to be drawn to the Place of Action under another Pretence. This Circumſtance therefore being Part of the original Agreement, the Priſoners cannot avail themſelves of it, if the Agreement upon the whole, and what was done in conſequence of it, be ſufficient to make them Acceſſaries.

As to the other Circumſtance, that the Priſoners had no Converſation with *Ellis* and *Kelly* before the Aſſault upon *Salmon*, their Counſel relied chiefly on the Words of the Statutes on which this Indictment is founded.

The Statutes are the 4th and 5th of *Phil.* and *Mar. c.* 4. and the 3d and 4th of *W.* and *Mar. c.* 9. The Words of the former, which are deſcriptive of the Offence, are, "If any Perſon ſhall maliciouſly *Counſel, Hire*, or *Command*." The latter retaineth the Words *Counſel, Hire*, or *Command*, and addeth others, "ſhall *Comfort, Aid, Abet*, or *Aſſiſt*." From theſe Words, which it muſt be admitted are deſcriptive of the Offence, the Priſoners Counſel concluded, That without a perſonal, immediate Communication of Counſels, Intentions, and Views, from the ſuppoſed Acceſſaries to the Principals, there can be no Acceſſary before the Fact.

But the Judges are all of Opinion, That whoever procureth a Felony to be committed, though it be by the Intervention of a third Perſon, is an Acceſſary before the Fact, and within theſe Statutes. For what is there in the Notion of Commanding, Hiring, Counſelling, Aiding or Abetting, which may not be effected by the Intervention of a third Perſon, without any direct immediate Connection between the firſt Mover and the Actor? *A* biddeth his Servant hire Somebody, no Matter whom, to murder *B*, and furniſheth him with Money for that Purpoſe; the Servant procureth *C*, a Perſon whom *A* never ſaw or heard of, to do it. Is not *A*, who is manifeſtly the firſt Mover or Contriver of the Murder, an Acceſſary before the Fact? It would be a Reproach to the Juſtice of the Kingdom to ſuppoſe he is not.

It is a Principle in Law which can never be controverted, That he who procureth a Felony to be done is a Felon. If preſent, he is a Principal; if abſent, an Acceſſary before the Fact.

In the Caſe of the Earl of *Somerſet*, (I. *St. Trial.*) who was indicted upon the Statute of *Phil.* and *Mar.* as an Acceſſary before the Fact to the Murder of Sir *Thomas Overbury*, the Lord Chancellor *Elleſmere*, High-Steward, in the Outſet of the Cauſe, and before any Evidence given, directed the Peers Triers, and all the Judges preſent concurred with his Lordſhip, that the only Point in Iſſue was, *Whether the Earl cauſed or procured the Murder, or not.* And accordingly the Earl was found guilty upon Evidence which ſatisfied his Peers, that he had contributed to the Murder by the Intervention of his Lady, and of Sir *Jarvis Elways*, and *Franklin*, who were themſelves no more than Acceſſaries, without any Sort of Proof that he had ever converſed with *Weſton*, the only Principal in the Murder, or had correſponded with him directly by Letter or Meſſage.

The beſt Writers on the Crown Law agree, that Perſons Procuring, or even Conſenting before-hand, are Acceſſaries before the Fact.

Lord *Coke*, in his Comment on *Weſt.* 1. *c.* 14. in explaining the Words *Commandment* and *Aid* as applied to Acceſſaries before the Fact, ſaith, "Under this Word *Command* are comprehended all thoſe who Incite, Procure, "Set-on, or Stir-up any to do the Fact. And under the Word *Aid* are "comprehended all Perſons Counſelling, Abetting, Plotting, Aſſenting, "Conſenting, and Encouraging to do the Fact, and not preſent when it "is committed."

Lord *Hale* ſaith, (1 *Hale* 374.) "Miſpriſion of Felony is Concealing a "Felony which a Man knoweth, but never conſented to; for *if he conſented, he is either Principal or Acceſſary.* (Id. 615, 616.) Again, Acceſſary before, is he that, being abſent at the Time of the Felony committed, doth yet Procure, Counſel, or Abet another to commit the Felony."

Many Authorities to this Purpoſe may be cited, which for Brevity ſake I will barely refer to *.

It was objected by the Priſoners Counſel, that Penal Statutes are to be conſtrued with great Strictneſs; and that the Words *Procure* or *Conſent* are not to be found in either of the Statutes upon which this Indictment is formed.

The Principle is true, that in Proſecutions on Penal Statutes the Words of the Statute are to be purſued. But it is equally true, that we are not to be governed by the Sound, but by the well-known, true, legal Import of the Words.

Some of the Words made uſe of in the preſent Indictment, and in one or other of the Statutes upon which it is founded, are *Command, Aid*, and *Abet*. The Paſſage I have juſt cited from Lord *Coke* ſheweth, that Perſons Procuring, Contriving, or Conſenting, come within the Words *Aid* and *Command*. And that Perſons Procuring are, in the Language of the Law, Abettors, may be proved by many Authorities, which it is not neceſſary to cite at large †.

This being ſo, the Priſoners *M'Daniel, Egan*, and *Berry*, who were the Contrivers of this Scene of Iniquity, agreed upon the Place and Manner

* See *Stanf.* 40. *Lambard* 157. *Dalt. c.* 161. *f.* 5. And ſee *Co.* Ent. Appeal *pl.* 5, 6. *Dyer* 120, 126. 1 *And.* 195. *Raſtal* Appeal, *Pl.* 15. Precedents of Appeals, and Indictments againſt Acceſſaries before the Fact, all charging them as Procurers of the Felony.

† See *Raſtall*'s Terms *le Ley*. V. Abettors, *Stanford*, l. 3. *c.* 11. *Weſtm.* 2. *c.* 12. *Raſtall*'s Ent. *fo.* 43. *b.* 44. *a. Dyer* 120.

of Execution, and conducted the Whole by the Intervention of their Inſtrument *Blee*, are Acceſſaries before to this Robbery, ſuppoſing a Robbery was committed. For in Conſtruction, and indeed in the Language of the Law, they did command *Ellis* and *Kelly* to commit the Fact, and did aid and abet them in it.

I come now to the other Queſtion, Whether, upon the State of the Caſe in the Special Verdict, any Robbery, in the legal Notion of that Offence, was committed on *Salmon* or no?

And the Judges are of Opinion, That it doth not appear, from the Facts ſtated in the Verdict, that the taking the Money and Goods from *Salmon*, by *Ellis* and *Kelly*, doth amount to a Robbery, in the legal Notion of that Offence.

Something was ſaid in arguing of this Caſe upon the Queſtion, how far a Perſon charged as an Acceſſary, and brought to his Trial after the Conviction of the Principal, can controvert the Truth of the Fact found by the Verdict againſt the Principal; or how far the ſuppoſed Acceſſary can be let in to ſhew, either that no Felony was committed, or that the Perſon convicted as Principal was not guilty of it.

This general Queſtion is of great Extent and of mighty Importance in Proſecutions of this Kind; and ſome Diverſity of Opinion there is among the Judges upon it.

But it will not be neceſſary at preſent to enter at all into it; becauſe the Court in the preſent Caſe muſt found its Judgment upon the Facts found by the Verdict, and upon them alone. Now it is expreſly found, that *Salmon* was Party to the original Agreement at the *Bell*; that he conſented to part with his Money and Goods under Colour and Pretence of a Robbery; and that for that Purpoſe, and in purſuance of this Conſent and Agreement, he went to *Deptford*, and waited there till this colourable Robbery was effected.

This being the State of the Caſe with regard to *Salmon*, the Judges are of Opinion, that, in Conſideration of Law, no Robbery was committed on him. His Property was not taken from him *againſt his Will*.

It was ſaid by the Priſoner's Counſel, That the Verdict doth not find that *Salmon* was put in Fear; and, ſay they, there can be no Robbery without the Circumſtance of putting in Fear.

I think the Want of that Circumſtance alone ought not be regarded. I am not clear that *that* Circumſtance is of Neceſſity to be laid in the Indictment, ſo as the Fact be charged to be done *violenter et contra Voluntatem*. I know there are Opinions in the Books which ſeem to make the Circumſtance of Fear neceſſary; but I have ſeen a good MS. Note of an Opinion of Lord *Holt* to the contrary. And I am very clear that the Circumſtance of actual Fear at the Time of the Robbery need not be ſtrictly proved. Suppoſe the true Man is knocked down without any previous Warning to awaken his Fears, and lieth totally inſenſible while the Thief riffleth his Pockets, Is not this a Robbery? And yet where is the Circumſtance of actual Fear? Or ſuppoſe the true Man maketh a manful Reſiſtance, but is overpowered, and his Property taken from him by the meer Dint of ſuperior Strength, this doubtleſs is a Robbery. And in Caſes where the true Man delivereth his Purſe without Reſiſtance, if the Fact be attended with thoſe Circumſtances of Violence or Terror which in common Experience are likely to induce a Man to part with his Property for the Safety of his Perſon, that will amount to a Robbery. And if Fear be a neceſſary Ingredient, the Law, *in Odium Spoliatoris*, will preſume Fear, where there appeareth to be ſo juſt a Ground for it.

I come now to the Caſe I promiſed at the Beginning to conſider, and to diſtinguiſh from the preſent Caſe. One *Norton* having been informed that one of the early *Stage-Coaches* had been frequently robbed near the Town by a ſingle Highwayman, reſolved to uſe his Endeavours to apprehend the Robber. For this Purpoſe he put a little Money and a Piſtol into his Pocket, and attended the Coach in a Poſt-Chaiſe, 'till the Highwayman came up to the Company in the Coach and to him, and preſenting a Weapon demanded their Money. *Norton* gave him the little Money he had about him, and then jumped out of the Chaiſe with his Piſtol in his Hand; and, with the Aſſiſtance of ſome others, took the Highwayman.

The Robber *(Belchier)* was indicted about a Year ago in this Court for a Robbery on *Norton*, and convicted. And very properly, in my Opinion, was he convicted.

But that Caſe differeth widely from the preſent. In that Caſe, *Norton* ſet out with a laudable Intention to uſe his Endeavours for apprehending the Highwayman, in caſe he ſhould that Morning come to rob the Coach, which *at that Time was totally uncertain*; and it was equally uncertain whether he would come alone or no. In the Caſe now under Conſideration, there was a moſt deteſtable Conſpiracy between *Salmon* and the reſt of the Priſoners, that his Property ſhould be taken from him under the Pretence and Show of a Robbery; and Time, Place, and every other Circumſtance, were known to *Salmon* before-hand, and agreed to by him.

In *Norton*'s Caſe, there was no Concert, no Sort of Connection between him and the Highwayman; nothing to remove or leſſen the Difficulty or Danger *Norton* might be expoſed to in the Adventure. In the preſent Caſe, there was a Combination between *Salmon* and one at leaſt of the ſuppoſed Robbers, I mean *Blee*. And though *Salmon* might not know the Perſons of *Ellis* and *Kelly*; yet he well knew that they were brought to the Place by his Friend *Blee*, and were wholly under his Direction.

So widely do theſe Caſes differ.

To conclude, All the Priſoners have been guilty of a moſt wicked and deteſtable Conſpiracy, to render a very ſalutary Law ſubſervient to their vile, corrupt Views. But great as their Offence is, it doth not amount to Felony *. And therefore the Judgment of the Court is, That they be all diſcharged of this Indictment.

(Foſter's Reports, pi 121—130.)

Afterwards, at the *February* Seſſions, 1756, in Alderman *Bethell*'s Mayoralty, they were proſecuted at the Expence of the Crown, upon the Repreſentation of the Judges, for a Conſpiracy, on the following Indictment:

" *Stephen M'Daniel*, *John Berry*, *James Egan*, (otherwiſe *Gahagan*), " and *James Salmon*, were indicted, for that they, being Perſons of wicked " and corrupt Minds and Converſations, and not having the Fear of God " before their Eyes, but being moved and ſeduced by the Inſtigation of " the Devil, not regarding the Laws of this Realm, or the Pains and Penalties that ſhould befal thereon, did wickedly, unlawfully, and maliciouſly combine, conſpire, and agree together, that one *Thomas Blee* " ſhould procure two Perſons, to wit, *Peter Kelly* and *John Ellis*, to go to " *Deptford*, in *Kent*, and to take divers Goods and Money from the Perſon of the ſaid *Salmon* on the King's Highway, who ſhould be waiting " there for that Purpoſe; with Intent that they ſhould cauſe the ſaid two " Perſons to be apprehended and convicted for robbing him the ſaid *Salmon* on the King's Highway, and ſo unjuſtly and wickedly procure to " themſelves the Rewards mentioned in the Act of Parliament, Proclamation, and other parochial Rewards for the apprehending of Highwaymen; to the great Diſpleaſure of Almighty God, and the great Diſhonour and Scandal of the Laws of this Kingdom, and the evil Example " of all others, againſt his Majeſty's Peace, his Crown and Dignity, *July* " 22, 1754."

Upon the Evidence of *Blee*, and others that confirmed him in every Thing, the Court declined calling more Witneſſes, though ſeveral were in Court; and the Priſoners making but a trifling Defence, they were all found Guilty. Their Sentence:

Stephen M'Daniel, *John Berry*, *James Egan*, (otherwiſe *Gahagan*), and *James Salmon*, to be impriſoned in *Newgate* for the Term of ſeven Years; and in that Time to be each of them ſet in the Pillory twice, in the Manner following: *M'Daniel* and *Berry* in *Holborn*, near *Hatton-Garden*; *Egan* and *Salmon* in the Middle of *Smithfield*. Afterwards *M'Daniel* and *Berry* at the End of *King-Street*, *Cheapſide*; and *Egan* and *Salmon* again in *Fleet-Street*, near *Fetter-Lane* End: And at the Expiration of that Time, to find Sureties for their good Behaviour for three Years, and to pay a Fine of one Mark each.

Stephen M'Daniel, *John Berry*, *James Egan*, (otherwiſe *Gahagan*), and *James Salmon*, have each once ſtood on the Pillory, *viz. M'Daniel* and *Berry* near *Hatton-Garden*, on *Friday* the 5th of *March*, 1756; and were ſo ſeverely handled by the Populace, that it was with the utmoſt Difficulty, that one of the Sheriffs, and the Keeper of *Newgate*, who ſtood in a Balcony juſt by, prevented their being utterly deſtroyed; and ſo great was the Mob, that the Peace-Officers found it impoſſible to protect the Priſoners from their Fury; and *Egan* and *Salmon* ſtood in *Smithfield* on *Monday* the 8th. They were inſtantly aſſaulted with Showers of Oyſter-ſhells, Stones, *&c.* and had not ſtood above half an Hour, before *Egan* was ſtruck dead; and *Salmon* ſo dangerouſly wounded in the Head, that it was thought impoſſible he could recover.—Whatever Puniſhment they might deſerve from the Law, it is certain they ought not to be killed, thro' the Rage of the Populace. And we find, that *April* 11, 1732, *Edward Dalton* and *Richard Griffiths* were tried at the *Old-Bailey*, for the Murder of *John Waller* in the Pillory, by pelting him with Cauliflower-Stalks, *&c.* and found Guilty, and both executed at *Tyburn*.

In *June* Seſſions, in Alderman *Bethell*'s Mayoralty, 1756, two of the before-mentioned Miſcreants, *M'Daniel* and *Berry*, together with one *Mary Jones*, were tried for Murder, upon a Conſpiracy of the like Nature againſt one *Kidden* (who was convicted and executed for a Robbery on the Highway, and at the Gallows, in the moſt ſolemn Manner, declared his Innocence), on the following Indictment: *Stephen M'Daniel*, *John Berry*, and *Mary Jones*, were indicted " for the wilful Murder of " *Joſhua Kidden*, in maliciouſly cauſing him to be unjuſtly apprehended, " falſely accuſed, tried, convicted, and executed, well knowing him to be " innocent of the Fact laid to his Charge, with an Intent to ſhare to " themſelves the Reward, *&c. Feb.* 4, 1754.

The Fact was plainly proved againſt them upon this Indictment, and " the † Special Matter being ſet forth in the Indictment, the Court ſuffered them to be convicted *(Death)*, but immediately reſpited Judgment; in order that the Point of Law might be more fully conſidered " upon Motion in Arreſt of Judgment ‡. But the Attorney-General declining to argue the Point of Law, the Priſoners were at a ſubſequent " Seſſion diſcharged of that Indictment.

" This Proſecution, I am ſatisfied, aroſe from a laudable Zeal for keeping the Fountains of Juſtice pure and unpolluted, and a juſt Indignation againſt an Offence of this ſignal Enormity.

" It muſt be confeſſed, that there are ſtrong Paſſages in our ancient " Writers, which greatly countenance a Proſecution of this Kind. But " thoſe Writers muſt always be read with great Caution upon the Subject " of Homicide.

* Judge *Foſter*, in his Reports, ſays further, *p.* 364. " At a Conference among the Judges upon the Caſe of *M'Daniel* and others above-reported, a general Queſtion was " moved, How far, and in what Caſes the Acceſſary may avail himſelf of the Inſufficiency of the Evidence in point of Fact, or of the Incompetency of Witneſſes in point " of Law, produced againſt the Principal; and in what Caſes he may be let in to ſhew, that the Facts charged and proved againſt the Principal, do not, in Judgment of " Law, amount to Felony? There was in that Caſe no Occaſion to enter far into theſe Queſtions; ſince the Facts, upon which the Point of Law then under Conſideration muſt neceſſarily turn, were all found by the Special Verdict. The general Queſtion was therefore waived."—*And then goes* (p. 365.) *to treat on Acceſſaries*; and adds, " Therefore, if it ſhall come out in Evidence upon the Trial of the Acceſſary, as it ſometimes hath, and frequently may, that the Offence of which the Principal was convicted did not amount to Felony in him, or not to that Species of Felony with which he was charged, the Acceſſary may avail himſelf of this, and ought to be acquitted. " This was the Caſe of *M'Daniel*, and others above-cited. The Youths who were convicted of the Robbery, being totally ignorant of the Conſpiracy mentioned in the " Report of that Caſe, took no Advantage of it, and were convicted upon full and legal Evidence. But when the whole Scene of Villainy came to be diſcloſed upon the " Trial of thoſe Miſcreants, they were diſcharged from that Indictment upon this ſingle Objection, that the Offence of the Principal did not, in the Eye of the Law, " amount to a Robbery.

" If this Opinion was well founded in Point of Law, and ſhall ſtand the Teſt of future Times, as I think it will, every other Perſon in the like Circumſtances may, upon " his Trial, avail himſelf of it, and will be entitled to a Verdict of Acquittal."—*If any one wants to ſee more on this Head relating to Acceſſaries, he may conſult Judge* Foſter's *Reports, p.* 130, 131, 366, *and following Pages.*

† *Foſter*'s Reports, *p.* 131, 132.

‡ " There being a Doubt, whether the Facts proved againſt them amounted in Law to Murder, which was to have been argued before the Judges, if the Attorney-' General had not declined it.—It is a Doubt which could not have ariſen in any other Country, where the *Roman* Law is allowed to have any Weight; for by that Law ' it is expreſly declared, That Witneſſes, who by a falſe and malicious Teſtimony procure an innocent Man to be capitally condemned, ſhall be deemed guilty of Murder. *Qui vi falſum teſtimonium* dolo malo *dixerit, quo quis publico judicio rei capitalis damnaretur.* Digeſt. lib. 48. Tit. 8. ſ. 2."

" *Bracton*

" *Bracton*, whom the Writers of that Age for the moſt Part follow, was " a Doctor of both Laws before he came to the Bench. It is no Wonder " therefore, that having before him no tolerable Syſtem of the *Engliſh* " Law, then in its Infant State, he ſhould adopt what he found in the " Books of the Civil and Canon Law, which he had read, and ſeemeth " to have well underſtood *.

" Succeeding Writers of that Age refined upon *him*, and in their looſe " Way wrote upon the Subject rather as Divines and Caſuiſts than as " Lawyers; and ſeem to have conſidered the Offence merely in the Light " in which it might be ſuppoſed to be conſidered in *Foro Cœli*.

" But the Practice of many Ages backwards doth by no means counte- " nance their Opinion.

" And during all the Violence and Rage of the Proſecution againſt Dr. " *Oates*, it ſeemeth not to have entered into the Imagination of thoſe con- " cerned in it, or of the Court, who would not have ſpared him if they " could have taken their full Blow at him, that the Offences of which " he was convicted could have been ſo charged as to have reached his " Life. Though the Judgment they paſſed on him, the moſt cruel, I " believe, that ever was given in *Weſtminſter-Hall* in Caſe of a Miſde- " meanour, might probably have ended in his Death †."

Egan was killed in the Pillory, but *M'Daniel* and *Berry* continued in *Newgate* under their former Sentence till *Feb.* 26, 1762, when *John Berry* died in *Newgate*; and the Year following *M'Daniel* procured himſelf to be ſent abroad for Life to the *Indies*, as a Soldier.—*Salmon*, I take it, died in *Newgate* before.

* See *Dig. l.* 48. *Tit.* 8. *ad Legem Corneliam de Sicariis. L.* 9. *Tit.* 2. *ad Legem Aquiliam.* And the Writers on the Canon Law, collected by *Linwood*, l. 1. Tit. 11. V. *Ne Occides.*

† See IV. *State Trials*, the Proceedings againſt him, and what fell from the Court at the Time of giving Judgment.

LIV. The Trial of William Barnard, at the *Seſſions-Houſe* in the *Old-Bailey*, before the Right Honourable Sir *Charles Aſgill*, Kt. Lord-Mayor of the City of *London*, Sir *Michael Foſter*, Knt. one of the Juſtices of the *King's-Bench*, Sir *Sidney Stafford Smythe*, Knt. one of the Barons of the *Exchequer*, Sir *William Moreton*, Knt. Recorder, and others his Majeſty's Juſtices of *Oyer* and *Terminer*, for the ſaid City, and County of *Middleſex*, on *Wedneſday* the 10th, and *Thurſday* the 11th of *May*, 1758, on the *Black Act*; for ſending a Letter in a fictitious Name to *Charles* Duke of *Marlborough*, demanding a genteel Support for Life.

Middleſex Jury.

William Spinnage,	*John Mills*,	*Simon Pawſon*,
Edward Barlow,	*Benjamin Bailey*,	*Richard Airey*,
John Chilton,	*Benjamin Leſter*,	*John Lugg*,
Edward Turner,	*Francis Phillips*,	*John Turner.*

" *WILLIAM BARNARD*, late of the Pariſh of *St. James's*, " within the City and Liberty of *Weſtminſter*, in the County of " *Middleſex*, Yeoman, was indicted, for that he being an ill- " diſpoſed Perſon, and ſeeking wicked Gain, and little regarding the " Laws and Statutes of this Kingdom, or the Pains and Penalties therein " contained, after the firſt Day of *June* in the Year of our Lord 1723, " *to wit*, on the 3d Day of *December*, in the thirty-firſt Year of the Reign " of our Sovereign Lord *George* the Second, King of *Great-Britain*, &c. " 1758, with Force and Arms, at the Pariſh aforeſaid, in the County " aforeſaid, knowingly, unlawfully, wickedly, and feloniouſly, did ſend " a certain Letter in Writing, with a fictitious Name, *to wit*, with the " fictitious Name of *Felton* thereto ſigned and ſubſcribed, to the Moſt " Noble *Charles* Duke of *Marlborough*, and directed to the ſaid Duke, by " the Title and Deſcription of his Grace the Duke of *Marlborough*, de- " manding therein a certain valuable Thing, *to wit*, a genteel Support " for the Life of him the ſaid *William Barnard*, againſt the Form of the " Statute in ſuch Caſe made and provided, to the evil Example of all " others in the like Caſe offending, and againſt the Peace of our ſaid " Lord the King, his Crown and Dignity."

After Mr. *Moore* had opened the Indictment, Mr. Serjeant *Davy* ſpoke as follows:

May it pleaſe your Lordſhips, and you Gentlemen of the Jury;

I am Counſel in this Cauſe for the Proſecution againſt the Priſoner at the Bar, who ſtands indicted on an Act of Parliament made in the ninth Year of his late Majeſty, very well known by the Name of the Black Act. That Act of Parliament, reciting the ſeveral Miſchiefs, and conſtituting ſeveral Felonies, amongſt other Things, enacts, That if any Perſon ſhall knowingly ſend any Letter, without any Name ſubſcribed thereto, or ſigned with a fictitious Name, demanding Money, Veniſon, or other valuable Thing; every Perſon ſo offending, being thereof lawfully convicted, ſhall be adjudged guilty of Felony, and ſhall ſuffer Death as in Caſes of Felony, without Benefit of Clergy.

It is on that Act that this Indictment now comes before you, that you have heard read. You ſee it is for ſending a Letter; for it is on the firſt of theſe Letters that the preſent Indictment is founded; the others are ſent in conſequence of the firſt, and explanatory of his Intentions.

I will open to you, as conciſely as I can, the ſeveral Circumſtances we have in Evidence, in order to affect the Priſoner at the Bar: They are Circumſtances of that Nature, correſponding ſo exactly with the Priſoner's Caſe, affecting him ſo very minutely, that the ſeveral Circumſtances do infer, I had almoſt ſaid, an Impoſſibility of his Innocence: You will find they all tally ſo exactly, they are ſo particularly relative to him, that it will be offering Violence to every Rule of Reaſon, not to find him guilty.

Gentlemen, on the 29th of *November*, a Letter was found under the Door of the *Ordnance-Office*, directed to his Grace the Duke of *Marlborough*: Upon opening this Letter, which was wrote in Imitation of Print-Hand, bearing Date that Day the 29th of *November*, it will be neceſſary, for the Sake of the following Circumſtances, to deſire your Attention to the ſeveral Parts. Theſe are the Words:

To his Grace the Duke of Marlborough.

xxviiii November.

" My Lord,

" As Ceremony is an idle Thing upon moſt Occaſions, more eſpecially " to Perſons in my State of Mind, I ſhall proceed immediately to ac- " quaint you with the Motive and End of addreſſing this Epiſtle to you, " which is equally intereſting to us both. You are to know, then, that " my preſent Situation in Life is ſuch, that I ſhould prefer Annihilation " to a Continuance in it: Deſperate Diſeaſes require deſperate Remedies; " and you are the Man I have pitched upon, either to make me, or to " unmake yourſelf. As I never had the Honour to live among the Great, " the Tenour of my Propoſals will not be very courtly; but let that be " an Argument to enforce the Belief of what I am now going to write. " It has employed my Invention, for ſome Time, to find out a Method " to deſtroy another, without expoſing my own Life; that I have ac- " compliſhed, and defy the Law. Now for the Application of it. I " am deſperate, and muſt be provided for: You have it in your Power, " it is my Buſineſs to make it your Inclination, to ſerve me; which you " muſt determine to comply with, by procuring me a genteel Support " for my Life; or your own will be at a Period before this Seſſions of " Parliament is over. I have more Motives than one for ſingling you " out firſt, upon this Occaſion; and I give you this fair Warning, be- " cauſe the Means I ſhall make uſe of are too fatal to be eluded by the " Power of Phyſic. If you think this of any Conſequence, you will not " fail to meet the Author, on *Sunday* next, at Ten in the Morning, or " on *Monday*, (if the Weather ſhould be rainy on *Sunday*) near the firſt " Tree beyond the Stile in *Hyde-Park*, in the Foot-walk to *Kenſington*: " Secrecy and Compliance may preſerve you from a double Danger of this " Sort; as there is a certain Part of the World, where your Death has " more than been wiſhed for, upon other Motives. I know the World " too well, to truſt this Secret in any Breaſt but my own. A few Days " determine me your Friend or Enemy.

FELTON.

" You will apprehend that I mean you ſhould be alone; and depend " upon it, that a Diſcovery of any Artifice in this Affair will be fatal to " you: My Safety is inſured by my Silence; for Confeſſion only can " condemn me."

This Letter containing every Thing that is dreadful, that might raiſe Apprehenſions of Terror, ſubſcribed by a Name which is painful to almoſt every Ear—the Name *Felton!* That was the Name of the Aſſaſſin that ſtabbed the Duke of *Buckingham* at *Portſmouth*.

My Lord Duke, not intimidated by the Letter, though greatly ſurprized at it, and willing to find out the Author, was not afraid to endeavour to apprehend him; he went alone to the Spot, and at the Time appointed; however, there was ſome Attendant on his Grace at a Diſtance, in order to obſerve what paſſed on the Occaſion. My Lord Duke had been there ſome Time on Horſeback, and as much undreſſed as a Man of his Quality is. He had Piſtols before him; he had been there ſome Time, and ſaw Nobody at all at that particular Place. After waiting ſome conſiderable Time, he was returning, and obſerved a Perſon come to the particular Spot juſt by the Tree beyond the Stile in *Hyde-Park*, by the Foot-walk to *Kenſington*: That Perſon held a Handkerchief to his Mouth in a ſeeming diſconſolate Manner, looking into the Water, and ſtood ſtill a very conſiderable while. Upon his Grace ſeeing this, that the Man was not purſuing any Way, the Duke had no Doubt in his own Mind, but that this Man (be he who he would) muſt be the Perſon who had ſent him this Letter. The Man ſauntering juſt at the Place, the Duke rode up to the Spot, expecting the Perſon would ſpeak to him: His Grace aſked the Man, *Whether he wanted to ſpeak to him?* He ſaid, *No.*—*Sir*, ſaid the Duke, *do you know me? I am the Duke of* Marlborough; *telling you that, perhaps you have ſomething to ſay to me.*—*No, my Lord.*—No Notice being taken, the Duke came away.

Gentlemen, you ſee, this was an Appointment on a *Sunday* to meet at a Place where ſeveral People might be ſuppoſed to be walking. What was the View of that Perſon may be ſeen by and bye. The Author of this Letter ſpeaks of his being exceedingly guarded againſt the

Poſſibility

Poſſibility of a Detection; he boaſts of the Care and Caution he had uſed for that Purpoſe,—*He defies the Law,—nothing but Confeſſion could condemn him,—his Safety was inſured by his Silence,——he knew the World too well, to truſt this Secret in any Breaſt but his own.*

A few Days after, in the ſame Week, the Duke received a ſecond Letter. This alſo was put under the Door of the *Office of Ordnance*, and was alſo wrote in Imitation of a Print-Hand: But the Directions of both the Letters are not; there will be Occaſion to take Notice of that Circumſtance by and bye. The ſecond Letter is in theſe Words:

To his Grace the Duke of Marlborough.

" My Lord,

" You receive this as an Acknowlegdment of your Punctuality as to " the Time and Place of Meeting on *Sunday* laſt, though it was owing to " you that it anſwered no Purpoſe. The Pageantry of being armed, and the " Enſign of your Order, were uſeleſs, and too conſpicuous: You need- " ed no Attendant; the Place was not calculated for Miſchief, nor was " any intended. If you walk in the Weſt Iſle of *Weſtminſter-Abbey*, " towards Eleven o'Clock on *Sunday* next, your Sagacity will point out " the Perſon, whom you will addreſs by aſking h Company to take a " Turn or two with you. You will not fail, on Inquiry, to be acquainted " with the Name and Place of Abode; according to which Directions you " will pleaſe to ſend two or three hundred Pound Bank Notes the next " day by the Penny-Poſt. Exert not your Curioſity too early: It is in " your Power to make me grateful on certain Terms. I have Friends " who are faithful; but they do not bark before they bite.

" I am, *&c. &c.*

F."

Gentlemen, you ſee, the Writer of the ſecond Letter ſpeaks of being himſelf in the *Park*, or at leaſt of knowing that the Duke was there, at the Time and Place appointed: And therefore this was a farther Circumſtance to convince the Duke, that the Perſon, whom he had ſeen the *Sunday* before in *Hyde-Park*, and ſpoke to, was the Writer of the ſecond Letter. You ſee it ſpeaks of the Duke's Punctuality as to the Time and Place of Meeting, the particular Dreſs his Grace was in, and aſſigns that as the Reaſon of not ſpeaking to him the *Sunday* before: So you ſee, Gentlemen, that Circumſtance, which was a little unaccountable of itſelf, of the Duke's not being owned by the Perſon whom he had ſeen the *Sunday* before, is by this ſecond Letter accounted for;---*the Pageantry of being armed, and the Enſign of his Order.* He had then only a Star on, and that perhaps an old one, ſo as not to be conſpicuous: So that this accounts for the Perſon's not ſpeaking to the Duke in *Hyde-Park*. There can be no Doubt at all, but that the Writer of the ſecond was the Writer of the firſt Letter.

The Conſequence then of this ſecond Appointment to meet the Writer of the Letters in the Weſt Iſle of *Weſtminſter-Abbey*, you will obſerve, Public Places were appointed, and at public Times; the firſt in *Hyde-Park*, the ſecond in Prayer-Time at *Weſtminſter-Abbey*, where the Duke was *by his Sagacity to point out the Perſon*—the Writer of this Letter. The Duke accordingly went to *Weſtminſter-Abbey*, to the Weſt Iſle (though indeed, properly ſpeaking, we don't know which to call the Weſt Iſle, the Church ſtanding Eaſt and Weſt). His Grace went to the Weſternmoſt Part of the *Abbey*, and obſerved Nobody lurking or ſtanding in Circumſtances ſuſpicious: After a little Time, his Grace was ſurprized to ſee that the ſame Perſon, whom he had ſeen the *Sunday* before exactly at the Spot in *Hyde Park*, appeared juſt in this Place at the Weſt End of *Weſtminſter-Abbey*; but he was ſurprized the more, that this Perſon did not ſpeak to him. Perhaps his Grace had not then conſidered the Tenour of this Letter; for it was not to be expected, that the Writer would addreſs the Duke, but rather refers to the Duke's Sagacity:—*Your Sagacity will point out the Perſon*, it then directs, *whom you will addreſs by aſking h Company to take a Turn or two with you.* His Grace perhaps did not conſider this exactly; but waiting ſome Time for the Perſon to ſpeak to him, and finding he did not, his Grace aſked him, *Sir, have you any thing to ſay to me? No, my Lord.—Have you nothing at all to ſay to me? No.—Have you nothing at all to ſay to me?* No, he had nothing to ſay to him. Now I ſhould have mentioned to you, when this Perſon came into the *Abbey*, another Perſon came in with him, who ſeemed by his Appearance to be a ſubſtantial Tradeſman, a good Sort of Man. Theſe two Perſons, after ſtopping and looking about at the Monuments near the Weſt Gate of the *Abbey*, the Duke being ſure one of them was the ſame Man he had ſeen before in *Hyde-Park*, his Grace thought proper to go and ſtand by them, to ſee if that Perſon would ſpeak to him. Seeing the Duke took no Notice of him, they both went towards the Choir: The Stranger went into the Choir, and the Man that his Grace had ſeen in the *Park*, came back again (leaving his Friend there) to the Spot where the Duke was. The Duke then aſked him, Whether he had any thing to ſay to him? No, he had nothing at all to ſay to him. No, he had nothing at all to ſay. Then the Duke walked a little on the other Side of the Iſle, to ſee whether the Man would follow him, or had a Mind to ſpeak to him at another Spot. He obſerved the Man looked eagerly at him: May-be it may be underſtood, he expected the Duke's *Sagacity would point out the Man:* However, the Duke did not do what the Letter required, that is, *Aſk him to take a Turn with him.*

At this ſecond Time there was Somebody that was with the Duke (when I ſay with him, I don't mean cloſe to him, but) near enough, ſo as to take Notice what paſſed, in order to apprehend the Perſon, ſo as to put it beyond all Doubt that he was the Author of thoſe Letters. The Duke, and this Attendant of his, went out at the Weſt Door of the *Abbey*, in order to go to his Coach. Now you will find by and bye, in the next Letter, that the Writer of theſe Letters took Notice of this Attendant, but was under no Apprehenſion of being watched by any body elſe; and that will account for thoſe Circumſtances I am going to mention: As ſoon as the Duke went out of the *Abbey*, that Man, whom the Duke had ſeen at both theſe Places, watched the Duke out of the *Abbey*, and as ſoon as his Grace had paſſed the Door of the *Abbey*, he went up, hid himſelf in a Corner, concealed from a Poſſibility of being ſeen by his Grace in caſe he had looked back, and ſo watched him into his Coach. It may be aſked, Why his Grace, upon having ſuch clear Conviction in his own Mind, that that Perſon muſt be the Writer of both the Letters, did not apprehend him? His Grace will tell you, he did not think himſelf juſtified in ſo doing; he could not reconcile it to his own Mind to take up a Man, where there was a Poſſibility of his Innocence.

Gentlemen, a few Days after this, came a third Letter to the Duke, wrapped up in a very ſmall Compaſs, and directed to his Grace the Duke of *Marlborough* at his Houſe. You will ſee, by comparing the Directions, that this third Letter was wrote by the Writer of the firſt Letter: It begins, *My Lord, I am fully convinced you had a Companion on* Sunday. So far it is proved, that the Writer of theſe Letters was in the *Park* on the firſt *Sunday*, and ſaw the Duke there; and was in the *Abbey* on the ſecond *Sunday*, and ſaw the Duke there; and that it was the ſame Man that the Duke ſaw at both theſe Times. *I interpret it as owing to the Weakneſs of Human Nature; but ſuch Proceeding is far from being ingenuous, and may produce bad Effects, whilſt it is impoſſible to anſwer the End propoſed.*—— Guarded through all.—*You will ſee me again ſoon, as it were by Accident, and may eaſily find where I go to; in conſequence of which, by being ſent to, I ſhall wait on your Grace, but expect to be quite alone, and converſe in Whiſpers. You will likewiſe give your Honour, upon meeting, that no Part of the Converſation ſhall tranſpire.*——So that you ſee, as he was guarded before, he was determined to make it impoſſible to be diſcovered: If they were to converſe in Whiſpers, and to be quite alone, it was impoſſible for other Evidence to riſe up againſt him——*Theſe and the former Terms complied with, inſure your Safety; my Revenge, in caſe of Non-compliance, (or any Scheme to expoſe me) will be ſlower, but not leſs ſure, and ſtrong Suſpicion the utmoſt that can poſſibly enſue upon it.*—You ſee, how artful he had contrived it: He was determined that nothing more than ſtrong Suſpicion ſhould ever be in Evidence againſt him—*While the Chances will be tenfold againſt you. You will poſſibly be in Doubt after the Meeting, but it is quite neceſſary the Outſide ſhould be a Maſk of the In. The Family of the* BLOODS *is not extinct, though they are not in my Scheme.* The Word BLOODS is in Capital Letters. That is a dreadful Name! As *Felton* was the Villain who aſſaſſinated the Duke of *Buckingham*, ſo this is the Name of the Fellow who ſeized the Duke of *Ormond*, and was going to carry him to *Tyburn* to execute him, and alſo who ſtole the Crown out of the *Tower* of *London*.

You ſee, Gentlemen, by this third Letter, that the Duke was to expect to hear ſomething farther from the Writer of theſe Letters. It contains no Appointment, but leads the Duke to expect he ſhall ſee the Writer again as by Accident, and was to obſerve where he ſhould go to, that the Duke might know where to ſend for him; and that he would come in conſequence of being ſent for; but when he came to the Duke, the Terms were, to be a ſecret Converſation, not in the Preſence of a third Perſon, and that too by Whiſpers, and the Duke promiſing, upon his Honour, that no Part of it ſhould tranſpire, without which he was not led to think the Writer ſhould diſcloſe any thing at all. The firſt Letter was dated and received the 29th of *November*, the ſecond received the next Week, the third in the ſecond Week of *December*, and the laſt was ſome Time in *April*.

The Duke waited, expecting to hear farther; but heard nothing more until the Middle of *April*. About the 14th there came a Letter to his Grace, wrote in a mean Hand, but not in Imitation of a Print-Hand, as the others were. Theſe are the Words of the fourth Letter:

To his Grace the Duke of Marlborough.

" May it pleaſe your Grace,

" I Have Reaſon to believe, that the Son of one *Barnard*, a Surveyor " in *Abingdon-Buildings*, *Weſtminſter*, is acquainted with ſome Secrets " that nearly concern your Safety; his Father is now out of Town, " which will give you an Opportunity of queſtioning him more private- " ly. It would be uſeleſs to your Grace, as well as dangerous to me, " to appear more publicly in this Affair.

" Your ſincere Friend,

" ANONYMOUS.

" He frequently goes to *Storey*'s- " *Gate* Coffee-houſe."

Gentlemen, the Duke ſent for Mr. *Barnard*, the Son of Mr. *Barnard*, according to the Directions in that Letter. This Letter, you will ſee, bears no Date at all; no Memorandum, or any thing which could poſſibly indicate when the Letter was ſent, or when the Duke received it. The Duke, when Mr. *Barnard* came, was ſitting in his Room; and though upon opening the Door of the outer Room (which was at threeſcore Yards Diſtance from where the Duke was), yet, the Moment Mr. *Barnard* entered the Room, he was ſure that was the Man he had ſeen both in the *Park* and in the *Abbey*. Though the Duke had no Doubt in his own Mind on the former Circumſtances, that the Perſon whom he had ſeen before was the Writer of the firſt Letter, now he was fully convinced that he was the Writer of all the Letters. The Duke was determined the Scheme ſhould not ſo far take Effect, as to engage himſelf upon his Honour, that no Part of the Converſation ſhould tranſpire; if ſo, nothing could have prevailed upon him to proſecute: Therefore you are not to expect he complied with a Converſation in Whiſpers, and a Promiſe on the Duke's Part, that no Part of the Converſation ſhould tranſpire. The third Letter will tell you, that the Perſon that entered the Room was the Writer of all theſe Letters. As ſoon as he came into the Room, the Duke took him to the Window, and aſked him, whether he wanted to ſpeak with him? *No my Lord.*—No, Sir! I have received a Letter, which tells me, that you are acquainted with ſome Circumſtances that nearly concern my Safety.——*Not I, my Lord.* This is very ſurprizing, Sir! This is the Letter; and ſhewed him the laſt Letter. Still the Duke had not given him any Promiſe at all of not expoſing the Converſation. Sir, it is very odd that you ſhould be pointed out to me, to acquaint me with ſome Circumſtances relating to my Safety, becauſe it mentions ſome Circumſtances as to the Time, the Place where you

you are to be found, your Father's being out of Town, and the like. The Priſoner incautiouſly ſaid immediately, *My Lord, my Father was out of Town at that Time.*----At what Time, Sir? The Letter bears no Date, nor have I mentioned to you a Syllablewhen I received it: How came you to know when I received this Letter, that you ſhould tell me, your Father was not in Town at that Time? You ſpeak clearly, as knowing when I received this Letter; therefore give me Leave on this Occaſion to tell you, that I do not only ſuſpect you know of this Letter, but that you have ſent to me ſome other Letters that I have received before: Then acquainting him with the other three Letters, his Grace obſerving upon them, that it was very odd and ſtrange, that the Letters correſponded ſo certainly and deciſively on him, he being always at the Places at the Times appointed, and that he being the Perſon named in the fourth Letter too, and that he knew the Time of the Duke's receiving that Letter, the Duke put it upon him, Sir, I am ſurprized at the Writer of this Letter; one ſhould ſuppoſe from the Style, and its being grammatically wrote, that the Perſon who wrote it, had had ſome Share of Education; at leaſt I am ſurprized that a Man that has had any Education at all, can deſcend to ſuch a Means of getting Money. *My Lord, your Grace need not be ſurprized at that; a Man may be learned, and very poor.* Very fond was he of ſoftening Things. *My Lord, you need not be affrighted; I dare ſay the Writer of theſe Letters is a very Madman.* Why! you are very much concerned to apologize for the Writer hereof, ſaid the Duke. Picking out this Circumſtance, The Man does not know me, he expreſſes his very great Surprize at my appearing in the *Park* with the Enſign of my Order, and my being armed—as incautious as he had been before, he is incautious upon that too, and ſaid, *Indeed I was ſurprized to ſee your Grace armed.* Was you ſo, ſaid the Duke? Was you ſurprized to ſee me armed? Can any Man doubt a Moment who wrote theſe Letters? But, however, Mr. *Barnard*, as you inſiſt upon it, and declare ſo ſolemnly your Innocence, I will not ſo far invade the Laws of Hoſpitality, whatever Crime you have done. (He would not for the World apprehend a Man in his own Houſe whom he had ſent for; he let him go ſafe Home again; it was for that Reaſon he would not give his Promiſe not to reveal the Converſation; but in regard to the Public he was determined to proſecute.) The Duke ſaid to him, Sir, If you are not the Writer of theſe Papers, it much becomes you to find out who is; for your Name is particularly mentioned in this laſt Letter; either you are the Writer, or allow me to ſay, Somebody elſe owes you very Ill-will that was the Writer of them. I am relying merely on the Terms of the laſt Letter, wherein he was to inform his Grace of ſome Secrets that nearly concern his Safety: What was the Anſwer that the Priſoner made? Firſt, what would have been the Anſwer? Muſt not a Man be ſtruck with Aſtoniſhment, to hear he was one that was to inform his Grace of Things that nearly concerned his Safety, ſo much to the Hazard of his own Life? What became him, as having a Regard to his own Reputation and Safety? To determine, as far as in his Power, to find out the Writer; nay to have given the Duke Aſſurance that he would do it: Inſtead of that, what was his Behaviour? A Smile of Contempt---an unmannerly Laugh in the Duke's Face, as if it did not concern him at all.

Gentlemen, I ſhould think that to this there can hardly be a Circumſtance added more clearly to convince any Man alive of the Circumſtances of this Man's being the Author of theſe Letters; but you will find afterwards the Priſoner (for what reaſon let him tell if he can) told his Grace, he had deſired his Companion that was with him in *Weſtminſter-Abbey* to leave him: Why? *Becauſe he thought the Duke wanted to tell him of ſome Place he had for him.* Good God! How could he imagine he wanted to tell him of a Place? A Perſon whom he had never ſeen before he ſaw him in the *Park*, how could he expect that? This was his aukward Reaſon for deſiring his Companion to leave him.

I beg Pardon, if I have omitted any Thing; theſe are the Circumſtances that have occurred to me on this Occaſion; they are ſo ſtrong and neceſſary in the Proof of the Priſoner's Guilt, that I will venture to ſay, it is much more ſatisfactory to an indifferent Perſon, than poſitive Teſtimony,---the poſitive Teſtimony of any Man, as Men are liable to Miſtakes, as a Miſtake in Time, a Miſtake in Perſons, will exceedingly vary the Caſe; but Variety of Circumſtances, which tally in their own Nature, cannot lye or deceive.

This Proſecution is commenced merely for the Sake of Juſtice; I am inſtructed to ſay from his Grace, it is perfectly indifferent to him what will be the Iſſue of this Trial: He thought it his Duty to come here, and leaves it to his Country to determine as they ſhall think proper.

The Duke of Marlborough *ſworn.*

I received this Letter from an unknown Hand, dated the 29th of *November*, and directed to me, appointing me to meet the Writer on a certain Spot in *Hyde-Park*.

(The firſt Letter read.)

To his Grace the Duke of Marlborough.

[*With Care and Speed.*]

xxviiii November.

" My Lord,

" AS Ceremony is an idle Thing upon moſt Occaſions, more eſpecially to Perſons in my State of Mind, I ſhall proceed immediately to acquaint you with the Motive and End of addreſſing this Epiſtle to you, which is equally intereſting to us both. You are to know, then, that my preſent Situation in Life is ſuch, that I ſhould prefer Annihilation to a Continuance in it: Deſperate Diſeaſes require deſperate Remedies; and you are the Man I have pitched upon, either to make me, or to unmake yourſelf. As I never had the Honour to live among the Great, the Tenour of my Propoſals will not be very courtly; but let that be an Argument to enforce the Belief of what I am now going to write. It has employed my Invention for ſome Time to find out a Method to deſtroy another, without expoſing my own Life; that I have accompliſhed, and defy the Law. Now for the Application of it. I am deſperate, and muſt be provided for: You have it in your Power, it is my Buſineſs to make it your Inclination, to ſerve me; which you muſt determine to comply with, by procuring me a genteel Support for my Life; or your own will be at a Period before this Seſſions of Parliament is over. I have more Motives than one for ſingling you out firſt upon this Occaſion; and I give you this fair Warning, becauſe the Means I ſhall make uſe of are too fatal to be eluded by the Power of Phyſic. If you think this of any Conſequence, you will not fail to meet the Author on *Sunday* next, at Ten in the Morning, or on *Monday* (if the Weather ſhould be rainy on *Sunday*) near the firſt Tree beyond the Stile in *Hyde-Park*, in the Foot-walk to *Kenſington*: Secrecy and Compliance may preſerve you from a double Danger of this Sort; as there is a certain Part of the World, where your Death has more than been wiſhed for, upon other Motives. I know the World too well, to truſt this Secret in any Breaſt but my own. A few Days determine me your Friend or Enemy.

" FELTON.

" You will apprehend that I mean you ſhould be alone; and depend upon it, that a Diſcovery of any Artifice in this Affair will be fatal to you: My Safety is inſured by my Silence; for Confeſſion only can condemn me."

Q. What did your Grace do upon the Receipt of this Letter?

Duke of Marlborough. I went to the Place at the Time appointed. It was at the firſt Tree near the Stile in *Hyde-Park*, in the Way to *Kenſington*, at the End of the *Serpentine* Water, betwixt that Water and a little Pond. I was there ſome Time, and ſaw Nobody ſtop that I could ſuſpect to be the Perſon; upon which I was going away: But as I came to *Hyde-Park* Corner, I turned my Horſe, and ſaw a Perſon ſtand loitering, and looking at the Water over the Bridge. This was, I believe, within twenty Yards of the Tree, and this induced me to go back again. I rode up to the Perſon very gently, and paſſed by him once or twice, expecting him to ſpeak to me; he did not. I made him a Bow, and aſked him, if he had ſomething to ſay to me? He ſaid, *No, I don't know you.* I ſaid, I am the Duke of *Marlborough*; now you know me, I imagine you have ſomething to ſay to me. He ſaid, *No, I have not.* Then I rode away.

Q. Was your Grace armed?

D. of Marl. I had Piſtols before me.

Q. Had your Grace any Great Coat on?

D. of Marl. No, I had not. My Star might eaſily be ſeen.

Q. Does your Grace ſee any body here that you ſaw there?

D. of Marl. It was the Priſoner at the Bar.

Q. Had your Grace any Servant or Attendant with you?

D. of Marl. I had no Servant with me; there was a Perſon, a Friend of mine, at a good Diſtance in the *Park*. A Day or two after, I cannot be ſure whether it was the next Day, or the Day after that, I received a ſecond Letter.

Counſel for the Priſoner. I am under a great Difficulty, whether I ſhall object againſt this Letter being read or not. Your Lordſhip ſees the firſt is a Letter ſent to the Duke of *Marlborough*, demanding a very valuable Thing, viz. a genteel Employment for Life. This is to the ſame noble Duke, not demanding that valuable Thing; but demanding two or three hundred Pounds in Bank Notes. Theſe Demands are very different and diſtinct from one another: So different and diſtinct, that they ſeem to me to be different Felonies. My Lord, I apprehend one Felony, whoever it may affect, cannot be Evidence of another Felony; nor can this Letter, ſuppoſing there is any Thing in it amounting to a Felony, be Evidence to another Felony——

but there were ſome Acknowledgment in that directly affecting the Priſoner at the Bar; but I am inclined that the whole of this Matter ſhall come before the Court, from my Opinion of the Defendant's Innocence, and the ſubſtantial Merits of his Defence; and I think myſelf very happy that I have the Aſſiſtance of ſuch a Court, who are always Counſel for the Priſoner, where the Life, Property, and Character of a Man is at Stake; and who, under theſe Circumſtances, will do that which is right, admit or not admit what is not proper Evidence. I don't firmly object to it; I don't think it for the Intereſt of my Client to ſuppreſs it, who is called upon to anſwer in this Matter; therefore I leave the Court to do as they think proper.

Coun. for Crown. I deſire, if you have any Objections, to make them now.

Court. The Uſe made of this Letter is to ſupport the Evidence of the firſt Letter, let the Contents be what they will. The Uſe they make of it is to ſhew, that the Priſoner at the Bar was the Writer or Sender of the firſt Letter.

(The ſecond Letter read.)

To his Grace the Duke of Marlborough.

" My Lord,

" You receive this as an Acknowledgment of your Punctuality as to the Time and Place of Meeting on *Sunday* laſt, though it was owing to you that it anſwered no Purpoſe. The Pageantry of being armed, and the Enſign of your Order were uſeleſs, and too conſpicuous: You needed no Attendant; the Place was not calculated for Miſchief, nor was any intended. If you walk in the Weſt-Iſle of *Weſtminſter-Abbey*, towards Eleven o'Clock on *Sunday* next, your Sagacity will point out the Perſon, whom you will addreſs by aſking h Company to take a Turn or two with you. You will not fail, on Inquiry, to be acquainted with the Name and Place of Abode, according to which Directions you will pleaſe to ſend two or three hundred Pound Bank Notes the next Day by the Penny-Poſt. Exert not your Curioſity too early: It is in your Power to make me grateful on certain Terms. I have Friends who are faithful; but they do not bark before they bite.

" I am, *&c. &c.*

" F."

Q. What did your Grace do upon the Receipt of this ſecond Letter?

D. of Marlb.

D. of Marlborough. I went to *Weſtminſter-Abbey* at the Time the Letter appointed. I had been walking there about five or ſix Minutes before I ſaw any body that I ſuſpected; then I ſaw the Perſon I had ſeen before in *Hyde-Park*, and another Perſon who ſeemed to be a good-looking Man, a ſubſtantial Tradeſman; They came in and looked on the Monuments. I knowing the Perſon again, went and ſtood by them; but the Priſoner ſaid nothing to me: Soon after they both of them went towards the Choir; the Stranger, I may call him, went into the Choir, and the Priſoner turned back and came towards me, but did not ſpeak to me. Then I aſked him, if he had any thing to ſay to me, or any Commands for me? He ſaid, *No, my Lord, I have not.* I ſaid, Sure you have? He ſaid, *No, my Lord.* He walked up and down one Side the Iſle, and I the other to give him a little more Time; but he did not ſpeak: Then I went away out at the great Door, and left him in the *Abbey*. I looked back to ſee if he watched me going out, but I did not ſee him.

Q. Had your Grace any body with you in the *Abbey?*

D. of Marlb. There were two or three People placed in Diſguiſe, ready, if I had given them the Signal, to have him taken up. Though I was certain it was the ſame Perſon whom I had ſeen and ſpoke to in the *Park*, I thought not proper to give the Signal, but to run a little longer Riſque rather than to take up an innocent Man. Very ſoon after this I received another Letter, this is it.

(The third Letter read.)

To his Grace the Duke of Marlborough.

"My Lord,

"I am fully convinced you had a Companion on *Sunday*. I interpret "it as owing to the Weakneſs of human Nature; but ſuch Proceeding is "far from being ingenuous, and may produce bad Effects; whilſt it is "impoſſible to anſwer the End propoſed. You will ſee me again ſoon, "as it were by Accident, and may eaſily find where I go to; in conſe-"quence of which, by being ſent to, I ſhall wait on your Grace, but ex-"pect to be quite alone, and to converſe in Whiſpers. You will likewiſe "give your Honour, upon meeting, that no Part of the Converſation ſhall "tranſpire. Theſe and the former Terms complied with, inſure your "Safety: My Revenge, in caſe of Non-compliance, (or any Scheme to "expoſe me) will be ſlower, but not leſs ſure; and ſtrong Suſpicion the "utmoſt that can poſſibly enſue upon it; while the Chances would be "ten-fold againſt you. You will poſſibly be in Doubt after the Meet-"ing, but it is quite neceſſary the Outſide ſhould be a Maſk to the In-"The Family of the BLOODS is not extinct, though they are not in "my Scheme."

Duke of Marlb. At about two Months after the Receipt of this, I received another Letter, this is it.

(The fourth Letter read.)

To his Grace the Duke of Marlborough.

"May it pleaſe your Grace,

"I Have Reaſon to believe, that the Son of one *Barnard*, a Surveyor "in *Abingdon-Buildings, Weſtminſter*, is acquainted with ſome Secrets that "nearly concern your Safety; his Father is now out of Town, which "will give you an Opportunity of queſtioning him more privately. It "would be uſeleſs to your Grace, as well as dangerous to me, to appear "more publickly in this Affair.

"Your ſincere Friend,

"ANONYMOUS.

"He frequently goes to *Storey's-Gate*
Coffee-Houſe."

D. of Marlb. There is no Date to this Letter. About a Week or ten Days after I received this Letter, I ſent a Meſſage to the Coffee-Houſe, by Mr. *Merrick*, who returned and told me he found Mr. *Barnard* there, and that he ſaid, What could the Duke of *Marlborough* want with him? He had ſpoke with him once in *Hyde-Park*, and another Time in *Weſtminſter-Abbey*. The Meſſenger told me, he ſaid he would wait on me, which he did at *Marlborough-Houſe*, about half an Hour after Ten o'Clock, I think, on the *Friday* following.

Priſoner. It was *Thurſday*, my Lord.

D. of Marlb. I cannot be ſure as to the Day. When he came in, I knew, at firſt Sight, it was the ſame Perſon that I had ſeen in the *Park* and in the *Abbey*. I deſired him to walk with me into a Room, and immediately ſhut the Door when we were in. I aſked him as before; he ſaid, *he had nothing to ſay to me*; then I told him of the laſt Letter I received, that it mentioned his Name, and that he knew ſomething concerning my Safety; he ſaid, *he knew nothing of it.* Then I recapitulated all the Letters, beginning with the firſt, and remarked to him, that it was ſtrange to me, that a Man that wrote ſo very correct, without falſe *Engliſh* in any Shape, ſhould be guilty of ſo low an Action; he ſaid, *A Man may be very learned, and very poor.* I then took Notice of the ſecond Letter, and ſaid, there muſt be ſomething very odd in the Man; he ſaid, *I imagine the Man muſt be mad.* I ſaid, he ſeems ſurpriſed that I ſhould have Piſtols; ſaid he, *I was ſurpriſed to ſee your Grace with Piſtols, and your Star on.* I ſaid, Why was you ſurpriſed at that? His Anſwer was, after ſtopping a Moment, *It was ſo cold a Day; I wondered you had not a Great Coat on:* Then I afterwards ſhew'd him the Letter again where his Name was mentioned, and walked with him to the Window; and as I read it, when I came to that Part where it ſaid his Father was out of Town, he ſaid, *It is very odd, my Father was then out of Town.* I ſaid nothing to him of that, though it ſtruck me a good deal, as there was no Date to the Letter. I ſaid, if you are innocent, it behoves you much more than me to find out the Author of thoſe Letters, particularly the laſt; for it was an Attempt to blaſt his Character behind his Back; he ſeemed to give me a Smile, and away he went. I did not apprehend him then.

Counſel for the Priſoner. In what Manner did your Grace receive this firſt Letter?

D. of Marlb. I am Maſter of the Ordnance. Somebody or other had put it in under the Door of the Office in the Night-time, and the Keeper of the Door ſent it to me the next Day.

Q. As to the ſecond Letter, which Way did your Grace receive that?

D. of Marlb. That was ſent the ſame Way, by being put under the Door as the other.

Counſel. In Conſequence of the firſt Letter, your Grace went into the *Park* on Horſe-back, and was there ſome Time without ſeeing any body you ſuſpected, Were there not People there?

D. of Marlb. I ſaw ſeveral People on Horſe-back, and ſome few walking in a Hurry on Foot.

Q. Pray, my Lord Duke, after you had ſeen this Perſon loitering, was there any thing going forward, ſuch as hunting a Duck, or the like?

D. of Marlb. No, nothing in the World as I ſaw; it was a very cold Day.

Q. Your Lordſhip ſaid there was another Perſon at a Diſtance, an Attendant on your Grace; How far might that Perſon be off when you was ſpeaking to the Priſoner?

D. of Marlb. I cannot tell exactly. I had ſpoke to him to keep a great Way off.

Q. Was he in View of your Grace?—*D. of Marlb.* I dare ſay he was.

Q. Might not any Perſon equally ſee that Perſon as well as your Grace?

D. of Marlb. I ſuppoſe he might.

Q. Was your Grace there at the Time?

D. of Marlb. I was there rather before the Time, I believe.

Q. Did he in the leaſt offer to follow your Grace?

D. of Marlb. No, he ſeemed to go the other Way.

Q. With reſpect to the ſecond Letter, your Grace went according to Appointment to *Weſtminſter-Abbey*, and ſaw the Priſoner and another Perſon come into the *Abbey*; Before that other Perſon had left him, had your Grace been near him?

D. of Marlb. I had; I ſtood by him in Hopes he would ſpeak to me, if he was the Perſon that wrote the Letters.

Q. Whether the Circumſtance was not ſuch, that That other Perſon might very well believe your Grace wanted to ſpeak to the Priſoner?

D. of Marlb. That I cannot tell. I ſtood very near the Priſoner, wanting him to ſpeak to me. It is poſſible he might think ſo.

Q. Whether there were not at that Time ſeveral Perſons attending on your Grace?—*D. of Marlb.* There were two or three.

Q. Did your Grace ſpeak to either of them in the *Abbey?*

D. of Marlb. No, I did not.

Q. Whether, if there was any other Perſon in *Weſtminſter-Abbey* at that Time, whether that third Perſon might not have taken Mr. *Barnard* for your Grace's Companion, as your Grace ſpoke to him?

D. of Marlb. Upon my Word, I cannot tell that.

Q. Could there be a Perſon to whom that Expreſſion, in the third Letter, might be applied, referring to your Grace's Companion, beſides Mr. *Barnard?*

D. of Marlb. Yes, it might be applied to a Gentleman that went away with me in the Coach from the *Abbey*.

Q. Whether your Grace did not bow ſeveral Times to the Priſoner before you ſpoke?—*D. of Marlb.* No, I don't think I did.

Counſel. With reſpect to the third Letter, your Grace heard no more of that till the fourth came?

D. of Marlb. I did not; and when the fourth came I ſent to Mr. *Barnard.*

Q. Did your Grace know Mr. *Barnard* before you received theſe Letters?—*D. of Marlb.* No, I did not at all.

Q. Does your Grace now know whether he was a Perſon in ſuch Situation in Life, as anſwered to the Deſcription in the Letters?

D. of Marlb. I don't know the leaſt Thing of him, either Character or Circumſtances.

Counſel. Then, abſtracted from theſe Circumſtances, ſhould your Grace have entertained any Suſpicion of him more than of any other Perſon?

D. of Marlb. I did not know there was ſuch a Man in the World.

Q. When he came to your Grace's Houſe, did he come in very readily?

D. of Marlb. He did.

Q. Whether his Anſwer was, I was ſurpriſed to ſee you armed too, or I was ſurpriſed to ſee you armed?

D. of Marlb. I cannot take upon me to ſay whether he laid ſuch an Emphaſis on it or not.

Counſel. Then he made no Secret of ſeeing your Grace in the *Park?*

D. of Marlb. No.

Counſel. Nor in the *Abbey?*

D. of Marlb. No.

Q. Your Grace mention'd, he ſaid, It is very odd, my Father was out of Town then! Could your Grace apply that, in the Manner it was ſpoke, that his Father was out of Town when the Meſſage came to him?

D. of Marlb. I really underſtood him, that he knew his Father was out of Town at the Time of his writing the Letter.

Q. Did your Grace mention the Time you received it?

D. of Marlb. No, I did not mention any Time.

Q. Did he come punctually to his Time?

D. of Marlb. He did; I think the Meſſenger ſaid he would wait on me about half an Hour after Ten.

Q. In what Manner was he apprehended?

D. of Marlb. I do not know; I underſtood he was ſummoned.

Q. It has been ſaid, he went away with a Smile; Pray, my Lord Duke, might not that Smile expreſs the Conſciouſneſs of his Innocence as well as any thing elſe?

D. of Marlb. I ſhall leave that to the Great Judge.

Q. He ſaid, A Man might be very learned, and very poor; Does your Grace know whether this Perſon at the Bar is either learned or poor?

D. of Marlb. I do not know indeed.

Q. May not that Expreſſion fall from any Man whatever?

D. of Marlb. I cannot ſay as to that.

James Merrick. I was directed from his Grace to carry a Meſſage to *Storey's-Gate* Coffee-houſe; I went, and there was the Priſoner at the Bar: I told him, the Duke of *Marlborough* wanted to ſpeak with him; he expreſſed ſome Surprize at what the Duke ſhould want with him, but no Fear.

Q. When was this?

Merri

Merrick. This was on *Tuesday* the 25th of *April*, in the Evening; and he said, he would wait on the Duke on the *Thursday* following, between Ten and Eleven o'Clock.

Cross-Examination.

Q. What Reason did he give for not waiting on his Grace sooner?

Merrick. His Excuse was, he was going out of Town.

Q. Did he say any thing to you of his having seen the Duke before?

Merrick. He did. He said, he had seen his Grace three Times in his Life, once in *Hyde-Park*, and once in *Westminster-Abbey*, and once at the Camp at *Byfleet*; he said, he did not know the Duke when he saw him in *Hyde-Park*, till the Duke himself told him who he was.

Q. Did he tell you what had passed either in the *Park* or in the *Abbey*?

Merrick. He told me, that in the *Park* the Duke rode up to him, and asked him, Sir, do you want any thing with me? His Answer was, No. Then the Duke asked him, If he knew who he was? He answered, No, again. Then the Duke told him, he was the Duke of *Marlborough*; then he made his Bow: And in *Westminster-Abbey* he told me he thought the Duke had spoke to him; but on turning about he said, he did not; and he turned and went away.

Q. Where had you this Conversation?

Merrick. This was in a Room in the Coffee-house by ourselves.

Q. Did he tell you this voluntarily?

Merrick. He did. At first he seemed surprized, and then said, he recollected these Circumstances.

Q. Did he express any Signs of Fear?

Merrick. No; but he seemed much surprized.

William Marsden. I was appointed by his Grace the Duke and Justice *Fielding* to watch the Duke in *Westminster-Abbey*, and had two Constables there in order to apprehend the Person, if his Grace had thought proper to give the Signal.

Q. Were you all together?

Marsden. No, but so dispersed that our Intention might not be known; I was within the Choir hearing the Prayers for some Time; there was a Gentleman near the Duke with a Sword, whom I thought the Person at first, but I learned afterwards, he was an Acquaintance of his Grace's; I was not apprized that any such Person would attend him: I saw Mr. *Barnard* and another Person come in, and his Eye was fixed on his Grace as he walked in the Isle; they walked down the Middle Isle, not directly to his Grace; in a little Time I observed his Grace to meet them, and as I thought by the Behaviour of Mr. *Barnard*, that he spoke first to the Duke, presently after that Mr. *Barnard*'s Partner went off from him; then Mr. *Barnard* went and stood looking at the Duke; then I thought Mr. *Barnard* was the Person; so I did not mind the other: I saw his Grace speak to him again, but was not near enough to hear what they said: After that, his Grace walked backwards and forwards once or twice, and went out at the Door he came in at; the other Gentleman immediately followed the Duke; I followed to see what passed; the Gentleman, the Duke's Acquaintance, walked opposite to the Duke; Mr. *Barnard* was got looking behind a Post; any body that was on that Side he was on could see him, but a Person on that Side his Grace was on could not; I believe it was impossible for his Grace to see him at that Time; he looked after his Grace a considerable Time, then walked back: I followed his Grace, and told him what Observations I had made; his Grace immediately told me, the Man in black was the Man that he had seen in *Hyde-Park:* Then I said, I wonder your Grace did not give the Signal to have him apprehended; his Grace said the same as repeated here, He would rather let it be a little longer, than to take up an innocent Man; he should hear of him again, he apprehended, for he seemed to be afraid to speak to him at that Time.

Q. Was he apprehended after this?

Marsden. He was. I procured him to come before Justice *Fielding*, by a sham Summons, in which he was accused with Assault and Battery: He was not taken up till he came there, then he seemed surprized.

Q. Did he tell you about any thing that happened in *Westminster-Abbey*?

Marsden. I was with him in the Dining-Room at Mr. *Fielding*'s, in order to take his Examination; I went as it were out of Complaisance to him, not to leave him alone; he talked a great deal, but I did not make such Observations of it as I should have done if I had thought of his coming here: I remember he said he ordered his Friend to walk off, that he might see what the Duke wanted with him; and said, he thought the Duke must come there by Appointment: He mentioned something about the Duke's giving him a Place or Post; I think he said he ordered his Friend to walk off, to see if the Duke would give him some Place; or, Perhaps the Duke wants to give me a Place.

Q. Are you sure he said the Duke wanted to give him a Place? Or, that his Friend said, Go towards him, perhaps the Duke wants to give you some Place?

Marsden. I cannot be sure which; I know the Word *Place* was mentioned.

Cross-Examination.

Q. Where is the Summons?

Marsden. This is the Summons (*producing one*); I did not serve it on the Day it bears Date; it was made out on *Saturday* the 29th of *April*. I was to have given him it that Afternoon, but I was told he was gone to *Brentford*; so I went early on *Monday* Morning following, and gave it him: This was only made out as a Decoy; the Name in it is one of the Constables that was fixed in *Westminster-Abbey*, named *Roger Boucher*.

Q. Did he shew any Unwillingness to come?

Marsden. No, none at all; he looked at it, and said, It is a Summons from Mr. *Fielding*; he read it over, and said, *Roger Boucher!* I know nothing of him; give my Compliments, tell him I will wait on him.

Q. As to this Place that he looked through, which Door is it at?

Marsden. It is the West Gate near the *Gate-house*; just at the Corner there is another Gate, and next to the Wall is a Sort of a Post, which is what he looked through, or by.

Q. Is not that Gate, as you call it, a close wainscotted Door?

Marsden. It is a Door, but the Place where I mean is a Post; he peeped between the Post and the Wall. I have never been since to look at it; if there is not a Hole between that and the Wall, he must look by the other Side of it.

Q. Which Way was his Head?

Marsden. That was towards the Gentleman who was close to the Wall, opposite him; he must have turned his Head farther from the Wall to have seen his Grace, as his Grace was going to take Coach.

Prisoner's Defence.

I am intirely innocent of this Affair with which I am charged. I leave it to the Court and the Jury, with the Evidence that will be produced.

For the Prisoner.

John Barnard. I am Father to the Prisoner at the Bar.

Q. What is his Employ?

John Barnard. He is employed in my Business as a Builder and Surveyor principally; in not only that, and drawing Plans, but also in receiving great Sums of Money.

Q. Have his Accounts always stood right and clear?

John Barnard. They always have.

Q. Do you look upon him to be a sober Man?

John Barnard. I have had great Reason to believe him such, more particularly lately.

Q. Has he been possessed of large Sums of Money?

John Barnard. He has, of considerable Sums; I have oftener asked him for Money than he me.

Q. Had you any Occasion to send him to *Kensington* on *Sunday* the 4th of *December*?

John Barnard. I had nothing, but Circumstances brought the Day to my Mind since: I gave him an Order on that *Sunday* Morning, when we were at Breakfast, to go to *Kensington*, to know whether there was some Money paid by the Treasurer of the Turnpikes for Gravel: I have a Brother there, named *Joseph*; he went there and did his Business, and dined with my Brother.

Q. How do you know that?

John Barnard. Because he told me so; and the Sollicitor of the Turnpike told me he had been with him, and in consequence of which I had my Money afterwards.

Q. Have you ever heard your Son take any Notice of his meeting with the Duke of *Marlborough* that Day?

John Barnard. When he came Home, he told me, he had met the Duke of *Marlborough*, and these Circumstances of his Grace's taking Notice of him; he mentioned it as an extraordinary Thing. I asked him, if he had not looked a little impudently (as he has a near Sight) at him, or pulled his Glass out? He said, he saw another Gentleman at a Distance, and the Duke was armed; and he imagined there might be a Duel going forwards; he has from that Time to this mentioned it as a very strange Event several Times in my House, without any Reserve at all.

Cross-Examination.

Q. At the Time you sent your Son to *Kensington* on the 4th of *December*, suppose you had not given him an Order to go there, whether he was not at Liberty to go where he pleased?

John Barnard. Yes; I never restrain him.

Q. Did he say he was surprized to see the Duke without a Great Coat?

John Barnard. I cannot remember that Particular.

Q. Did you hear him mention his seeing the Duke of *Marlborough* in *Westminster-Abbey*?

John Barnard. I have very often, and very publickly, and with some Surprize; as he has that in *Hyde-Park*. I said to him, I would not have you be public in speaking of Things of this Kind, lest a Use be made of it to your Disadvantage.

Thomas Barnard. I am First Cousin to the Prisoner at the Bar. On *Saturday* the 3d of *December* I was at *Kensington*, and lay at my Uncle's House there and dined there. On the *Sunday* the Prisoner came there before Dinner, he said he had been to do some Business that Way. He dined with us; there were my Uncle, Aunt, he and I; he related that Circumstance to us of meeting with the Duke of *Marlborough* in *Hyde-Park*; he said he rode up to him, and asked if he knew who he was; he answered, No; he replied, I am the Duke of *Marlborough*. He related it with some Chearfulness, though as Matter of Surprize.

Q. How long have you known the Prisoner?

T. Barnard. From his Birth: He is in Business with his Father; I always understood he would succeed his Father; I never knew him to behave any otherwise than well in my Life. I never thought him extravagant, nor never heard so; I had always looked upon him to be an honest Man; his Father is in very great Business.

Q. Should you look upon it, that a small Place would be equal to the Chance of succeeding his Father in his Business?

T. Barnard. I should never have thought of such a Thing; I look upon his Situation in Life to be a very extraordinary Thing: I thought he would give the Preference to that above any Thing else.

Cross-Examination.

Q. Do you think he would refuse a good Place?

T. Barnard. No Man would refuse a Place that is to his Advantage.

Joseph Barnard. I am Uncle to the Prisoner at the Bar; I live at *Kensington*; my Nephew, *Thomas Barnard*, lay at my House on the *Saturday* Night, and dined with the Prisoner at the Bar on the *Sunday*. I remember he then mentioned having met with the Duke of *Marlborough* in *Hyde-Park*, while we were sitting at Dinner. I said I was surprized he should meet with him that Day; he said he saw but one Gentleman at a Distance, and the Duke was armed; and his Grace looked him full in the Face, very earnestly (which he seemed to speak with a great deal of Pleasure to me); he is very near-sighted, he can see nothing at a Distance without the Use of a Glass. I have heard him since speak four or five Times of seeing the Duke in *Westminster-Abbey*.

Q. How long ago?

Joseph Barnard. About a Month ago. He is brought up under his Father in very considerable Business, and a Man of some Property besides, and was employed as his Clerk or Book-keeper.

Q. Is he a sober Man?

Joseph Barnard. Very ſober; I never heard to the contrary; neither did I ever hear his Father ſpeak of him as idle or dilatory.

Thomas Calcut. I live at *Kenſington*: I remember the Priſoner coming there on a *Sunday* Morning; a very cold, foggy Morning; with ſome Meſſage from his Father to me, to know whether the Sollicitor had paid ſome Money or not. He was under his Father, as I am under mine; he deſired me to go with him; I ſaid, Stay and dine with me; he ſaid, he could not promiſe, becauſe he had promiſed to dine with his Uncle *Joſeph*: He went into the Parlour, and ſaid, It is vaſtly cold: There has been the oddeſt Accident happened as I came over the *Park!* The Duke of *Marlborough* came up to me, and aſked me, if I knew him? I ſaid, No. He aſked me, if I wanted any thing with him? I told him, No. He ſaid, I am the Duke of *Marlborough*, if you want any thing with me; then the Duke went away, and he came there. He expreſſed a great Surprize at it, and I thought it a very odd Affair.

Henry Clive, Eſq. I have known the Priſoner two Years; I remember dining with him on the 8th of *December*, at his Father's Houſe, with a great deal of Company; I heard him then ſay at Dinner, that ſome few Days before, he had met the Duke of *Marlborough* in *Hyde-park*; that the Duke aſked him, if he had any Buſineſs with him? He ſaid, No; he then told him who he was, and aſked him the ſame again; he ſaid, No. That the Duke ſeemed in ſome Confuſion, and was armed; and he thought he was about a Duel; and indeed I thought it was a very great Lye. I have gone very frequently to his Father's in relation to *Brentford* Bridge. I have no other Acquaintance with him, only going to his Father's, ſo cannot ſay any thing to his Character, either frugal or extravagant.

Q. Can you name any body that dined there that Day?

Mr. *Clive.* Yes, there was Mr. *Wilſon* and his Lady, Mr. *Tunſtall* and his Lady, another Gentleman and his Wife, and the Priſoner's younger Brother that is at *Weſtminſter* School.

Mrs. *Mary Wilſon.* I dined at Mr. *Barnard*'s on *Thurſday* the 8th of *December*; the Priſoner I remember ſaid he had been in *Hyde-Park* ſome Days before, and there he ſaw a Gentleman on Horſeback come up to him, and aſked him, if he had any thing to ſay to him? He ſaid, No; then he ſaid, I am the Duke of *Marlborough*, now you know me, have you any thing to ſay to me? He ſaid, No. He talked of this very freely to us all.

James Greenwood. I live at *Deptford*, with a Relation in the Brewing-Way; I came from *Deptford* on *Saturday* to the Priſoner's Father's; and on the *Sunday* following I was there at Breakfaſt; I ſollicited the Priſoner to get himſelf dreſſed to go with me into the *Park*, being to meet a Perſon at Twelve o'Clock; I with a good deal of Difficulty got him to dreſs himſelf; I put my Shirt on in the Parlour, and after that he put on his; I fancy we breakfaſted about Nine o'Clock; when we got to the End of *Henry* the VIIth's Chapel, the Priſoner would have gone the other Way into the *Park* without going through the *Abbey*; I took hold of his Sleeve, and ſaid, *Barnard*, you ſhall go through the *Abbey*; this was a little after Eleven; this was no unuſual Thing; we have ſeveral Times walked in the *Park*, and ſometimes parted.

Q. Which is the neareſt Way to the *Park?*

Greenwood. I do not know which is the neareſt Way, through the *Abbey*, or by the Side of it; this was the firſt Time I believe that I ever ſaw the Monument of General *Hargrave*. After that we walked down to the Monument erected at the public Expence for Captain *Cornwall*; the Preacher was in the Pulpit; when we were ſtanding at Captain *Cornwall*'s Monument, the Priſoner made ſome Obſervation on the Execution of it in his own Way. After we had ſtayed there ſome Time, I ſaw his Grace the Duke of *Marlborough*, who was got pretty near us: Upon ſeeing the Duke, I jogged him by the Elbow, and ſaid, Step this Way; he ſeemed to look at him.

Q. Had you heard what happened in *Hyde-Park*, previous to this?

Greenwood. I had; I believe it was told to me by the Priſoner at the Bar; on my jogging him we walked up the Middle Iſle towards the Choir. I ſaid, Did you ſee that Gentleman in the blue Coat, or do you know him? No, ſaid he, not I. No, ſaid I, it is the Duke of *Marlborough*; we will walk to the Monument again. The Duke came, and placed himſelf pretty near me a ſecond Time; after this we walked away. I believe we walked ſome conſiderable Time in that Iſle in which is the Monument of Sir *Godfrey Kneller*, there I believe we paſſed and repaſſed again.

Q. Why did you jog him?

Greenwood. Becauſe he is very near-ſighted. At laſt I think it ſo happened, we paſſed the Duke between two of the Pillars; and as I had hold of his Arm walking together, there was barely Room for three People to paſs a-breaſt; the Duke rather gave way, and made, as I thought, a kind of a Bow. Upon this I ſaid, The Duke of *Marlborough*'s Behaviour is extremely particular; he certainly has ſomething to ſay to you; I ſuppoſe he does not chuſe to ſay it while I am with you, I will go into the Choir, and do you walk up and down here, and he will poſſibly ſpeak to you. While I was there, I looked; the firſt Thing I ſaw was the Duke of *Marlborough* and the Priſoner at the Bar, with their Heads bowing together, as if it was the firſt Salutation.

Q. Had the Priſoner the leaſt Inclination to go into the *Abbey* before you propoſed it to him?

Greenwood. No: he did not diſcover any.

Q. Did he diſcover any Inclination to be left alone, when you propoſed to go into the Choir?

Greenwood. No, he did not in the leaſt; in ſome few Minutes after, the Priſoner and I met together, he told me the Duke of *Marlborough* was gone out of the *Abbey*, he had ſeen him go out. I ſaid, What paſſed? To which he replied, The Duke ſaid, did you ſpeak to me? or who ſpoke firſt I cannot tell.

Q. In this Tranſaction did the Priſoner appear openly, or as if he had ſome ſecret Tranſaction to do with the Duke?

Greenwood. No, it was open and clear.

Q. Did you ſee the Duke come in?

Greenwood. No, I did not; we were employed in looking at the Monuments; we looked at ſeveral.

Q. What did you do when you firſt came in?

Greenwood. We walked along, and looked on the Monuments.

Q. Did you ſee the Priſoner's Eye fixed on any Perſon?

Greenwood. No, I did not.

Q. Is Mr. *Barnard* very near-ſighted?

Greenwood. He is; I queſtion whether he can be able to ſee a Perſon acroſs this Room.

Q. Where did you go, when you went out of the *Abbey?*

Greenwood. We went immediately into the *Park*; and after walking there, we met with two Ladies whom I knew, and to whom Mr. *Barnard* was not unknown, to whom we related this Affair; he always repeated theſe Things, that is, this and that in *Hyde-Park*, as Matter of great Curioſity.

Q. How long have you been acquainted with him?

Greenwood. I have been acquainted with him ſeven Years.

Q. What is his Character?

Greenwood. I know nothing to the contrary but that he is an induſtrious, ſober young Man.

Q. Did you ever hear that he was a profligate, expenſive Man?

Greenwood. No, never.

Q. His Father is in great Buſineſs; is he not?

Greenwood. His Father's Buſineſs is a very conſiderable Thing.

William Ball. I am the Maſter of *Storey's-Gate* Coffee-houſe; I remember Mr. *Merrick* coming to my Houſe, to inquire for Mr. *Barnard*; he aſked me, if Mr. *Barnard* was at my Houſe? I ſaid, Leave any Meſſage, I will deliver it to him; he ſaid, he wanted to ſee him that Evening; he left his Meſſage, I delivered it to him; and he came rather before Eight o'Clock to him. He has uſed my Houſe ſome Years, always a well-behaved Man; I never perceived any Extravagancy in him, always a ſober, regular Man. I have heard him ſpeak of having met the Duke of *Marlborough*, but not till after this; he ſaid he had been to his Grace at his Grace's Houſe; this was as he called at my Houſe, after he had been there.

Q. Did he mention what had paſſed?

William Ball. No, he did not; only that he had ſeen his Grace.

Croſs-Examination.

Q. Did he not tell you any Thing that paſſed?

William Ball. He did not tell me a Syllable of it.

Q. What did you ſay to him?

William Ball. I told him, may-be he was going to have a Commiſſion; he ſaid, he would not thank his Grace, except it was a very good one.

Q. How did he appear as to Chearfulneſs, or Dullneſs, or the like?

William Ball. He ſeemed to be very chearful, not in the leaſt concerned; the ſame as uſual, compoſed, rather more chearful.

Counſel. We will now ſhew his Behaviour after he was apprehended.

Mr. *Ford.* While he was in Cuſtody, Mr. *Fielding* did me the Honour of ſending for me; he told me it was upon ſome Buſineſs which concerned the Duke of *Marlborough*'s Life; he aſked me to go along with him and Mr. *Box* to *New-Priſon*, which I conſented to; we went together in a Coach; this was about Twelve at Night, and Mr. *Barnard* was then in Bed; I have really forgot what Day it was: Mr. *Fielding* told him, he had omitted examining his Pockets at the Time he was before him; he then ſearched his Pockets, in order to ſee whether he had any Letters or any Writings that might give Light into the Affair; he very readily let me look into his Pocket-book and Papers. Mr. *Fielding* with great Candour told him, he was in the Hands of a very honourable Proſecutor, and one that would be as glad to diſcover his Innocence as his Guilt. Mr. *Fielding* aſked him for his Keys, and he gave him the Keys of his Scrutore and Compting-houſe with great Readineſs; and I remember that I then told him, that, if he was guilty, ſome Copies might be found to correſpond with the original Letters; and if nothing of that Sort did appear, it would be a Circumſtance in his Favour.

Q. Did you or Mr. *Fielding* tell him he was not obliged to part with his Keys, and did he do it as Matter of Choice?

Mr. *Ford.* I do not recollect that; I know he parted with them very readily.

The Rev. Dr. *Markham.* I have known the Priſoner ſome Years; I have always conſidered him as a young Man of remarkable Sobriety and Attention to Buſineſs: I have had ſome Experience of him; I entruſted him with the Execution of ſome Matters of Importance relating to myſelf, in regard to ſurveying and valuing Eſtates, in which he acquitted himſelf ably and honeſtly; that is the Character he always had: He lives in my Neighbourhood, his Father is a Man of conſiderable Property, and carries on a large Buſineſs.

Counſel. Then you don't ſuppoſe the Priſoner to be in diſtreſſed Circumſtances?

Dr. *Markham.* I never ſuppoſed it, I have no Reaſon to imagine it; if he had come to me, wanting Money, he might eaſily have impoſed on me, he might have had any thing of me; he is one of the chief Perſons I truſted, and I don't know a Man on whom I would have had a greater Reliance; I thought him remarkably able in his Buſineſs, and very likely to be a conſiderable Man; and I never was more aſtoniſhed in my Life than when I heard this ſtrange Story.

Samuel Cox, Eſq. I have known Mr. *Barnard* about the Space of three Years laſt paſt. The Beginning of my Acquaintance was on the Account of his ſurveying of Houſes in the *New Square*, *Dean's-Yard*; the Surveys were generally made by him; he did his Buſineſs with ſuch Accuracy, that I have always thought him a Man very attentive to his Buſineſs, and very unlikely of being charged with this Fact; and upon his being employed upon public Schemes, I employed him in my own Affairs; I employed his Father to finiſh ſome Houſes for me at *Hammerſmith*, the Son was conſtantly employed till the 6th of *April* laſt; I have at different Times paid to Mr. *Barnard* about ſeven hundred Pounds, all paid into the Hands of the Priſoner, except fifty or ſeventy Pounds of it. He has appeared as the Perſon that managed his Father's Buſineſs: If he had come to me, and mentioned any Want of Money, upon his Father's being out of Town,

or the like, he might have had two or three hundred Pounds at any Time. When I firſt was acquainted with him, I obſerved he had a remarkable ſhort Sight; when he has looked full at me, I have thought he ſneered at me; he has ſuch a Fall with his Eye-lids on the Account of his Short-Sightedneſs; I have found his Eyes ſo fixed upon me, that I have been going to ſpeak to him, which, by my long Acquaintance with him, I ſince found was only an Accident.

Robert Vanſittart, Eſq. I have known Mr. *Barnard* about five or ſix Years; my Acquaintance with him was by being acquainted with his Father, who was employed in carrying on a large Building for Mr. *Lee*, an Acquaintance of mine in *Oxfordſhire*; and theſe five Years I have been acquainted with the Son, and frequently in Company with him. In the Beginning of *April* he was in my Chamber, putting up ſome Book-caſes; I remember one Morning at Breakfaſt he told me the Circumſtance of meeting the Duke of *Marlborough* in *Hyde-Park* and in *Weſtminſter-Abbey*, in the ſame Way as the Court has been told from his Grace and the reſt of the Witneſſes: It appeared to me to be a very ſtrange Story, and he ſeemed to tell it as ſuch, as I or any body elſe would have told it. I ſuſpended my Judgment upon it, and never related it to any body, only to my Father and another Gentleman, and they looked upon it as a great Lye that *Barnard* had invented; I, knowing his Character, did not take it as ſuch, but thought he muſt have known it to be as he ſaid.

Q. What is your Opinion of him as to his Buſineſs?

Mr. *Vanſittart*. From my own perſonal Acquaintance with him, and from the many Surveys I have ſeen of his, he certainly is very capable and Maſter of his Buſineſs. I never heard any thing ill as to his private Character.

Q. Did you ever ſee him write?

Mr. *Vanſittart*. No; he draws very well; I have ſeen him draw.

John Smith, Eſq. I have known him eight or ten Years, and his Father's Family twenty-five. He always appeared an induſtrious, ſober, diligent Man, particularly within theſe four or five Years, ſince he has come into Buſineſs with his Father. I conſidered him as a very promiſing Genius in his Way, and one capable of conducting his Buſineſs with Reputation and Character.

Q. Did you look upon him likely to be driven to Diſtreſs, or in Want of a Place?

Mr. *Smith*. No, I did not. I can with great Truth ſay, moſt of the Payments in my Compting-Houſe, on his Father's Account, have moſt of them been paid by the Hands of this young Man; except the laſt five hundred Pounds: Then Mr. *Barnard* and his Wife came over and dined with me, and paid it; and then I blamed him for not bringing his Son.

Q. What are you?

Mr. *Smith*. I am a Timber-Merchant.

Joſhua Smith, Eſq. I am in Partnerſhip with my Father, the laſt Evidence. I have known the Priſoner ſeveral Years; I always thought him a very honeſt, ſober Man, capable in his Profeſſion: The Money that has been paid to us lately, except that five hundred Pounds, has been by him; they never paid leſs than a hundred Pounds at a Time, except once.

Q. Have you any Reaſon to imagine him in deſperate Circumſtances?

Mr. *Joſhua Smith*. There is no Reaſon as I know of to imagine ſo.

Robert Tunſtall, Eſq. I have known him two Years.

Q. What is his general Character?

Mr. *Tunſtall*. He is induſtrious, and very capable of his Buſineſs. His Behaviour has been prudent; he is the principal Man in his Father's Buſineſs in drawing and ſcheming *.

Mr. *Peter Bruſhel*. I have known him from a Child.

Q. What is his Character?

Mr. *Bruſh*. I always took him to be a very ſober, honeſt Man. His Father has done a great deal of Buſineſs for me, and is now at Work for me.

Q. Who did you generally pay the Money to?

Mr. *Bruſh*. I generally paid the Father; if the Priſoner had applied to me, I would have let him have a hundred Pounds at any Time.

Q. Is he capable of his Buſineſs?

Mr. *Bruſh*. He is very capable: He drew a Plan for me laſt *Saturday* was Se'nnight.

Q. Do you look upon him to be in deſperate or diſtreſſed Circumſtances?

Mr. *Bruſh*. No, I do not.

Q. Has he been always a viſible Man?---Mr. *Bruſh*. Always.

Mr. *Jelfe*. I am the King's Maſon. I have known the Priſoner ſeven Years and more.

Q. Do you look upon him to be capable of his Buſineſs?

Mr. *Jelfe*. I believe he is a very capable Man in his Buſineſs.

Q. What is his general Character?

Mr. *Jelfe*. Always a very worthy, honeſt Man.

Q. Did you ever ſee him guilty of any Extravagancy?

Mr. *Jelfe*. No, never.

Q. Do you live near him?

Mr. *Jelfe*. I am a very near Neighbour to him, and keep him Company on Evenings, within this Year or two more particular.

William Robinſon, Eſq. I have known him about ſix or ſeven Years.

Q. Is he a Perſon capable of his Profeſſion?

Mr. *Robinſon*. I believe he is.

Q. What has been his Behaviour?

Mr. *Robinſon*. I always looked upon him to be a very ſober, diligent, frugal Man.

Q. Did you look upon him to be in deſperate Circumſtances?

Mr. *Robinſon*. No, not at all.

Thomas Kynaſton, Eſq. I have known him ſix or ſeven Years.

Q. What are you?---Mr. *Kynaſton*. I belong to the Board of Works.

Q. What is your Opinion of the Priſoner's Situation?

Mr. *Kynaſton*. I think he is in a good one.

Q. What has been his Behaviour?

Mr. *Kynaſton*. That has been always good.

Mr. *Keynton Cowſe*. I have known him ſeven Years, and been in his Company many Times.

Q. What is his Character?

Mr. *Cowſe*. He is a very worthy young Man, ſober and induſtrious, always attending his Father's Buſineſs.

Mr. *Uffort*. I have known him about ſix or ſeven Years; he is a ſober, ſedate young Man as ever I met with. I have done Buſineſs for him ſeveral Times.

Mr. *Brent*. I have known him upwards of three Years.

Q. What is his Character?

Mr. *Brent*. He has a good Character; he is a very induſtrious Man. I have frequently paid him Money.

Mr. *Jones*. I have known him ſeveral Years.

Q. What is his general Character?

Mr. *Jones*. He is very honeſt; no Ways extravagant, that could lead him into a deſperate State; he is as moral a Man as any I know, and has as good a Character.

Mr. *Wilſon*. I have known him about ſeven Years.

Q. What has been his Behaviour during that Time?

Mr. *Wilſon*. It has been always very well. I always looked upon him as an honeſt Man.

Q. Did you ever look upon him to be in a deſperate Way in his Fortune?---Mr. *Wilſon*. No, never.

Q. *to Mr.* Barnard *the Elder*. Where was you when your Son was ſent for to the Duke of *Marlborough's*?

Mr. *Barnard*. I was then out of Town. I have not been in Town above one Week theſe five or ſix Weeks.

Mr. Serjeant Davy's *Reply*.

My Lord, and Gentlemen of the Jury,

I AM ſorry to take up any more of your Time; but the Defence conſiſting of various Parts, I would beg Leave to treſpaſs a little longer on your Patience, and make a very few Obſervations on the Caſe, as it now ſtands before you. I do not claim any Merit at all for their not oppoſing any Evidence, as was attempted on the other Side; I am ſure I ſhall be juſtified in your Opinion. Nothing has paſſed in the Courſe of this Proſecution, but what clearly manifeſts that the Duke is totally indifferent about the Iſſue of it: In this Matter he is only a Friend to Juſtice, and would wiſh for the Priſoner not to be diſturbed in any Method he ſhould take in the Courſe of his Examination: Be that as it may, I have done what I have thought right, and am very glad they have done every thing they could for the Priſoner.

I ſhall now conſider two general Queſtions: The firſt is, Whether the ſeveral Circumſtances that have been given in Evidence, on the Part of the Proſecution, independently, are in themſelves ſufficient to convince a reaſonable Underſtanding of the Priſoner's Guilt; I mean your Underſtandings as Jurymen. The ſecond Queſtion is, Whether the Defence that has been ſet up, thoſe Circumſtances are ſufficient to repel the Weight of the Evidence; I mean, whether the Defence is reconcileable to the Suſpicions of the Priſoner's Guilt; for if they are irreconcileable with the Priſoner's Guilt, (as I do not intend to impeach the Credit of any one Witneſs) I am content upon that Suppoſition, he may be acquitted: I don't mean, that any Witneſs has laid a ſingle Circumſtance before you that is not ſtrictly true, but that they may be reconcileable with the Suſpicion of his Guilt.

I do not mean to draw your Attention back to the ſeveral Circumſtances of the Proſecution; they are all before you, and they are too ſtrong and ſtriking to be eaſily forgot; they would be diminiſhed conſiderably by attempting to recapitulate them, and therefore I ſhall not attempt it: And, as I ſaid at the Opening, they are irreconcileable with any Suppoſition of the Priſoner's Innocence, independently of the Defence ſet up for him, if they are ſo ſtrong in themſelves, as it would be offering Violence to one's Underſtanding, not to conſider them as Circumſtances neceſſarily inducing his Guilt.

It will remain for your Conſideration, it is now the capital Queſtion, Whether theſe Circumſtances laid before you, conſiſting of five or ſix Parts on the Part of the Priſoner, may be reconciled with the Suſpicion of his Guilt? Becauſe, if they may, it is no Defence at all.

Gentlemen, the firſt is, the Priſoner being ſent by his Father to *Kenſington* on this *Sunday* on which he met the Duke in *Hyde-Park*. I did not chuſe by any Means to aſk the Father any Queſtion; I ſhould have diſobliged my Noble Client if I had done it. As, Why he was ſent to *Kenſington*? What Converſation might have led to that Matter? What happened at Breakfaſt with his Father was the ſole Occaſion of his going there. The Son, you ſee, is principally concerned in conducting his Father's Buſineſs; he might, or he might not propoſe the Expediency of ſuch a Journey. It is a little extraordinary, this Buſineſs (not being urgent in its own Nature) ſhould be appointed by the Father to be tranſacted on the *Sunday*, when the Father might as well have employed his Time in going elſewhere: Going to aſk whether a Sum of Money had been paid on the Account of Gravel, to make it neceſſary to be ſent juſt at Church-time. His Father talked of his going; he did go——What does that prove? Does it prove he was not to go to *Hyde-Park* any other Way? Whoever was the Writer of theſe Letters, certainly intended to have a Meeting on both the *Sundays*, in the *Park* and in the *Abbey*, in a very public Manner; and that agreeable to the Tenour of the Letter, he did provide himſelf with a Defence in caſe of Need. Now, be the Author of theſe Letters who it may, the Author did contrive a Subterfuge for himſelf afterwards, in order to reply to a Charge of that Nature.

Gentlemen, the next Part of the Defence is, that he at ſeveral Times and to ſeveral People related the Meetings he had had with the Duke,

* Mr. *John Barnard*, the Father of the Priſoner, built *Kew* Bridge for this Mr. *Tunſtall*.

and the extraordinary Occurrences. This indeed corresponds with the Observations I made: The Writer of these Letters proposed to meet the Duke at a Time that People were walking out on a *Sunday*, and in the *Abbey*, the most public Places, and at the most public Times: Is that irreconcileable with the Suspicion that the Prisoner (if he was the Author of these Letters) might have been contriving with other Persons, telling People of the several Meetings he had had with the Duke, and the Substance of those Meetings? But one Observation will arise, perhaps not much to his Service; and that is, when he told those People of his seeing the Duke, he spoke to his seeing an Attendant, which corresponds with the second Letter: What does he say about it to the Persons to whom he relates the Meeting? He saw he was armed---He saw one likewise at a Distance, and he thought there was a Duel going forwards. Now, when he spoke to the Duke of the Surprize he had entertained on seeing the Duke armed, does he assign that as a Reason of apprehending a Duel? No; it was because it was cold Weather, and he wondered to see him without a Great-Coat: So that the same Man that speaks of it to his Friends as a Circumstance that might induce a Surprize, speaks of it at another Time as being surprized, without giving that as a Reason for it.

The next Circumstance is, Mr. *Greenwood*'s Evidence of going with him to *Westminster-Abbey*. There are two or three Things a little particular: After Breakfast, about Nine o'Clock, he sollicits the Prisoner to dress himself in order to go to the *Park*. The Prisoner seemed unwilling to go there. He said, it was not an unusual Thing, when they were to go together, for them to differ, and upon that Occasion to part. Supposing the Prisoner wanted to get rid of this Companion of his, who had layed there, and was not easily to be got rid of, why might not that account for his being unwilling to dress himself at Nine in the Morning, in order to get rid of him? For he had Time enough to dress himself an Hour after that, and to meet the Duke in the *Abbey* at Eleven. It is a little odd, that the Prisoner wanted to go another Way, and expressed a Reluctancy in going through the *Abbey*. It is clear, he did not mean to be seen by Mr. *Greenwood* in the *Abbey*: But when he could not get rid of that, and he plucked him by the Coat for that Purpose, did they prosecute their Design in going to the *Park*, and yet saunter a good while in the *Abbey*? (No Reason why they did so) First they went to General *Hargrave*'s Monument, then to Captain *Cornwall*'s Monument; there they stayed some Time, the Duke's Behaviour being in Mr. *Greenwood*'s Evidence particular; from the Duke's bowing, he thought that the Duke wanted to speak to him in private. How is this reconcileable? There is not a Circumstance in all that Part of the Story of Mr. *Greenwood*'s Evidence, which suits so well as this of his Guilt: First he wanted to get rid of Mr. *Greenwood*, and when he could not do that, then making no Secret of having seen the Duke,
and make that tally with his telling him he had met him.

The next Circumstance is Mr. *Ball*'s; and if that Circumstance of his Evidence strikes you as it did me, I wonder he was produced as a Witness; for, you see, he was very forward: He was blamed for it by one of his Witnesses; he thought he talked too much of having met the Duke, that was so singular, that it demanded Animadversions: Yet notwithstanding, when he had had a third Interview with the Duke, and there appeared so very material a Circumstance of the Duke's having charged him with a very extraordinary and wicked Proceeding against him; when he had told him of all these Letters, and one of them set forth his Name, as a Person that could inform his Grace of something which nearly related to his Safety, and hinted to him the Strangeness of these Letters, and charged them upon him; and after having pretended a total Ignorance of this Matter, he afterwards conceals all this from Mr. *Ball*: And what is another Circumstance, Mr. *Ball* says, he was rather more chearful in relating what he did than usual. God knows, he had no Reason to be chearful! for the Duke had charged him home with a capital Offence; the Duke had admonished him, and told him, either he was the Author of the Letters, or he was used exceeding ill by the Person that did write them. Yet, you see, in mentioning these Things to his Friend Mr. *Ball*, *Ball* considers it as a Fruit of the Duke's Benevolence to him, and says, he will give you a Post in the Army. The Prisoner replied, It must be a very good one, if I accept it.

These are all the Circumstances that they have insisted upon as Proofs of his Innocence, except one, that is his Character. They have called to that many Witnesses; they say he is very expert in his Business, a very diligent, sober Man; nothing about him as Marks of Distress; no Vices to which they find him inclined; which give him an Occasion for a Demand of this Kind; and that, upon the whole, he has passed as a very honest Man.

Gentlemen, when you come to consider that, Character goes but a very little, and indeed no Way at all, towards proving his Innocence.

In the first Place, Character can only be of Service to a Man, where his Case hangs as it were in equal Scales, and it is doubtful whether innocent or guilty; there it is that a good Character stands in some Stead, and will balance the Scale in his Favour. But this is that Sort of a Case, that this particular Character they have given of him will have no Weight to repel those several suspicious Circumstances that tally so exactly as to his Guilt. Might it not happen, that a Man betwixt twenty and thirty Years of Age, dependant in some Measure on his Father, might have a secret Call for Money, which he would wish his Father, and those Friends that are fond of lending him Money, not to be acquainted with? We know very well, there are certain Circumstances, some in this Capital City of *London*, where a Man might be very hard driven for the Want of Money, which he would chuse to hide from his Friends.

I know nothing of the Prisoner's particular Character; but it is enough for this Purpose, that it possibly may be his Case: If so, What then has the present Character to do with it? If the Circumstances of the Out-lines are such, can any doubt about believing he is Guilty or not? Then all those other Circumstances will have no Weight at all to counterpoise the Weight of the former.

As I said at first, if upon any Circumstances offered on the Part of the Prisoner, if the Weight of Evidence on the Part of the Prosecution is sufficient to charge him, there is nothing in the Defence that will lessen it at all.

Gentlemen, he is safe in your Hands. I doubt not but that you will do your Duty: If you think him guilty, you will find him so; if not, you will acquit him. With regard to the Duke, his Grace has discharged his Duty which he owed to the Public, which he will at all Times do, and is perfectly indifferent about the Issue of it.

The Jury acquitted the Prisoner.

He was a second Time indicted by the Name of *William Barnard*, for feloniously sending another Letter to the Most Noble *Charles* Duke of *Marlborough*, signed *F.* demanding two or three hundred Pounds; but no Evidence appearing against him, he was acquitted.

LV. The Trial of John Stevenson, late of *Bickerton*, in the County of *Chester*, Cheesefactor, at *Chester* Assizes, upon *Friday* the 27th Day of *April*, 1759, before Mr. Justice *Swinnerton*, and Mr. Justice *White*, for the Murder of Mr. *Francis Elcock*, late of *Nantwich*, in the said County, Attorney at Law.

ABOUT Nine o'Clock in the Morning, the Court being sat, the Prisoner was brought to the Bar.

Counsel for the Crown,
Mr. *Hall*, Attorney-General for *Cheshire*.
Mr. *Falconer*.
Mr. *Hayward*.

Counsel for the Prisoner,
Mr. *Townsend*, Recorder of *Chester*.
Mr. *Perryn*.
Mr. *Maddox*.

Prothonotary. Prisoner, hold up your Hand.

Prisoner arraigned.

You stand indicted by the Name of *John Stevenson*, late of *Bickerton*, in the County of *Chester*, Yeoman, for that you, not having the Fear of God before your Eyes, but being moved and seduced by the Instigation of the Devil, on the 21st Day of *March*, in the thirty-second Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great-Britain*, &c. with Force and Arms, at *Bickerton* aforesaid, in the County aforesaid, in and upon one *Francis Elcock*, in the Peace of God, and our said Lord the King, then and there being, then and there feloniously, wilfully, and of your Malice aforethought, did make an Assault; and that you the said *John Stevenson* a certain Gun of the Value of ten Shillings, then and there charged with Gunpowder and one Leaden Bullet; which Gun you the said *John Stevenson* in both your Hands then and there had and held, to, against, and upon the said *Francis Elcock*, then and there, feloniously, wilfully, and of your Malice aforethought, did shoot and discharge; and that you the said *John Stevenson*, with the Leaden Bullet aforesaid, out of the Gun aforesaid, then and there, by Force of the Gun-powder shot, discharged, and sent forth as aforesaid, the aforesaid *Francis Elcock*, in and upon the left Side of the Belly of him the said *Francis Elcock*, then and there, with the Leaden Bullet aforesaid, out of the Gun aforesaid, by you the said *John Stevenson*, so as aforesaid shot, discharged, and sent forth, feloniously, wilfully, and of your Malice aforethought, did strike, penetrate, and wound; giving to the said *Francis Elcock*, then and there, with the Leaden Bullet aforesaid, so as aforesaid shot, discharged, and sent forth out of the Gun aforesaid, by you the said *John Stevenson*, in and upon the left Side of the Belly of him the said *Francis Elcock*, one mortal Wound, of the Depth of five Inches, and of the Breadth of one Inch; of which said mortal Wound the said *Francis Elcock*, on the aforesaid 21st Day of *March*, in the Year aforesaid, for the Space of ten Hours, at *Bickerton* aforesaid, in the County aforesaid, did languish, and languishing did live; on which said 21st Day of *March*, in the Year aforesaid, the said *Francis Elcock*, at *Bickerton* aforesaid, in the County aforesaid, of the mortal Wound aforesaid died: And so the Jurors aforesaid, upon their Oath aforesaid, do say, that you the said *John Stevenson*, the said *Francis Elcock*, in Manner and Form aforesaid, feloniously, wilfully, and of your Malice aforethought, did kill and murder, against the Peace of our said Lord the King, his Crown and Dignity.

Prothonotary. How say you, *John Stevenson*, are you Guilty of the Murder and Felony whereof you stand indicted, or Not Guilty?

Prisoner. Not Guilty.

Prothonotary. Culprit, how will you be tried?

Prisoner. By God and my Country.

Prothonotary. God send you a good Deliverance.

Prisoner. Amen! God send me a good Deliverance.

Then

Then the Jurors were called and ſworn.

Names of the Jurors.

William Brown, of *Stockport-Etchels*, Foreman,
John Bennet, of *Marple*.
John Hodſon, of *Raby*.
Henry Price, of Ditto.
John Lee, of *Tranmore*.
Samuel Jones, of *Over-Bebbington*,
Joſeph Wright, of Ditto.
Richard Jackſon, of Ditto.
Thomas Robinſon, of *Newhall*.
George Woodhouſe, of *Buerton*.
John Cliffe, of *Audlem*.
Samuel Lea, of *Baddiley*.

N. B. The Priſoner challenged *Abraham Darlington*, of *Brindley*, as he came to be ſworn; but no Cauſe was aſſigned for ſuch Challenge.

Mr. Attorney-General challenged *Edward Hamnett*, of *Newhall*, as he came to be ſworn; as Mr. *Hamnett* owned he was related to the Priſoner.

Prothonotary then read the Indictment.

Mr. Attorney-General, Counſel for the Crown, opened the Caſe to the following Effect:

Gentlemen of the Jury,

The Priſoner, *John Stevenſon*, ſtands indicted before you, for the Murder of Mr. *Francis Elcock*, late of *Nantwich* in this County, an Attorney at Law; which Crime he (the Priſoner) perpetrated and committed upon the 21ſt Day of *March* laſt: And it is now my Duty, as Counſel on Behalf of the Crown, to uſe my Endeavours for the obtaining that Juſtice and Reſtitution, which the Law requires for Crimes of this horrid Nature. To which End, it may be neceſſary, that I point out ſome Facts and Circumſtances antecedent to the Commiſſion of the Murder, which I doubt not we ſhall be able to prove, and hope you will be ſatisfied in your Conſciences, that the Priſoner did kill and murder Mr. *Elcock*, as laid in the Indictment; and if ſo, that you will find him Guilty.

Gentlemen, at the Time this Murder was committed, Mr. *Elcock* was doing a legal and a commendable Act: He was endeavouring to ſubdue the Priſoner, and to bring him to a juſt Senſe of, and an Obedience to the Laws, which he had but a little while before violated, by an outrageous Contempt of, and Rebellion to thoſe Laws, which have been wiſely (and happily for us) made, for the Preſervation of the Lives, and Security of the Properties of the Subject. The Priſoner, Gentlemen, has been for many Years a Cheeſefactor in this County; but failing in his Credit ſome Years ago, has ſince then taken Sanctuary in his Houſe at *Bickerton*, and there kept himſelf confined, to prevent the Effect of a Civil Proceſs, and to evade the Payment of his juſt Debts. Common Attempts for Juſtice to the Creditors were vain: The Sheriff's Officers too well known, and indeed Perſons in general (except a few Confidents) too hardly ſuſpected, to gain Admittance: Art and Policy became neceſſary. The unfortunate young Gentleman, whoſe Death you are now to enquire into, was employed as an Attorney, for one of the Priſoner's Creditors, to ſue out a Writ againſt him, which he accordingly did, and obtained the Sheriff's Warrant thereon, and delivered it to one of the Officers named therein, with Directions to arreſt the Priſoner. But the Officer apprehending he ſhould be denied Admittance to the Priſoner, had Recourſe to a Stratagem, not unlikely to prevail. He wrote a Letter to the Priſoner, ſignifying, that the Gentleman who ſent it wanted to buy ſome young Trees from the Priſoner, and deſiring that the Bearer of the Letter might be permitted to view the Trees, or to that Purpoſe. The Officer went to the Priſoner's Houſe with this Letter; and knocking at the Door, a Perſon came to the Window, to whom it was delivered; and as ſoon as the Priſoner had read the Letter, the Officer was admitted to him. After ſome Diſcourſe relating to the Trees, the Bailiff acquainted the Priſoner *Stevenſon* with the real Errand he came upon, namely, to arreſt him; and accordingly the Bailiff did then and there actually arreſt the Priſoner, by laying his Hand upon him, and telling him that he had the Sheriff's Warrant againſt him, which he produced. What was the Priſoner now to do in this Situation? Muſt he tamely ſubmit to the legal Authority of the Bailiff, and quit his Aſylum, till he had given Security, or rendered to the Plaintiff Satisfaction for his Debt? No.—After a ſhort Pauſe, and taking a Turn or two in his Houſe, he ſuddenly preſented a Piſtol at the Breaſt of the Officer, and ſwore, if he did not immediately leave the Houſe, he would blow his Brains out; and without waiting for an Anſwer, actually ſnapped the Piſtol at him, which miſſed Fire. But he could not reſt here; his Temper was too hot to put up with the Affront of being lawfully arreſted for a juſt Debt: He ſnapped the Piſtol three Times at the Officer's Breaſt, which providentially did not go off.—It was high Time for the Bailiff now to retire; the Preſervation of his Life required it: He had no Chance, unarmed and alone, to maintain his Arreſt againſt a loaded Piſtol, and there was no Time for Words to ſoothe a Man of ſo deſperate and outrageous a Diſpoſition into a peaceable Compliance; and therefore the Officer thought fit (and I think very prudently too) to leave his Priſoner. But after his miraculous Eſcape, he went to Mr. *Elcock*, who was in the Neighbourhood, and told him that he had arreſted the Priſoner, who reſcued himſelf by ſnapping a Piſtol at him three different Times, and deſired Mr. *Elcock* to get him Aſſiſtance, for the re-taking the Priſoner; whereupon Mr. *Elcock*, and the Plaintiff in the Action, with one or two other Perſons, returned with the Officer to the Priſoner's Houſe, which they found locked; and Mr. *Elcock* going to one of the Doors, demanded Entrance, and deſired the Priſoner to yield to the Arreſt. But the Priſoner's Reſentment could not reliſh a Capitulation of this Sort; he was determined ſtill to oppoſe the Authority of the Law, and to refuſe any Obedience to it. Reſolved upon the Death of Somebody or other, no matter whom, he took up a Gun loaded with Gunpowder and Ball, and diſcharged it through the Door againſt which Mr. *Elcock* ſtood, and unfortunately killed him. It ſeems unneceſſary for me, Gentlemen, to make any Obſervations with reſpect to the Intention of the Priſoner to commit Murder: His keeping of Fire-arms loaded in his Houſe; his ſnapping a loaded Piſtol three different Times at the Bailiff, in the Execution of his Duty, after he had arreſted the Priſoner; and his diſcharging the Gun, whereby the Deceaſed was killed, too fatally evince, beyond the leaſt Shadow of Doubt, that the Priſoner did intend and deſign an unlawful Killing: And although the Priſoner might not have ſeen Mr. *Elcock*, when he diſcharged the Gun which killed him, yet his ſhooting at Random was an unlawful ſhooting, for the Purpoſe, and with an Intent to kill Somebody then at the Door; and therefore that ſhooting at Random can be no Juſtification or Excuſe to the Priſoner.---We, who are of Counſel for the Crown, ſhall now proceed to examine the Witneſſes in Support of the Indictment; and doubt not but we ſhall be able to make out the Caſe, as I have ſtated it; and if ſo, you will then find the Priſoner Guilty, that he may receive the Puniſhment juſtly inflicted by Law upon thoſe who ſhall be guilty of the horrid Crime of Murder.

Mr. Falconer, *Counſel for the Crown.*

Gentlemen, Mr. Attorney has repreſented the Caſe ſo fully, that it is quite unneceſſary for me to enlarge upon it; and therefore ſhall not take up the Time of the Court, but proceed to the Examination of the Witneſſes.

Cryer calls *John James*, the Bailiff, who arreſted the Priſoner.

John James ſworn.

Counſel for the Crown. Do you know the Priſoner at the Bar?

James. Yes.

Q. Did you know the deceaſed Mr. *Francis Elcock*?---*James.* Yes.

Q. Were you, at any Time, employed to arreſt the Priſoner for Debt; and what happened in conſequence of it? Speak up, that the Gentlemen of the Jury may hear you.

James. Yes, I was employed to arreſt the Priſoner for a Debt due to *John Atkin*.

Q. By whom were you ſo employed?

James. By Mr. *Elcock*, an Attorney.

Q. You mean, I ſuppoſe, the deceaſed Mr. *Elcock*,---him that was ſhot?

James. Yes.

Q. Go on.

James. Being ſo employed to arreſt Mr. *Stevenſon*, I went to his Houſe, and knocked at the Door. Somebody came to the Window, and aſked me, what I wanted? I told the Perſon who came to the Window, that I had a Letter for the Maſter of the Houſe, which ſhe took through the Window; and I ſuppoſe it was delivered to Mr. *Stevenſon*.

Q. Why do you ſuppoſe ſo?

James. Becauſe, in a little Time after, Mr. *Stevenſon* opened the Door.

Q. The Priſoner opened the Door, you ſay?

James. Yes, and he aſked me, whether I lived with the Gentleman who ſent the Letter, or from whom the Letter came? I told him I did; and Mr. *Stevenſon* invited me in.

Q. Well; What happened afterwards?

James. I went into the Houſe with Mr. *Stevenſon*, and we then went together towards the Back Door; and at the Back Door Mr. *Stevenſon* ſtood ſtill, to call his Servant.

Q. Whereabouts at the Back Door did the Priſoner ſtand ſtill, to call his Servant? Was it within-ſide of the Door, or at the out-ſide of the Door?

James. He ſtood ſtill upon a Step, at the Back Door, the out-ſide of the Door; and I was within-ſide of the Door.---I then took the Warrant I had againſt Mr. *Stevenſon* out of my Pocket, and I laid my Hand upon his Shoulder, and ſaid, Sir, I hope you will excuſe me.——

Q. Was the Priſoner then out of the Door?

James. Yes. I ſaid, Sir, I hope you will excuſe me; for the Letter I gave you was to decoy you. I am a Bailiff; this is a Warrant againſt you; and you are my Priſoner in the King's Name.

Q. What did the Priſoner ſay then?

James. He ſhrieked out, and ſaid, I had uſed him ill.

Q. What did you do afterwards?

James. Mr. *Stevenſon* and I returned into the Houſe; and when we got into the Kitchen, he called to *Betty*, who I believe was his Houſe-keeper, and ſaid to her, We have done ill in letting this Man into the Houſe; for he has arreſted me.

Q. He told her, you had arreſted him, you ſay?---*James.* Yes.

Q. Well; What happened then?

James. The Priſoner went then towards the Fire, and turned to the Screen on the right Hand, and ſtood at the further End of the Screen.

Q. What did he do then?

James. He turned all of a ſudden upon me, with a Piſtol in his Hand, and ſaid, he would blow my Brains out, if I did not get immediately out of the Houſe.

Q. Did he preſent the Piſtol at you?---*James.* He did.

Q. What did you ſay then?

James. I told him, that was not the Way to do Buſineſs.---Mr. *Stevenſon* then ſnapped the Piſtol at me, but it miſſed Fire.

Q. Are you ſure he ſnapped the Piſtol at you?---*James.* Yes, very ſure.

Q. Well; What did you then?

James. I went backwards through the Kitchen, and Mr. *Stevenſon* followed me; and in a narrow Paſſage leading from the Kitchen towards the Door, he ſnapped the Piſtol at me again; and he ſnapped the Piſtol at me a third Time, but I was then out of the Houſe.

Q. When you got out of the Houſe, where did you go then?

James. I went to the next Houſe, I think Mr. *Nevill*'s, where Mr. *Elcock* promiſed to be. Mr. *Elcock* ſaw me, and met me, and aſked me, if I had arreſted *Stevenſon*? I told Mr. *Elcock*, that I had arreſted him, and that he had ſnapped a Piſtol at me three different Times, which obliged me to come away.

Q. What did Mr. *Elcock* ſay to that?

James. Mr. *Elcock* ſaid, I had done enough.

Q. How did you proceed afterwards?

James. I told Mr. *Elcock*, if I had a Piſtol, I could bring him away; and he ſaid, I ſhould not want that.---Then Mr. *Elcock* ſent a Man to the Plaintiff *John Atkin*'s, and to bring Arms from his Father's.

Q. Where did *Atkin* live?

James. At *Cholmondley*, not very far from *Bickerton.*

Q. Did the Meſſenger return with Arms?——*James.* Yes.

Q. What did you then?——*James.* After the Arms and Aſſiſtance were brought, we went again to Mr. *Stevenſon*'s Houſe.

Q. Who went to the Priſoner's Houſe?

James. I went, and the Plaintiff *John Atkin*, and a Servant of his, I think. Four or five Perſons, I believe, came with me.

Q. Was there another Sheriff's Officer with you?

James. Yes, a Man tolerated by the Sheriff, one *John Jones.*

Q. Did Mr. *Elcock* go to the Priſoner's Houſe with you?—*James.* Yes.

Q. What happened when you all returned to the Priſoner's Houſe?

James. As we were all running towards the Priſoner's Houſe, I ſaw the Priſoner and another Man out of Doors; I called to Mr. *Stevenſon*, and ſaid, You may as well ſtay, for we are coming for you.

Q. Did the Priſoner hear you ſay this?

James. I believe he did.

Q. Did the Priſoner ſtay for you?

James. No; he and the other Man with him, ran into the Houſe.

Q. Well; when you came up to the Houſe, pray what followed?

James. When we came up to the Houſe, I ſaid to Mr. *Elcock*, I know the Way to that Door; go you to the other.

Q. How many Doors were there to the Houſe?——*James.* Three.

Q. Did you know all the three Doors?

James. Yes, I knew them all.

Q. You bid Mr. *Elcock* go to one of the Doors, I think, you ſay?

James. I bid Mr. *Elcock* and the others to take care of two of the Doors, and I would go to the other.

Q. How far was the Door that you ſaid you would go to, from the Door you deſired Mr. *Elcock* to take care of?

James. It was a good Way diſtant, in going round about.

Q. You ſaid, you would go to the third Door; did you know the Way to it?——*James.* Yes, very well.

Q. Did Mr. *Elcock* ſay any Thing to the People in the Houſe, when he came up to the Door?

James. I cannot tell whether he did or not, becauſe I was not preſent, for I ran to the other Side of the Houſe.

Q. Pray, was the Door you went to locked, or made faſt?

James. It was faſt.

Q. When you all came up to the Doors, as you have been mentioning,—pray, what followed?

James. In a very little Time, almoſt immediately after I came up to the Door, I heard a Noiſe—I heard a Gun go off.

Q. Which Way did the Noiſe come? Where did you apprehend the Gun went off? In what Situation were you from the Noiſe, or Report of it?——*James.* The Noiſe came as betwixt me and them; betwixt me and the People who came with me.

Q. How far diſtant might you be from the Door where the Gun was fired?——*James.* Nine or ten Yards, it might be, from Mr. *Elcock.*

Q. When you heard the Noiſe, and the Gun go off, what did you do then? It muſt have alarmed you?

James. When I heard them crying out on the other Side, I went backwards to an Hedge, and looking over it, I ſaw Mr. *Elcock* held by two Men ſitting on a Block.

Q. You ſaw Mr. *Elcock* ſitting on a Block, ſupported by two Men; how did he look?——*James.* Very piteouſly indeed.

Q. Did you hear him ſay any Thing?

James. Yes, I heard him ſay, Oh! I am ſhot, I am ſhot.

Q. Was Mr. *Elcock* at a great Diſtance from the Gun at the Time he received the Wound, or was he near it?——*James.* I cannot tell whether he was at a great or a ſmall Diſtance from it.

Q. What did you do, after you had ſeen Mr. *Elcock* ſitting on the Block?

James. I returned again to my own Door, to prevent the Priſoner's getting out.

Q. Did you ſee Mr. *Elcock* afterwards?

James. In about ten Minutes afterwards, I ſaw two Men carrying him down the Lane.

Q. Were you with Mr. *Elcock* at the Houſe he was carried to?

James. No.

Q. Did you ſee him afterwards?——*James.* No, I did not ſee him after the two Men carried him down the Lane.

Q. Have you the Warrant whereby you arreſted the Priſoner?

James. I have.

Q. Pray produce it.—Is this the very Warrant, under the Authority whereof you arreſted the Priſoner?——*James.* It is.

Q. Pray, who delivered to you this Warrant to execute?

James. Mr. *Elcock* himſelf.

Q. Were there any Holes in the Door that the Ball came through which killed Mr. *Elcock*, beſides the Shot-hole?

James. Yes, there were two Holes in the Door, beſides the Shot-hole.

Q. Was there ever a Slit in the Door?

James. That I do not know.

Q. Were the two Holes in the Door higher than the Shot-hole, or lower, or how?——*James.* The two Holes were higher than the Hole which the Ball had made.

Q. Could you ſee through the two Holes? Were they large enough to ſee, and know a Perſon through?

James. Yes, I could ſee through them; I did look through, and ſaw into the Kitchen plainly. I and ſeveral others did ſo.

Q. Pray, what Buſineſs did Mr. *Elcock* go about, when he went with you to the Priſoner's Houſe?

James. To aſſiſt me in re-taking Mr. *Stevenſon.*

Q. Do you know the Sheriff's Hand-writing?

James. Yes, very well.

Q. Is the Warrant whereby you arreſted the Priſoner, all of the Sheriff's Hand-writing?

James. All is of his Hand-writing, except two Names.

Q. Are you poſitive to the Sheriff's Hand-writing?

James. Yes, to Mr. *Baxter*'s Hand-writing, who acted as Sheriff, and made out the Warrant, and delivered it.

Q. Pray what are the two Names that were not written by Mr. *Baxter*?

James. My own Name, and the Name of *John Jones*, another Bailiff.

Q. Who wrote your Name, and the Name of *John Jones*, in the Warrant?——*James.* Mr. *Elcock.*

Q. Are you ſure of that?

James. Yes; for I ſaw him write them.

Q. Are you uſually employed as a Bailiff for the executing of the Sheriff's Warrants?

James. Yes, I get my Bread by it; and am often ſent for, fifteen or twenty Miles round the Country.

Q. Was your Name inſerted in the Warrant, as the Sheriff's own Bailiff, or as a Special Bailiff?

James. I was a Special Bailiff, for that Time, appointed by the Sheriff.

Q. How do you know that?

James. I have been informed ſo: I think it is ſo expreſſed in the Warrant.

Q. Had you executed any Warrants from the Sheriff of the County of *Cheſter* the Year before?

James. Yes, many; twenty, or more.

Q. Had you executed any Warrants from the preſent Sheriff, under his Authority?

James. Yes, I executed Attachments under that Authority,—under Mr. *Baxter.* I had four or five Warrants, upon Proceſs out of the *Exchequer*, at the Time I arreſted Mr. *Stevenſon*, and have executed ſeveral Warrants ſince Mr. *Harriſon* became Sheriff.

Q. How long had Mr. *Harriſon* been Sheriff, before you arreſted the Priſoner?——*James.* A Week or a Fortnight it might be.

Court. Read the Warrant, whereon the Priſoner was arreſted by the Witneſs.

(*The Warrant was then read, and it appeared, that the Words*, "Bailiffs "for this Time only," *after the Names of* John James *and* John Jones, *the Special Bailiffs, were written by Mr.* Baxter. *The Warrant was dated the* 1*ſt of* March, *and there was an Indorſement thereon*, "Take good Bail for eighteen Pounds eight Shillings and Ten-"pence Half-penny, by Affidavit filed." *And under-written*, "*El-*"*cock* by *Lowe*, by the ſaid Sheriff.")

Q. Did *John Evans*, the Sheriff's Bailiff named in the Warrant, go with you, when you attempted to re-take the Priſoner?

James. No; he did not.

Q. When did the Plaintiff *John Atkin* come to you? Was he with you before, or at the Time you attempted to re-take the Priſoner?

James. *John Atkin* came when Aſſiſtance was ſent for, but not before. He came with us, when we went to re-take Mr. *Stevenſon.*

Croſs-Examined.

Counſel for the Priſoner. I think you ſay, you took the Warrant out of your Pocket, and put your Hand upon the Priſoner's Shoulder, and arreſted him?——*James.* I did.

Q. Pray, where did you firſt ſee that Warrant, whereon you arreſted the Priſoner?

James. I ſaw it firſt at *Nantwich.*

Q. Who ſhewed it you?——*James.* The deceaſed Mr. *Elcock.*

Q. When you firſt ſaw the Warrant, was your Name in it?

James No.

Q. Was the Warrant, when you firſt ſaw it, under the Seal of the Sheriff?——*James.* I believe it was.

Q. Was the Name of *John Jones* (the other Special Bailiff) in the Warrant when you firſt ſaw it?

James. I believe it was not.

Q. Was the Name of *John Evans*, the Sheriff's Officer, in the Warrant then?——*James.* Yes, it was.

Q. Who wrote *Evans*'s Name in the Warrant?

James. The Sheriff put it in.

Q. Of whoſe Hand-writing is the Warrant?

James. It is all of Mr. *Baxter*'s Writing, except my Name, and the Name of *John Jones.*

Q. Are you ſure of that?——*James.* Yes.

Q. Who is Mr. *Baxter?*

James. Mr. *Baxter* acts for the Under-Sheriff.

Q. Of whoſe Hand-writing are the Names, *John James* and *John Jones*, now appearing in the Warrant?

James. My Name and *John Jones*'s were written in the Warrant by Mr. *Elcock.*

Q. Are you ſure that the Names *John James* and *John Jones* were written in the Warrant by Mr. *Elcock?*

James. I am very ſure of it; for I ſaw him write them.

Q. Were they written by Mr. *Elcock*, after you firſt ſaw the Warrant at *Nantwich?*——*James.* Yes.

Q. Is the Warrant in the ſame Situation, in every Part of it, as it was when you firſt ſaw it at *Nantwich?*

James. It is, except the Addition of the Names made ſince.

Q. Where does Mr. *Baxter* live?

James. In this City (*Cheſter*).

Q. Do you know Mr. *Hollins?*——*James.* Yes.

Q. Who is he?——*James.* The Under-Sheriff.

Q. Do the Sheriffs always keep their Office in the City?

James. They keep their Office in the City, where they pleaſe to appoint; I believe ſo.

Q. And is that the Place where the Sheriff's Warrants are always made out?

James. That is the Place where they apply for Warrants.

Q. How far does the Under-Sheriff live from this City?

James. Twenty Miles, I believe.

Q. Was Mr. *Elcock* appointed by the Sheriff to make out Warrants?

James. I do not know that he was.

Q. Had Mr. *Baxter* Authority to make out Warrants?

James. I don't know.

Q. You ſay, the Under-Sheriff always keeps an Office in the City of *Cheſter?*

James.

James. Yes; where the Sheriffs, when they come in, are pleaſed to fix it.

Q. You ſay, you went to Mr. *Elcock* after you had arreſted the Priſoner?

James. Mr. *Elcock* met me, as I was going to him.

Q. And you then told Mr. *Elcock* you were forced to retreat?

James. I told him ſo, and ſo it was.

Q. Is it the Practice, for the Names of the Sheriff's own Bailiffs, or thoſe bound to the Sheriff, to be put into Warrants in the Office; and Blanks to be left in the ſame Warrants for the Names of other Bailiffs, to be put in by Attornies, after the Warrants come from the Office?

James. It is the Practice.

Q. Did you give Security to the Sheriff, for being his Bailiff?

James. No, not at that Time.

Q. Where did you ſtay, after you had arreſted the Priſoner, till Aſſiſtance came to you?

James. I and Mr. *Elcock* ſtayed at a Gentleman's Houſe, the next Houſe to Mr. *Stevenſon*'s, Mr. *Robert Nevill*'s Houſe, till Aſſiſtance came.

Q. Who went for the Aſſiſtance?

James. *John Jones*, the other Bailiff named with me, I believe.

Q. What Number of People came to your Aſſiſtance?

James. I don't well recollect the Number; but I remember the Plaintiff *John Atkin*, and his Servant, (whoſe Name I know not) *Richard Bowker*, *John Jones*, and myſelf made five.

Q. Did you deſire Mr. *Elcock* to ſtay where he was, at Mr. *Nevill*'s Houſe, and not go to the Priſoner's Houſe?

James. I did not.

Q. Pray, had not you an Iron Crow with you, when you all went to the Priſoner's Houſe?

James. Yes.

Q. Where had you that Crow?

James. I told Mr. *Elcock* I wanted a Crow, and he borrowed one from the Woman of the Houſe, Mrs. *Nevill.*

Q. You ſay, you went to different Doors, when you came to the Houſe; pray, were theſe Doors on one Side of the Houſe,---at the Corners of the Houſe; or how were they ſituated?

James. I ſaid, I went to a Door on one Side of the Houſe, and deſired Mr. *Elcock* would ſtay at a Door on the other Side of the Houſe.

Q. Did you yourſelf ſpeak to the Priſoner when you came to the Houſe, and demand Entrance from him?

James. I did not.

Q. Did *John Jones* demand Entrance?

James. I don't know: *John Jones* was not on the ſame Side of the Houſe with me.

Q. Did you deſire Mr. *Elcock* to demand Entrance, as you were going to the Houſe, or before you came to the Houſe?

James. No, I did not.---But when we were going to Mr. *Stevenſon*'s, I ſaw Mr. *Stevenſon* out of Doors, and called to him to ſtay, and told him, we were coming for him.

Q. How far might you be from the Priſoner at that Time?

James. It might be threeſcore Yards.

Q. Were Mr. *Elcock* and *John Jones* at one Door of the Houſe?

James. I don't know.

Q. Did you, from the other Side of the Houſe, deſire Mr. *Elcock* to demand Entrance?

James. I could not ſee Mr. *Elcock* from the other Side of the Houſe.

Priſoner. Is the Warrant you have ſhewn to the Court, the ſame Warrant you produced to me?

James. Yes, the very ſame.

(Priſoner deſires to ſee the Warrant. He looks at it, and ſays,---It is not the Warrant).

Court to the Priſoner. Leave the Queſtions to be aſked by your Counſel; they know beſt how to act for your Defence. Conſider, you ſtand upon Trial for your Life. Your Condition is a moſt melancholy one, and very perilous; therefore refer yourſelf to the Judgment of your Counſel in Matters of ſo great Importance to you.

James. It is the very Warrant upon which I arreſted the Priſoner.

Then the Witneſs withdrew.

Cryer, call *John Atkin.*

John Atkin ſworn.

Counſel for the Crown. Do you know the Priſoner at the Bar?

Atkin. Yes, very well.

Q. Did you know Mr. *Francis Elcock*, deceaſed?——*Atkin.* Yes.

Q. When were you laſt in Company with the Deceaſed?

Atkin I was in Company with him upon the 21ſt Day of *March* laſt, at the Houſe of *John Stevenſon* in *Bickerton.*

Q. Did you go with the Deceaſed to the Priſoner's Houſe on that Day?

Atkin. Yes.

Q. What was the Occaſion of your going thither with Mr. *Elcock?*

Atkin. John James ſent for me, to come to aſſiſt the Bailiffs.

Q. To do what?——*Atkin.* To re-take *John Stevenſon.*

Q. And did you go accordingly for that Purpoſe?——*Atkin.* Yes.

Q. Who went with you?

Atkin. Mr. *Elcock*, and *John James* and *John Jones.* We all went to take the Priſoner by Force, *John James* having ſent for me to aſſiſt him, after the Priſoner had ſnapped a Piſtol at him.—We all went, becauſe *John Stevenſon* had drove the Bailiff from the Houſe, by ſnapping a Piſtol at him.

Q. Who told you, that the Priſoner had ſnapped a Piſtol at the Bailiff?

Atkin. John James, the Bailiff, told me ſo.

Q. Did you ſee the Priſoner in the Houſe, when you came there?

Atkin. I did not.

Q. Did you go with Mr. *Elcock?*——*Atkin.* Yes.

Q. How far were you from Mr. *Elcock*, when you came to the Houſe?

Atkin. Within three or four Yards of him.

Q. Then you did not ſee the Priſoner?——*Atkin.* No.

Q. Did you ſee any People in the Houſe, when you came there?

Atkin No; but I imagine People were in the Houſe, when Mr. *Elcock* and I came to it.

Q. Did you hear any People in the Houſe?

Atkin. Yes, we heard People, but ſaw Nobody.

Q. Were the Doors locked, or made faſt?

Atkin. Yes; the Doors were made faſt.

Q. When you came up to the Houſe, did *John James* give Mr. *Elcock* and you any Directions about the Buſineſs you were to do there?

Atkin. Yes; when we came up to the Door, *John James* ordered Mr. *Elcock* and me to attend that Door.

Q. Which Door was it?---*Atkin.* It was the Back Kitchen Door.

Q. When you came to the Door, did Mr. *Elcock* ſay any thing to the People in the Houſe?

Atkin. As ſoon as we came to the Door, Mr. *Elcock* ſaid, Open the Door,---open the Door, or we will break it down.---I thought they were making the Door faſt.

Q. Was the Door opened?——*Atkin.* No.

Q. What was done afterwards, when the People within would not open the Door?

Atkin. As ſoon as Mr. *Elcock* ſaid ſo, he bid me ſtrike an Iron Crow under the Door, in order to lift it off the Hinges; and I accordingly put the Crow under the Door.

Q. Was it Mr. *Elcock*, who ordered you to put the Crow under the Door?

Atkin. Yes.

Q. When you put the Crow under the Door, pray, what happened?

Atkin. As ſoon as I had put the Crow or Ringer under the Door, Mr. *Elcock* ſaid to me, *John*, run to the other Door, for fear *Stevenſon* gets out of it; whereupon I left the Crow ſticking under the Door upon the Sill, and went away towards the other Door, and had not gone above three or four Yards from the Door, before I heard a Gun go off.

Q. Did you ſee Mr. *Elcock* when the Gun went off?---*Atkin.* Yes.

Q. Did he ſay any thing then?

Atkin. Yes.---I heard him ſay, I am ſhot, I am ſhot: And he fell on one Side of his Back down two Steps.---*Richard Bowker* and I took him up:---Then Mr. *Elcock* took up his Shirt, and ſhewed us the Wound.

Q. Who was this *Bowker?*

Atkin. He was an Aſſiſtant, who came with me to re-take *John Stevenſon.*

Q. What did you do with Mr. *Elcock*, after you and *Bowker* took him up?

Atkin. He hung about our Shoulders, and we carried him to a wooden Block, where he deſired to reſt.

Q. You ſay, he pulled up his Shirt, and ſhewed you his Wound; pray, on what Part of his Body was he wounded?

Atkin. He was wounded on the Side of the Belly, above his Groin.

Q. Were there any Holes in the Door where the Ball came through, beſides that which the Ball made?---Did you ſee the Hole which the Bullet made?

Atkin. I ſaw the Hole which the Bullet came through; and there was alſo a Slit in the Door, which ſeemed big enough for a Perſon to ſee through; and there were two Holes beſides in the Door.

Q. How large were the two Holes that were in the Door, beſides that which the Bullet made?

Atkin. One of the Holes was an Inch-and-half Hole; the other bigger. But the Slit was afterwards lathed on the inner Side of the Door.

Q. Could you have ſeen the Priſoner through thoſe Holes?

Atkin. No Doubt of it, if he had been oppoſite to me when I looked through; but he was not, and therefore I could not ſee him.

Q. Were you preſent when the Priſoner ſurrendered himſelf?

Atkin. I was.

Q. Had he any Fire-arms in the Houſe, when he ſurrendered?

Atkin. He had Fire-arms at that Time. I fired off one of the Piſtols the Day after the Priſoner killed Mr. *Elcock.*

Q. What Day of the Month was that?

Atkin. The 22d of *March.* Mr. *Elcock* received his mortal Wound upon the 21ſt, about Three o'Clock.

Q. What other Fire-arms had the Priſoner when he ſurrendered beſides the Piſtol you fired?

Atkin. There were two Piſtols;---one beſides that which I fired; and a Gun.

Q. Were they loaded?——*Atkin.* Yes.

Q. How do you know they were loaded?

Atkin. That Piſtol which I fired off, was very heavy loaded: The other Piſtol was diſcharged againſt an Aſh-Tree, and I ſaw the Hole which the Bullet had made in the Tree; and the Gun was fired into the Air.

Q. When the Priſoner ſurrendered himſelf, did he acknowledge that he had Fire-arms in the Houſe?

Atkin. He ſaid, he had but one Piſtol.---But the Woman in the Houſe being aſked, whether there were any more Fire-arms; ſhe told them, there was another Piſtol and a Gun.

Q. You ſay, you diſcharged one of the Piſtols yourſelf; Did you?

Atkin. I did, and fired it into the Air.

Q. Did you ſee the Piſtol diſcharged againſt the Aſh-Tree?

Atkin. I did; and looked at the Hole which the Ball had made.——The Gun was fired into the Air.

Croſs-Examined.

Counſel for the Priſoner. When you came to re-take the Priſoner with Mr. *Elcock*, what Orders did *John James* give you?

Atkin. He ordered Mr. *Elcock* and me to ſtay at the Door; and he ran to the other.

Q. What Orders had *John Jones* received?---Was he to have no Hand in re-taking the Priſoner?

Atkin. John Jones was ordered by *John James* to attend a Woman, *Stevenſon*'s Houſe-keeper, I believe, and not let her come near him.

Q. Was neither *John James*, nor *John Jones*, with you and Mr. *Elcock*, at the Door where you were ſtationed, in order to re-take the Priſoner?

Atkin. Neither of them.

Q. Was *John Jones* within Sight of you?---*Atkin.* I think he was.

Q. Did you all act as Aſſiſtants to the Bailiff?——*Atkin.* Yes.

Q. And by his Orders?

Atkin. Yes.

Then the Witneſs withdrew.

Cryer,

Cryer, Call *William Griffith*.

William Griffith ſworn.

Counſel for the Crown. Do you know the Priſoner at the Bar?

Griffith. Yes, very well.

Q. Do you remember any Thing about the Priſoner's diſcharging or firing a Gun at any Time? Pray, ſpeak up, that the Jury may hear you, and acquaint them with what you know of the Matter.

Grif. Yes, Sir; I was in Mr. *Stevenſon*'s Houſe at *Bickerton*, when Mr. *Elcock* was ſhot.

Q. What Part of the Houſe were you in at that Time?

Grif. I was in the Houſe-place, and Mr. *Stevenſon* was in the Back-Kitchen.

Q. Was any body in the Houſe, beſides the Priſoner and yourſelf?

Grif. Yes; a Woman was in the Houſe,—a Servant-Woman.

Q. Did you ſee the Priſoner fire the Gun?

Grif. The Priſoner did fire the Gun at the Back-door, and brought it in afterwards, and took it into the Parlour.

Q. After the Gun was fired, did you hear no Noiſe out of Doors?---Was there no Alarm made about it?

Grif. Yes; the People without ſhouted, Murder!

Q. From what Place did the Priſoner take the Gun which he fired?

Grif. He took it from the Mantle-piece in the Kitchen.

Q. Was the Priſoner accuſtomed to keep Fire-arms in the Houſe with him?---*Grif.* I cannot tell.

Q. How long was it after the Gun was fired, that you heard the People ſhout, Murder?

Grif. In about a Minute or two after the Gun was fired.

Q. I ſuppoſe you were curious enough, after the Gun was fired, and you heard the Cry of Murder, to know, whether any body was hurt, or not; were not you?

Grif. I went to a Window, and looked out; and ſaw a Man in blue Cloaths ſupported or held up between two Men.

Q. Did you ſay nothing to the Priſoner upon this Occaſion?

Grif. Yes; I told Mr. *Stevenſon*, that I believed there was never a Man killed, but there was one hurt, and they called him Mr. *Elcock*.

Q. And pray, when you told the Priſoner there was never a Man killed, but a Man hurt, and his Name was Mr. *Elcock*; What did he ſay to you?

Grif. He ſaid, I don't know what Buſineſs a Man of his Coat had among ſuch Men as thoſe. I am glad of it.

Q. What do you apprehend he meant by the Words, "*A Man of his Coat?*"---*Grif.* I don't know.

Counſel for the Priſoner. You will pleaſe to obſerve, the Witneſs told the Priſoner there was a Man hurt, but Nobody killed; and that was immediately before the Priſoner ſaid, he was glad of it——Glad that Nobody was killed.

Then the Witneſs withdrew.

Cryer, call Mr. *Cooper*.

Mr. *Cooper* ſworn.

Coun. for the Crown. I think you are a Surgeon?

Mr. *Cooper.* Yes, Sir.

Q. Where do you live?---Mr. *Cooper.* At *Nantwich*.

Q. Did you know the deceaſed Mr. *Francis Elcock?*

Mr. *Cooper.* Yes, very well.

Q. Were you ſent for at any Time, and when, to attend Mr. *Elcock*, upon account of his having received a Wound, by the firing of a Gun, or otherwiſe? Pray, acquaint the Court and Jury with what you know of this Matter.

Mr. *Cooper.* Upon *Wedneſday* the 21ſt Day of *March* laſt, a Meſſenger came to me about Three o'Clock in the Afternoon, deſiring me to go to *Bickerton*, to Mr. *Francis Elcock*, who, the Meſſenger told me, was ſhot. I went accordingly with the Man, and got to *Bickerton* about Five o'Clock in the Evening. When I came there, I found that Mr. *Rowe*, a Surgeon from *Malpas*, had been ſent for likewiſe, and had been there for ſome Time before. Mr. *Rowe* and I went up Stairs together, to the Room where Mr. *Elcock* was, and we found him ill in Bed. Almoſt ſo ſoon as he ſaw me, he pulled up his Shirt, and ſhewed me where the Ball was lodged, and ſeemed impatient to have it taken out: Upon ſeeing the Wound, I took the Ball between my Finger and Thumb, and perceived I could eaſily diſlodge it. I then examined the Wound, where the Ball had entered, and found it cut about two Inches from the Hip on the left Side of his Belly: It paſſed through his Belly, by his Bowels, no doubt, and lodged five or ſix Inches below the right Hip, almoſt through the Skin. As ſoon as I ſaw this, I took Mr. *Rowe* into another Room, to conſult what was fitteſt to be done; and I told him, it was my Opinion, that Mr. *Elcock* was a dying Man, and that I did not know whether it would be of any Uſe to take the Ball away, although it could be ſo eaſily effected. But conſidering that it would give him ſome Satisfaction, and perhaps Eaſe too, by taking the Ball from the Place where it did lie, Mr. *Rowe* and I went into the Room again, and I took out the Ball. After I had taken the Ball out, and dreſſed the Wound, and put a Bandage about it, I aſked Mr. *Elcock*, how he did? He ſaid, he was eaſier. Doctor *Hayes* came in afterwards; and when I had told him the Nature of the Wound, he looked upon the Caſe to be extremely dangerous. The Doctor ſtayed with him two or three Hours, and then went away; but Mr. *Elcock* deſired me and Mrs. *Nevill* to ſit with him; which we did, and his Father did ſo too, till ten Minutes paſt Three the next Morning, and he then expired. (*The Witneſs produces the Ball.*)

Q. Do you believe that the Wound which Mr. *Elcock* received was the Occaſion of his Death?

Mr. *Cooper.* I firmly believe, that the Wound which he received was the Occaſion of his Death.

Q. Did Mr. *Elcock* ſay any Thing to you in his Agonies, upon the melancholy Occaſion, and what?

Mr. *Cooper.* Mr. *Elcock* told me, that he was ſhot, as he was ſtooping down, with a Crow in his Hand, ſtriving to open the Priſoner's Door.

Q. Did he tell you from what Part of the Houſe he was ſhot?

Mr. *Cooper.* He ſaid, he received the Wound at the Door of the Priſoner's Houſe.

Q. Pray, how came the Ball to be made ſo flat, in that uncommon Form?

Mr. *Cooper.* I believe its going through the Door was the Occaſion of its being in that Form.

Then the Witneſs withdrew.

Cryer, call Mr. *Baxter*.

Mr. *Robert Baxter* ſworn.

Counſel for the Crown. Pray, Mr. *Baxter*, are you concerned in any, and what Manner, for Mr. *Harriſon*, the preſent Sheriff of the County of *Cheſter?*

Mr. *Baxter.* Yes, Sir, I am concerned for the Sheriff, and keep his Office.

Q. Do you make out Warrants for the Sheriff?---Mr. *Bax.* I do.

Q. Did you receive at any Time, and when, a Writ againſt the Priſoner, at the Suit of *John Atkin?*

Mr. *Bax.* I received a Writ againſt him upon the 1ſt of *March* laſt. (*Which he produces.*)

Q. Look upon that Warrant.---Did you make out that Warrant upon the Writ, in order to arreſt the Priſoner?

Mr. *Bax.* I did.

Q. And are you ſure that is the ſame Warrant you did make out?

Mr. *Bax.* Yes; I am ſure it is.

(*The Writ was read, and upon the Back of it was written,* "Take Bail for "Eighteen Pounds Eight Shillings and Ten-pence Half-penny, by "Affidavit filed."——*And another Indorſement, viz.* "I promiſe to "indemnify the Sheriff in the Execution of the Writ, as to the "Special Bailiffs. JOHN ATKIN."

Q. Is it uſual for the Sheriff to appoint a Gentleman in this Town to execute the Office, and to act for him?

Mr. *Bax.* It is uſual. I have been ſeveral Times appointed myſelf.

Q. Do you receive all the Writs that are ſued out, directed to the Sheriff of this County?---Mr. *Bax.* I do.

Q. And do you make out the Warrants upon ſuch Writs?

Mr. *Bax.* I do.

Q. And return the Writs?---Mr. *Bax.* Yes.

Q. Do you execute all other Acts that the Sheriff would do, if he reſided here himſelf?

Mr. *Bax.* Yes; except attending the Aſſizes and Seſſions.

Q. And has this been the conſtant Practice in this County?

Mr. *Bax.* Yes, during all my Time.

Q. Has it been uſual, when Plaintiffs would have Special Bailiffs appointed, to leave Blanks in the Warrants for their Names to be inſerted?

Mr. *Bax.* Yes, upon the Sheriff being indemnified.

Q. Have you done this yourſelf?---Mr. *Bax.* Yes.

Q. Have you known others to do it?

Mr. *Bax.* Yes, ſeveral others, to my Knowledge.

Q. Did you ever know it to be refuſed?

Mr. *Bax.* No, never, upon the Sheriff being indemnified, and the Attorney is known to be a fair Practiſer. I have known it refuſed, where the Practiſer was not liked, or where the Sheriff run any Riſk or Hazard, and the Indemnity was not approved; but when the Attorney, or Practiſer, and the Indemnity are liked, it is uſually done.

Q. Pray, what is the Nature of the Indemnity given to the Sheriff upon this Occaſion?

Mr. *Bax.* It is, that he ſhould not ſuffer by Eſcapes or Reſcues.

Q. And has this been the conſtant Practice uſed by the Perſons who have acted in the Sheriff's Office in the Capacity you now act?

Mr. *Bax.* It has been ſo all the Time I have known the Office.

Q. How long, pray, is that?

Mr. *Bax.* Seven or eight-and-twenty Years.

Q. To leave Blanks in the Warrants for the Names of the Special Bailiffs to be inſerted?---Mr. *Bax.* Yes.

Q. Pray, whether is ſuch Practice convenient to the Plaintiffs and Suitors in the Court, or inconvenient to them?

Mr. *Bax.* It is looked upon to be very convenient for the Plaintiffs.

Q. Do you think ſo yourſelf?---Mr. *Bax.* I look upon it in that Light.

Q. Had Mr. *Lowe* or Mr. *Elcock*, or both of them, a Right to inſert the Names of the Special Bailiffs in the Blank left in the Warrant, whereon the Priſoner was arreſted?

Mr. *Bax.* I apprehend either Mr. *Lowe* or Mr. *Elcock* had a Right to do ſo.

Q. Is it uſual for Attornies in the Country to ſend their Directions to their Agents in *Cheſter* to take out Writs?---Mr. *Bax.* Yes.

Q. And is the Agent's Name generally put to the Writ, or the Name of the Attorney in the Country only?

Mr. *Bax.* The Agent's Name is generally added to the Name of the Country Attorney, in the Writ, ſince the late Act of Parliament for that Purpoſe; but before that, the Name of the Attorney was only put to the Writ.

Q. And you ſay that either Mr. *Lowe* or Mr. *Elcock* had a Right to inſert the Names of the Special Bailiffs?

Mr. *Bax.* Yes, I apprehend ſo.

Croſs-Examined.

Counſel for the Priſoner. Do not the Attornies, and other Perſons, uſually ſend the Names of the Special Bailiffs to be inſerted in the Warrants by the Sheriff, or by thoſe who act for him?

Mr. *Bax.* Sometimes People do ſend the Names of the Special Bailiffs to be inſerted.

Q. Has it not been the moſt uſual Way in your Time to do ſo?

Mr. *Bax.* It was when I firſt knew the Office the moſt uſual Way, in 1732, and 1733. But Warrants went out with Blanks then.

Q. Did *John Evans*, the Bailiff named in the Warrant, indemnify the Sheriff?

Mr. *Bax.* He has given Security to the Sheriff, I believe. But the Indemnity was for the Special Bailiffs.

Q. In the Year 1732, or 1733, were Blank Warrants ſent out, and not the Names of the Special Bailiffs inſerted?

Mr. *Bax.* When I was concerned for Mr. *Page*, who was Sheriff in 1732, or 1733, ſeveral Blank Warrants were ſent out, and not the Special Bailiffs inſerted.

Q. How

Q. How many Warrants were ſent out, with Blanks for the Names of the Special Bailiffs, in Mr. *Page*'s Time?—Mr. *Baxter*. I cannot tell.

Q. Were not Warrants oftener delivered, with the Names of the Special Bailiffs inſerted in the Office, before they were ſent out, than Warrants with Blanks, for the Names of the Special Bailiffs to be afterwards inſerted by the Attornies?

Mr. *Baxter*. I believe, Warrants were oftener ſent out with the Names of the Special Bailiffs inſerted, than with Blanks.

Q. Is that the Warrant you made out on the Writ the 1ſt of *March* againſt the Priſoner?

Mr. *Baxter*. (*Looks at the Warrant.*) It is the ſame Warrant.

Q. Is it in the ſame Situation it was, when you delivered it out of your Hands?—Mr. *Baxter*. No.

Q. How has it been altered? How does it differ?

Mr. *Baxter*. The Names *John James* and *John Jones* have been ſince inſerted.

Q. Pray, was the Seal to the Warrant before you delivered it out of your Hands?—Mr. *Baxter*. Yes.

Q. Are you ſure of that?

Mr. *Baxter*. Yes, for I put the Seal to it myſelf.

Court. Do you remember, that any Arreſt was ever ſet aſide, or diſputed, on account of a Blank Warrant having been ſent out?

Mr. *Baxter*. No, never.

Counſel for the Priſoner. Through all the Courſe of your Practice, has it not been moſt uſual to make out Warrants after you received the Names of the Special Bailiffs, than without them;—than making out Blank Warrants?

Mr. *Baxter*. Yes, it has been moſt uſual, I think.

Q. When the Names of the Special Bailiffs are ſent, do you always inſert them in the Warrants?—Mr. *Baxter*. Yes, I do.

Q. Pray, how is the Under-Sheriff of *Cheſhire* appointed?

Mr. *Baxter*. He is appointed by the Sheriff, by Deed.

Q. Have you any written Authority from the Sheriff?

Mr. *Baxter*. No further than by Letters ſent me ſometimes about the Buſineſs of the Office.

Q. How were you appointed?

Mr. *Baxter*. The Night before the Sheriff was ſworn, I ſupped with him, and it was agreed, I ſhould act for him.

Q. Who were preſent, when you were appointed to act for the Sheriff?

Mr. *Baxter*. The Sheriff and Under-Sheriff were both preſent, and appointed me.

Q. Were you appointed by any Inſtrument in Writing, or not?

Mr. *Baxter*. I was not.

Q. Is it uſual for the Sheriff and Under-Sheriff both to appoint an Agent to act for the Sheriff?

Mr. *Baxter*. I believe, the uſual Way is by the Under-Sheriff only.

Q. Is there no other Method of appointing a Perſon to act for the Sheriff, but by Parol?—Mr. *Baxter*. I don't know of any other Way.

Q. Is the Seal to the Writ the Seal of Office?—Mr. *Baxter*. It is.

Q. Have the Perſons concerned for the Sheriff of this County uſually that Sort of Seal?—Mr. *Baxter*. Yes.

Q. Where had you this Seal?

Mr. *Baxter*. I had this from Mr. *Griffith*, having loſt my own.

Then the Witneſs withdrew.

Mr. *Gaſtrell*, Clerk to Mr. *Lowe*, an Attorney in *Cheſter*, was then called, to prove that *John Atkin* ſigned the Indemnity given to the Sheriff, when the Blank Warrant againſt the Priſoner was ſent out. But the Court thought it unneceſſary to examine him.

Mr. *Croſs*, an Attorney in *Cheſter*, ſworn.

Counſel for the Crown. Are you acquainted with the Method of ſuing out Proceſs in the Court of Seſſion for this County?—Mr. *Croſs*. Yes.

Q. Is it uſual to ſend out Warrants from the Sheriff's Office, with Blanks for the Names of the Special Bailiffs to be inſerted?

Mr. *Croſs*. When Special Bailiffs are deſired, Warrants frequently iſſue with Blanks, for their Names to be inſerted.

Q. Do you know this to be frequently done?—Mr. *Croſs*. Yes.

Counſel for the Priſoner. But is it not more uſual for the Names of the Special Bailiffs to be put into the Warrants in the Office, before they are ſent out, than for Warrants to iſſue with Blanks, for Bailiffs to be inſerted afterwards?

Mr. *Croſs*. Sometimes the Names of the Special Bailiffs are inſerted in the Office.

Q. I ſay, is it not oftener done? more frequently?

Mr. *Croſs*. I don't know but it may.

Counſel for the Crown. Don't you think it prudent, ſometimes, not to ſend the Names of the Special Bailiffs to the Office;—to conceal the Names till they are inſerted by the Attorney?—Mr. *Croſs*. I do.

Mr. *Fluit*, an Attorney in *Cheſter*, ſworn.

Counſel for the Crown. Did your Father ever act as Agent for the Sheriff of this County?—Mr. *Fluit*. He did.

Q. Was it cuſtomary for your Father to ſend out Warrants with Blanks, for the Names of the Special Bailiffs to be inſerted afterwards?

Mr. *Fluit*. He did leave Blanks often in the Warrants.

Q. I ſuppoſe you underſtood that your Father had Authority ſo to do?

Mr. *Fluit*. I always underſtood that he had Authority to do it.

Counſel for the Priſoner. But did your Father never refuſe to ſend out Blank Warrants, to your Knowledge?

Mr. *Fluit*. Yes; he ſometimes did, when he ſuſpected the Attorney; but never, when he knew the Attorney to be a fair Practiſer.

Here ends the Evidence on Behalf of the Crown.

Court to the Priſoner. Have you any Witneſſes to examine?—This is the Time for making your Defence.

The Priſoner called no Witneſſes, nor ſaid any Thing in his Defence.

Mr. Recorder Townsend, *of Counſel for the Priſoner.*

The Priſoner, I believe, has no Witneſſes to call to his Defence, except one Woman, and I do not know yet, that it will be neceſſary to examine her.

The Occaſion, my Lord, of my appearing this Day, as Counſel for the Priſoner at the Bar, is, on all Sides, a very lamentable Occaſion indeed, which muſt unavoidably affect every body, who has the leaſt Degree of Tenderneſs and Humanity; and glad I ſhould have been, if the Priſoner had ſubmitted to the Arreſt, how illegal ſoever, rather than to have taken the deſperate Methods he did for delivering himſelf from it; and I could wiſh, that it was now in his Power to ſatisfy the Gentlemen of the Jury, upon the preſent Trial for his Life, that he did not diſcharge the Gun, nor kill the unfortunate young Gentleman Mr. *Elcock*, rather than to have Recourſe to the Sanction of the Law for a Juſtification of his Raſhneſs: Yet, as the unhappy Condition of the Priſoner at the Bar does require all the Aid and Aſſiſtance which the Law can allow him, for the ſaving of his Life, I hope, I ſhall incur to myſelf no Imputation in the Diſcharge of my Duty, by endeavouring to ſatisfy your Lordſhip, under the Authority of the Law, that, although the Priſoner did diſcharge the Gun whereby Mr. *Elcock* was killed, yet, that he is, by Law, acquitted from the Crime of Murder; and that, under the Circumſtances of his Caſe, ſuch Killing will not amount to more than Manſlaughter.—My Lord, I humbly conceive, that no Warrant or Proceſs from the Sheriff can be executed by any Perſons, but by thoſe whom the Sheriff appoints to execute them. The High-Sheriff undoubtedly may appoint his Deputy to act for him; and the Appointment of the Under-Sheriff of this County was by Deed, and not a Parol Appointment. Under that Appointment, the Under-Sheriff is armed with a Power of doing the lawful Duty and Buſineſs of the Sheriff himſelf.—But, my Lord, in the preſent Caſe, Mr. *Baxter*, who made out the Warrant againſt the Priſoner, was a Perſon acting under the Under-Sheriff: He was not appointed by any Deed, or Inſtrument in Writing; but he was appointed by Parol, by Word of Mouth only: And Mr. *Baxter*, as Aſſiſtant to the Under-Sheriff, under this defective Appointment, made out a Warrant againſt the Priſoner, and ſent it out, after it was ſealed, with a Blank left therein for the Names of the Special Bailiffs to be inſerted in it.—The Names *John James* and *John Jones* were not in the Warrant, when Mr. *Baxter* delivered it out, under the Seal. It was taken twenty Miles, to *Nantwich*, to have the Names afterwards inſerted in it. This is proved by *John James* himſelf, who ſwears, that he ſaw Mr. *Elcock* write his Name, and the Name of *John Jones*, in the Warrant at *Nantwich*.—My Lord, I humbly apprehend, that no Warrant whatſoever from the Sheriff, can or ought to receive the leaſt Addition, Diminution, or Alteration, after it paſſes the Seal of Office; and that if any Perſon, in the Execution of a Warrant, which ſhall receive any Addition or Diminution, or any Alteration whatſoever, after it has paſſed the Seal, ſhall be killed, ſuch Killing cannot be Murder.—And if a Perſon not lawfully authoriſed ſhall attempt to deprive a Man of his Liberty, although by a legal Warrant, and is killed in ſuch Attempt, the Killing, in that Caſe alſo, is not Murder. My Lord, I have the Authority of as great a Man, as eminent a Lawyer, as ever lived, which, I humbly apprehend, is directly in Point, *Hale's Pleas of the Crown*, p. 457. where my Lord *Hale* lays down the Law in theſe Words: "If a Sheriff's Bailiff comes to execute "a Proceſs, but has not a legal Authority; as if the Name of the Bailiff, "Plaintiff, or Defendant, be interlined, or inſerted, after the Sealing "thereof, by the Bailiff himſelf, or any other; if ſuch Bailiff be killed, "it is but Manſlaughter, and not Murder." And, my Lord, notwithſtanding the Evidence given by Mr. *Baxter*, and Mr. *Fluit*, that Warrants have been generally ſent out with Blanks, for the Names of the Special Officers to be afterwards inſerted, I humbly contend, that the Warrant, whereon the Priſoner was arreſted by *James*, the Special Officer, at the Suit of *John Atkin*, was an illegal Warrant, inaſmuch as the Names of the Bailiffs were added to, or inſerted in the Warrant, after it had paſſed the Seal; and it was at the Peril of the Party executing that Warrant, whether Death, or any other Miſchief, enſued upon it: And, notwithſtanding Warrants have ſometimes been ſent out by the Perſon acting for the Sheriff, with Blanks left in them for inſerting the Names of the Bailiffs, after the Warrants have been ſealed, yet that Uſage or Practice cannot be conſidered to extend to over-rule or ſet aſide the known Law, ſet down by my Lord *Hale*.—My Lord, this is a Point of Law, which I hope your Lordſhip will look upon to be worthy of Conſideration, and not be left to the Determination of the Jury.—It has likewiſe appeared in Evidence, that when *John Atkin* and *John Jones* came to the Aſſiſtance of *John James* the Bailiff, all that *James* ordered Mr. *Elcock* to do, was to ſtay at the Door: He gave him no Authority, nor Orders to break open the Priſoner's Houſe; all he was to do, was to guard the Door.—But, it appears in Evidence, that Mr. *Elcock*, in a very extraordinary Degree, exceeded the Limits of the Orders which the Bailiff had given him: For, a Crow or Ringer was thruſt under the Door, (that very Door which he was ordered to ſtay at only) poiſing it open; and Mr. *Elcock* himſelf, in his Agonies, declared to Mr. *Cooper* the Surgeon, who attended him, that he was ſtriving to break open the Door with the Crow, when the Gun was fired: And therefore I ſubmit it to your Lordſhip, Whether Mr. *Elcock* did not exceed the Orders and Authority given him by *James*, ſuppoſing that *James* had, in himſelf, any Power at all, (which I humbly conceive he had not) and could have transferred any Power or Authority to Mr. *Elcock*. Theſe are two Queſtions, my Lord, which appear to me to be in Favour of the Priſoner, and to deſerve Conſideration; and if the Court ſhall be of the ſame Opinion, I humbly hope, you will not ſuffer a General Verdict to go againſt the Priſoner, but reſerve thoſe Points for the Conſideration of the Court.

Then Mr. Perryn, *alſo of Counſel for the Priſoner.*

The only Queſtion, my Lord, is, Whether the Killing Mr. *Elcock*, in Manner given in Evidence, ought to be conſidered as Murder, or Manſlaughter.

Manſlaughter. It appears clearly, that the Names of the two Bailiffs were not inſerted in the Warrant, when it iſſued under the Seal of the Sheriff; and therefore it was an illegal Warrant, under which *James* could not derive any lawful Authority to arreſt the Priſoner: For, according to Lord *Hale*, the Warrant ſhould have been a full and compleat Warrant, when it paſſed the Seal, and ought not to have been a Blank Warrant, *Hale's Pleas of the Crown*, 457. (quoted by Mr. Recorder.) And the preſent Fact proved by *James* and Mr. *Baxter*, that the two Special Bailiffs were inſerted after the Warrant was ſealed, comes under the Words of this great Authority. My Lord, you will obſerve, that the Sheriff's own Bailiff, named in the Warrant, was not called upon, nor employed to execute it, nor did he attend the Execution of it: But the Arreſting of the Priſoner was intirely left to the Special Bailiffs, who, I humbly apprehend, had not the leaſt Power or Authority to execute it.—My Lord, I ſhall quote other Authorities, which, I humbly apprehend, will make in Favour of the Priſoner, and thoſe are, *Hawkins's P. C.* 80. *Cro. Car.* 372. 1 *Jones* 346, 372. 1 *Leo.* 91. 12 *Coke* 49. And I mention thoſe Authorities, to ſhew, that if a Warrant be in the leaſt defective, the Arreſt cannot be juſtified.—With regard to the Power derived to Mr. *Elcock* from *James* the Bailiff, I hope it will appear to your Lordſhip's Satisfaction, that *James* had not the leaſt Power or Authority whatſoever in himſelf, and therefore could not transfer any to Mr. *Elcock*. But ſuppoſing the Bailiff had any Power to call Aſſiſtance, and to have given his Orders to Mr. *Elcock*, yet Mr. *Elcock* ſhould have ſtrictly obſerved the Orders which had been given to him—he ſhould have purſued the Directions, namely, to ſtay at the Door; and not have exceeded the Limits of his Authority, in the Manner he did, in attempting to break down that Door, which he was only directed to guard, or ſtay at, and had not any Orders or Authority to break down. There are other Authorities, which I humbly conceive will be of Uſe to the Priſoner, when they come to be conſidered, 2 *Lev.* 144. 2 *Inſt.* 105, 143. and 3 *Lev.* 146. They treat of Arreſts, and the Authority of the Bailiffs, and their Aſſiſtants. No Requeſt was made from the Bailiff to Mr. *Elcock*, to break down the Door, which ſhould have been previouſly done, before Mr. *Elcock* could have had the leaſt Colour or Pretence for attempting to break open the Door of the Priſoner's Houſe. *Bretton* and *Cole. Salk.* 409. 1 *Ray.* 305.—Upon the whole, I hope your Lordſhip will think that thoſe Points deſerve the Conſideration of the Court, and that they ought not to be left to the Determination of the Jury.

Then Mr. MADDOCKS, *likewiſe of Counſel for the Priſoner.*

I AM alſo of Counſel with Mr. Recorder *Townſend*, and Mr. *Perryn*, for the unhappy Priſoner at the Bar, and hope your Lordſhip will be of Opinion, that a good deal of Nicety attends this Caſe, not proper for a Jury to determine upon; and that ſeveral Points of Law have ariſen, well worth the Conſideration of the Court. The Law, my Lord, ariſes out of the Fact. This appears to be an Indictment againſt the Priſoner for the Murder of Mr. *Francis Elcock*, who, when he was murdered, was aſſiſting to re-take a Perſon making his Eſcape from an Arreſt: And I ſhall conſider the Caſe according to its Nature. Firſt, If Mr. *Elcock* was a Treſpaſſer, then the Priſoner's killing him could be only Manſlaughter, not Murder.—Secondly, Whether upon the Writ, the Special Bailiff and Mr. *Elcock* derived an Authority for what they did. And here I ſhall mention one Authority, *Hawkins's P. C.* 86. which ſhews, (although the Caſe is not exactly the ſame with this) that the general Rule is, if a Party, under Colour of Authority, not having legal Authority, ſhall attempt to take away a Man's Liberty, and is killed in the Attempt, the Killing of that Party is not Murder, but Manſlaughter: And whether Mr. *Elcock* was a Treſpaſſer or not, will depend upon the Authority he derived under the Writ.——The Writ itſelf does not appear to be void, and therefore I won't ſpeak upon it; but ſhall confine myſelf to the Warrant made out for arreſting the Priſoner, in Obedience to the Writ. As to the Facts given in Evidence, it appears, that the Warrant was iſſued by Mr. *Baxter*: That Mr. *Baxter* then acted for the Sheriff, as an Aſſiſtant, by Parol Agreement, and delivered the Warrant under the Seal of the Sheriff's Office: That the Name of *John Evans*, a Bailiff, was then in it, and none others, and that it was carried ſo to *Nantwich*: That Mr. *Elcock* was at *Nantwich*, and there inſerted the Names of *John James* and *John Jones*. Now the General Queſtion is, Whether this Warrant was good in Point of Law? In the firſt Place, The Perſon granting the Warrant muſt have lawful Authority for ſo doing. Mr. *Baxter*, on his Examination, has ſaid, that the Night before the Sheriff was ſworn, he ſupped with him, and it was then agreed, he ſhould act for the Sheriff: That the Sheriff and Under-Sheriff were both preſent, and appointed him, but that it was by Word of Mouth only. And it fully appears, that Mr. *Baxter* had no Authority from the High Sheriff in Writing.---An Under-Sheriff, my Lord, may be admitted into his Office by Parol; he is to execute the whole Office: But Mr. *Baxter* is only to execute a particular Part of it. The Under-Sheriff was appointed by Deed: But Mr. *Baxter*, who did ſome Things for the Sheriff, but did not execute others, ſuch as attending the Aſſizes and Seſſions, was appointed by Parol. I apprehend, if a Perſon is to act for the Sheriff under a limited Authority, that Authority ought to be in Writing; and where the Sheriff delegates a Part only of his Authority to another, it ſhould be by Writing; and therefore, I humbly conceive, that the Appointment of Mr. *Baxter* to act for the Sheriff, was not a good Appointment, and that his Authority to make out the Warrant upon the Writ for arreſting the Priſoner, was a very defective Authority.---Now, whether the Warrant was a legal Warrant, or not, is in the next Place to be conſidered. And that will depend upon a Variety of Circumſtances;---upon the Nature of the Inſtrument itſelf, and Matters attending it. A Warrant is always under Seal, and therefore is a Deed:---I ſay, this Warrant was a Deed under Seal: And nothing binds the Parties, but what is contained in a Deed, when executed: No Interlineation, or Addition afterwards made, can affect the Parties who had executed it, unleſs the Deed be re-executed; and there has been no Evidence given, that this Deed, this Warrant, was re-executed. Then, if this be the Caſe in general, at the Time the Sheriff ſealed this Warrant, the Names of the two Bailiffs, *James* and *Jones*, were not in it. No Authority was given to any Perſon, but to *Evans* the Bailiff, who was then named in the Warrant.---Cites *Hale's P. C.* 457. (quoted before by the other Counſel.) Every Iota of this Caſe is parallel, and is agreeable to Law and Common Senſe. How can this Caſe be diſtinguiſhed from the General Law? Can it by Cuſtom? by *Lex Loci?* It may. What is then incumbent to be done, to eſtabliſh this Diſtinction? Why,---the Cuſtom muſt be immemorial, muſt be uniform, muſt be certain; and there is no Evidence here of ſuch a Cuſtom. Mr. *Baxter* ſays, he ſometimes leaves Blanks in the Warrants, and ſometimes he inſerts the Names of the Special Bailiffs, and that he has known it ſo done for ſeven or eight-and-twenty Years. This Cuſtom is not a Cuſtom immemorial, it is not proved to have been an immemorial Cuſtom; neither is it uniform, nor proved to be certain.---On the contrary, it has been proved, that the inſerting the Names of Special Bailiffs in the Warrants at the Office, is more uſual than ſending out Blank Warrants. And therefore, ſuppoſing the Inſtances of Cuſtom to be of any Conſequence, upon the Determination of this Point, the Cuſtom muſt make for the Priſoner at the Bar, becauſe the putting in the Names of the Bailiffs at the Office has been more uſual. The General Law therefore is ſupported; the Cuſtom, or *Lex Loci*, not being immemorial, nor uniform, but uncertain. We are now to ſtand on the General Law of the Land; and if the Warrant fails, neither the Bailiff, nor Mr. *Elcock*, nor any of their Aſſiſtants, acted under any legal Authority; and therefore the Killing of Mr. *Elcock* cannot amount to more than Manſlaughter. The Authority, my Lord, which Mr. *Elcock* had, was given him by *James*; *John Evans*, the proper Bailiff, was not there, but *James* was the acting Bailiff. If *James* had a Mind that Mr. *Elcock* ſhould have attempted the breaking open the Door, ſurely he would have deſired him to have done ſo, and not bid him ſtay at the Door only. The Bailiff acts under a limited Authority, Can he then do what he is not authorized?---*James* acted under a limited Authority; and whether he had Power to call Aſſiſtance, without an Application to the Sheriff, ſeems to me a great Doubt; but I humbly apprehend, that a Perſon, to whom a limited Power is delegated, cannot depute another to execute any Part of that limited Power.---In Caſes of Reſcous, a Writ of Reſcous may be had.—Upon Complaint made, that the Party is reſcued, a Writ of Reſcous iſſues.---In Criminal Caſes, I allow, an Officer can call another to his Aſſiſtance: But this was a Civil Caſe; the Priſoner was out of Sight; it was not a Criminal Matter, nor an Eſcape from an Execution. If *James* the Bailiff had an Authority to break open the Priſoner's Houſe, it has not been proved that he gave Mr. *Elcock* this Authority, but the Reverſe. *James* bid him only ſtay at the Door: Mr. *Elcock* himſelf ſent for, or borrowed the Crow, the Plaintiff *Atkin* put it under the Door, and Mr. *Elcock* poiſed it with an Intent to take it off the Hinges. No particular Authority was given by *James*; but Mr. *Elcock* took the Management upon himſelf. It was his Buſineſs only to watch the Door.---*Atkin* put the Crow under the Door, and Mr. *Elcock* poiſed it; neither of them had any Order or Directions to break open the Houſe; and Mr. *Elcock*, having exceeded the Limits of the Authority given him, became a Treſpaſſer; and the unfortunate Killing of him, in the Commiſſion of that Treſpaſs, can only be Manſlaughter, and not Murder.---My Lord, I apprehend, that upon an Eſcape, or Reſcous from an Arreſt upon Meſne Proceſs, an outward Door cannot be broke open. This was an outward Door: The Reſcous was at an End for two Hours, and there ought to have been a Requeſt to aſſiſt on the Reſcous; and a Requeſt to aſſiſt on a Reſcous is traverſable.

Court. It muſt be left to the Jury, whether there was a Requeſt, or not.

Mr. *Maddocks.* In ſhort, if Mr. *Elcock* was a Treſpaſſer, the Killing of him can be only Manſlaughter. I humbly apprehend, that *John James* had no Authority under the Warrant for the arreſting the Priſoner: His Name was not inſerted in the Warrant, till after it had paſſed the Seal of Office. He delegated only a particular Authority to Mr. *Elcock*.---Mr. *Elcock* exceeded that Authority. Mr. *Elcock* was a Treſpaſſer. The Priſoner fired a Gun, which killed Mr. *Elcock* in the Commiſſion of the Treſpaſs, when he was breaking open the Priſoner's Door: And therefore I hope your Lordſhip will be of Opinion, that theſe are Points ſo eſſentially in Favour of the Priſoner, that you will not prevent him from having the Benefit of the Law which may reſult from a judicial Determination of them, nor ſuffer the Priſoner's Life to be left at the Hazard of a General Verdict.

Mr. Juſtice *Swinnerton.* Can you ſhew any Caſe to the Court, where an Arreſt under a Blank Warrant has been ſuperſeded?

Mr. *Maddocks.* No, my Lord, I know of no Caſe at preſent.---But the Thing ſpeaks for itſelf: It is not likely there ſhould be many Caſes of this Kind.

Mr. Juſtice *Swinnerton.* Is the Doctrine of my Lord *Hale* laid down in any Part of *Hawkins's Pleas of the Crown?*

Mr. *Maddocks.* I have not looked over Mr. *Hawkins* for it; but if it is omitted to be inſerted in his *Pleas of the Crown*, I hope, that Omiſſion cannot be conſidered to repeal or invalidate my Lord *Hale's* Authority.

Mr. Juſtice *White.* This Caſe does not ſeem to me to come under the Doctrine of Lord *Hale.* For here a Bailiff was named, and inſerted in the Warrant, before it was ſealed; and I think it was a good Warrant.

(Court diſtinguiſhes the Warrant from a Deed; for a Deed muſt be delivered, and the Sealing and Delivering make a Deed.)

Mr. *Maddocks.* The Warrant was directed to the Bailiffs, jointly and ſeverally. The Name of *John Evans* was then, only, in the Warrant; *John Evans* never acted in the Execution of it; and therefore the Warrant muſt be illegal, *quoad James.*

Mr. HALL, *of Counſel for the Crown.*

I SHOULD have almoſt thought it unneceſſary for me to have troubled the Court further on ſo plain a Caſe, but that the Objections made to the Authority of Mr. *Baxter* ſeem to require, that ſomething ſhould be ſaid, to prevent a Notion from prevailing, that he had not a Right to make

out the Warrant.—By the Common Law, an Under-Sheriff may be appointed by Parol, or Deed; and several Under-Sheriffs for different Purposes.

Court. Shew your Cases.

Mr. *Hall* proceeds.

One Sheriff in *London* has two Under-Sheriffs, two Compters, two Prisons: The Business is carried on by different Persons.—And there is a Sheriff's Office in *Furnival's-Inn*, the Business of which is executed by a Clerk; and those Persons are appointed by Parol. Mr. *Baxter* has been appointed in the same Manner, and it has been usual to make out Blank Warrants for a great Number of Years. Prescription for thirty Years is good, unless the contrary appears; and here nothing does appear to the contrary. Mr. *Baxter* swears, it has been the Custom all his Time, which he limits to seven or eight-and-twenty Years, to make out Blank Warrants, for the Names of the Special Bailiffs to be inserted. Mr. *Baxter* did make out this Warrant against the Prisoner, and directed it to *John Evans*, a Bailiff, and left a Blank for the Attorney to insert two other Names; Mr. *Elcock* did put in those two Names, and must be considered as Clerk or Agent to the Sheriff; and if so, *John James* was lawfully authorized to arrest the Prisoner upon that Warrant, and did actually arrest the Prisoner, who afterwards by Violence rescued himself from the Custody of the Bailiff. The Law, upon a Rescous, gives Authority, for the Purpose of taking a Defendant, to break open Doors, and justifies all Persons aiding and assisting the Officer, whether they be requested or not.—If a Bailiff takes a Man by the Hand out of a Window, it is an Arrest, and he may justify the breaking open of Doors after the Defendant, if he should attempt to escape; and I humbly apprehend, the Reason for breaking open the Door was stronger in this Case.—Cites *Peer Williams*, The Corporation of *Bewdley*, relating to *Venires*.—Though upon Complaint of a Rescous, a Writ of Rescous may be sued out; yet I apprehend, that does not prevent taking other Remedies, such as breaking open Doors. The Sheriff may return a Rescous upon a Mesne Process, but cannot upon an Execution: He must raise a *Posse Comitatus*; but that does not hinder him from raising the *Posse Comitatus* for a Rescous from an Arrest upon a Mesne Process, if he thinks fit.—It was the Duty of every Man to aid and assist *John James* the Bailiff, to re-take the Prisoner, after he had rescued himself from the Hands of Justice, by the Force and Violence given in Evidence by *James*; and Mr. *Elcock* did what was right, in endeavouring to suppress the Arrogance and Outrage of the Prisoner, and to bring him under a Subjection to those Laws, which are too authoritative to be trampled upon, and treated with Contempt and Disobedience. The Authority in Lord *Hale*, cited by the Prisoner's Counsel, is a very old Authority. My Lord *Hale*, I admit, was a great Man, and I pay the highest Regard to his Reports; but I don't find this Authority named in Serjeant *Hawkins's Pleas of the Crown*, and therefore I apprehend the Serjeant doubted it.

Then Mr. Falconer, *also of Counsel for the Crown.*

THE Practice of the Officer, acting for the Under-Sheriff, in granting Blank Warrants, has never been complained of as an irregular or unlawful Practice, nor has any Arrest made upon those Sort of Warrants been ever superseded or set aside: Such Blank Warrants have always been held good, and the acting under them legal; and it would be of most dangerous Consequence to attempt to vitiate Proceedings, under which Justice has, for Time immemorial, been administered to the Suitors of the Court. Cites *Hale's P. C.* 459.

Prisoner's Counsel. That is upon an Execution.

Then Mr. Hayward, *likewise of Counsel for the Crown.*

MY Lord, I humbly conceive, that the Arguments made use of by the Prisoner's Counsel, for invalidating the Practice of issuing Blank Warrants, will have little Weight with your Lordship, it having been the Usage for Time immemorial, for Persons acting under the Sheriff of this County, as Mr. *Baxter* now does, to send out such Warrants, and that Practice was never known to be controverted: And if your Lordship is satisfied, that such has been the allowed Practice, then I humbly contend, that the Special Bailiff, *John James*, had a legal Authority to arrest the Prisoner, by virtue of the Warrant which he received from Mr. *Elcock*; and that upon his rescuing himself, as has been given in Evidence, the Officer had a Right to call Assistance, and to break open Doors for the Purpose of re-taking him.—Cites *M'Cullogh*'s Case, 9 *Coke*.—If a *Capias* instead of a *Distringas* be executed by an Officer, and the Officer is killed, it is Murder; surely then, it can be no less a Crime than Murder, to kill an Officer after he has executed a *Capias*: If then the Authority under which *James* acted was a good Authority, Mr. *Elcock* did what was legal, though I heartily wish he had acted with better Caution. Cites *Palmer* 52. *White*'s Case. And the killing Mr. *Elcock*, or any of the Persons who assisted in re-taking the Prisoner, after he had rescued himself, was Murder. If a Sheriff can appoint a Deputy generally by Parol, I humbly apprehend he may appoint a Person to act in any particular Part of the Office by Parol: I see no Reason why he may not do it in one Case as well as in the other.—As to a Warrant being the same Thing in Effect as a Deed, with regard to the Execution of it, as the Counsel for the Prisoner contend, surely there is not the least Foundation for the Comparison: A Warrant is only sealed; but Signing, Sealing, and Delivering, are necessary to make a Deed. It has been argued by the Counsel for the Prisoner in his Defence, That *James*, the Bailiff, had no Right to call Assistance for the re-taking the Prisoner, because, as they say, it was a Civil Case; it was not a Criminal Matter, nor an Escape from an Execution: But, my Lord, I humbly insist, that from the Moment the Prisoner had refused to submit to the Arrest, and had rescued himself from the Officer, by snapping a Pistol at him, it ceased to be a Civil Case; it became a Criminal Matter: The Prisoner was a Transgressor and Violator of the Laws of his Country; he broke his Majesty's Peace, and became a Criminal Offender; and therefore the Bailiff had a Right to call, and every Person ought to give him, Assistance for apprehending him: His House remained no longer an Asylum, or Sanctuary for him; He forfeited the Safety which the Law had given him in the close Retirements of his House before he was arrested: His Doors could be afterwards no Security to him from the Hands of Justice; and therefore his killing Mr. *Elcock* in the Pursuit of him, for the Purpose of bringing him to a due Submission and Obedience, was (I humbly conceive) Murder, and not Manslaughter. The Life of a Man (says my Lord *Coke*) is to be favoured, but the Life of the Law more so. The Law was established for the Security, Defence, and Protection of every Individual, and is the Life, Strength, and Support of the Community. Upon the whole, I humbly apprehend, your Lordship will be of Opinion, that the Points insisted upon by the Counsel for the Prisoner cannot entitle him to any Indulgence from the Court; but, on the contrary, that you will think them too weak and insufficient to induce you to direct a Special Verdict to be found; and that therefore your Lordship will now sum up the Evidence to the Jury, that they may consider it, and find a General Verdict.

Mr. Attorney produces a Case, *Harris* against *Ashley*, determined by Lord *Mansfield*, the Sittings after *Michaelmas* Term 1756, in the *King's-Bench*, where a Sheriff's Clerk filled up the Assignment of a Bail Bond, and it was held good.

Mr. Townsend, *for the Prisoner.*

I HUMBLY contend, That the Warrant, by reason of the inserting the Bailiffs after the Sealing of it, is not a legal Warrant *; and if so, my Lord *Hale*'s Doctrine is to the Point, and clearly for the Prisoner. The King's Counsel themselves admit Lord *Hale*'s Reports to be an Authority, and therefore, I hope, the Prisoner is well entitled to the Benefit of this Authority. Though the Sheriff may appoint a Deputy by Parol, and that Deputy depute his Authority to a third Person, yet, if that third Person had not a Right of deputing, Mr. *Elcock* could not act as Agent or Clerk to the Sheriff; and I humbly insist, Mr. *Elcock* had not a Right to do so, unless the Sheriff himself gave an Authority appointing him. Mr. Serjeant *Hawkins* omitting to insert my Lord *Hale*'s Case in his *Pleas of the Crown*, is no Reason for its not being a Resolution of as great Authority as any extant; and it would be a Pity, as well as cruel, that the Prisoner's Life should be forfeited for that Omission. It was an Omission not probably intended; he might have over-looked it, or it might have been left out by some other Accident: No Authority contradicts it; and therefore I contend, that it is still an Authority, in full Force and Effect, and available to the Prisoner, and not abolished or affected by the Custom, which the Counsel for the Crown have set up in Opposition to it. Custom, my Lord, must be supported by Usage for Time immemorial; Custom must be uniform and certain, before it becomes a Law: This Custom carries with it none of those Qualifications. What Mr. *Baxter* has said, therefore, cannot overset the Rules of the Common Law. I never knew, during all the Time of my own Clerkship, a Blank Warrant sent out, without an Indemnity by Deed; and the Attornies always sent, with the Names of the Special Bailiffs, Indemnities, either by Deed or *Assumpsit*, on the Back of the Writ: And I humbly insist, that the Inserting of the Names of the two Bailiffs in the Warrant, which *James* had to arrest the Prisoner, is directly within the Words and Sense of my Lord *Hale*'s Case, as to those two Bailiffs.

Court. Persons coming to the Assistance of the Constable the Law gives the same Sanction to, as to those called by Name.—One Point occurs, not yet spoken to, Whether the Warrant may not be considered as an Escrow.—Suppose a Person gives a Bond to another, sealed and delivered, with a Blank in it for the Sum, and desires him to insert Two Hundred Pounds, or any Sum in it, and he to whom the Bond is given, fills up the Blank accordingly, it is good. I should be glad you could produce one Instance, where a Person who has been arrested upon a Blank Warrant, has been discharged.

Mr. Justice *White*. No other Person was concerned in the Transaction, but the Party giving the Warrant, and the Party executing it. No Instrument or Writing is a Deed, until it is delivered; but a Warrant is a Warrant as soon as it is sealed.

If a Court see a Blank Indorsement on a Note, they will afterwards suffer it to be filled up. What a dangerous Confusion would be created in the Country, were the Proceedings upon Arrests made by Blank Warrants to be now set aside? To what a precarious Situation would the Property of the Subject be exposed? And how unsettled the Distribution of Justice, heretofore administered upon the Foundation of such Arrests? As to the Question, Whether the Bailiff's Authority to Mr. *Elcock* was for a particular Purpose, or general—By the Bailiff's calling out after *Stevenson* to stay; they were coming for him—I should think, that Mr. *Elcock* was with the Bailiff to give him general Assistance.—This is Matter of Fact, not Law.

Mr. Townsend *again, for the Prisoner.*

I HOPE, the Points of Law that have arisen in the Course of this Trial, will induce your Lordship to direct the Jury to find a Special

* "In the Case of Arrests upon Process, whether by Writ or Warrant, if the Officer named in the Process give Notice of his Authority, and Resistance is made, and the Officer killed, it will be Murder; if in Fact such Notification was true, and *the Process legal*: For, after such Notice, the Parties opposing the Arrest acted at their own Peril.

"I said above, by Way of Caution, *if the Process be legal*: But I would not be understood to mean any thing more than, *Provided the Process, be it by Writ or Warrant, be not defective in the Frame of it, and issue in the ordinary Course of Justice from a Court or Magistrate having Jurisdiction in the Case.* There may have been Error or Irregularity in the Proceeding, previous to the issuing of the Process; and if the Sheriff, or other Minister of Justice, be killed in the Execution of it, this will be Murder: For the Officer to whom it is directed, must at his Peril pay Obedience to it; and therefore, if a *Capias ad Satisfaciendum, Fieri facias*, Writ of Assistance, or any other Writ of the like Kind, issue, directed to the Sheriff, and he or any of his Officers be killed in the Execution of it, it is sufficient, upon an Indictment for this Murder, to produce the Writ and Warrant.

"But, if the Process be defective in the Frame of it; as if there be a Mistake in the Name or Addition of the Person on whom it is to be executed; or if *the Name of such Person, or of the Officer, be inserted without Authority, and after the issuing of the Process, or the Officer exceedeth the Limits of his Authority, and is killed*, this will amount to no more than *Manslaughter in the Person whose Liberty is so invaded.*" Foster's Reports, p. 311, 312.

Verdict, that the Priſoner may have the Benefit of the Law, and that you will not ſuffer a Matter, which ſo nearly endangers the Priſoner's Life, to be determined by a Jury: The Authority of Lord *Hale* furniſhes me with an Expectation, that you will grant this Indulgence to the Priſoner.

Mr. Juſtice *Swinnerton.* I muſt, in Juſtice to you, Mr. Recorder, and the other Counſel for the Priſoner, ſay, that you have diſcharged yourſelves, through the Courſe of this Trial, with great Decency and Judgment, and have done every Thing for the unhappy Man, that could poſſibly be expected from Gentlemen at the Bar. As for my own Part, I have the greateſt Inclination to Mercy, and no Perſon would more readily extend Compaſſion to a proper Object, than I would: But, I could wiſh that it had not been my Province to hear, and be a Judge of ſo ſhocking and melancholy an Event; for this being an Inquiſition for Blood, to delay the Execution of Juſtice, may tend to overſet and deſtroy Juſtice. However, if you, Gentlemen at the Bar, of Counſel for the Priſoner, will give this Court your Honour, that you verily believe the Points of Law, which ſeem to have ariſen upon this Trial, will in the End avail the Priſoner, and that you think Judgment of Murder may be averted from him upon the Deciſion of thoſe Points; and that you do not aſk Indulgence for the Sake of Delay, but from reaſonable Hopes that the Priſoner may be acquitted of Murder, when the Facts come to be argued; I will moſt readily conſent to direct the Jury to find a Special Verdict: But if, on the other Hand, you think that the Priſoner may not be availed by the Determination of the Court upon thoſe Points, I rely upon your Honour, and hope you will not requeſt it.

Mr. *Townſend.* With great Submiſſion to the Court, we humbly apprehend, that the Priſoner will receive the utmoſt Advantage upon the Determination of the Facts to be ſtated: We have the Authority of Lord *Hale* on our Side, and ſhall have Time to conſult other Authorities, which may probably give us further Aſſurances, that the Priſoner's Life in the End will be ſaved by the Deciſion of thoſe Points. But if we ſhould fail, I have no doubt upon me, but the Conduct of myſelf, and of the other Counſel for the Priſoner, will be clear from every Imputation, inaſmuch as we requeſt this Indulgence under the Patronage of my Lord *Hale*, and not to delay or protract Juſtice, but that the Priſoner may receive that Benefit from the Law, which we humbly conceive he is intitled unto; and for theſe Reaſons only we deſire, that the Court will give the Priſoner an Opportunity of having thoſe Points argued.

The Court conſented.

Then the Facts were ſtated, and found by the Jury as follows:

The Jurors find the *Capias* with the Indorſement of Indemnity.

That the ſaid *John Atkin*, Plaintiff in the ſaid *Capias*, ſigned the Indorſement of Indemnity.

That the Sheriffs of the County of *Cheſter* have always appointed a Perſon, reſiding in the City of *Cheſter*, to receive Writs, make Warrants thereon, and to return them.

That Mr. *Robert Baxter*, the Night before *Samuel Harriſon*, Eſquire, Sheriff of the ſaid County of *Cheſter*, was ſworn into Office, but after he had received his Appointment as Sheriff, was in Company with the ſaid *Samuel Harriſon*, then and now Sheriff of the ſaid County, and *John Hollins*, Gentleman, Under-Sheriff of the ſaid County; and the ſaid *Robert Baxter* was then appointed for the Purpoſes aforeſaid; under which Appointment the ſaid *Robert Baxter* has acted ever ſince. That the ſaid Sheriff was ſworn into Office the Day following ſuch Appointment: That the ſaid *Robert Baxter* after that Time, and in purſuance of ſuch Appointment, did make out a Warrant upon the ſaid *Capias*, under Seal of the ſaid Sheriff, in the Words following, that is to ſay, [*Here the Warrant is to be ſet forth in the Record of the Special Verdict.*] But

Note,-----In ſetting forth the Warrant in the Special Verdict, the Words, "*John James* and *John Jones*," are to be omitted.

That the ſaid *Robert Baxter* delivered the ſaid Warrant, ſo under Seal as aforeſaid, to Mr. *Lowe*, then Agent to *Francis Elcock* ſince deceaſed, which ſaid *Francis Elcock* was Attorney for the Plaintiff *John Atkin*.

That the ſame Warrant ſo ſealed, was ſent to the ſaid *Francis Elcock*, to *Nantwich* in the ſaid County (a Blank being left in the ſaid Warrant).

That it has been the Practice, in the Sheriff's Office of the ſaid County of *Cheſter*, to grant Warrants with the Names of the Sheriff's Bailiffs inſerted, and that Blanks have been left therein, for the Purpoſe of inſerting the Names of Special Bailiffs, to be added to ſuch Sheriff's own Bailiffs, to act jointly or ſeverally; and that it has alſo been the Practice for the Sheriff's Agent to inſert the Names of all the Special Bailiffs therein, before the ſame hath been delivered out to the Bailiffs, when ſuch Names have been ſent to the Sheriff's Office; and that the ſaid *Francis Elcock* afterwards, at *Nantwich* aforeſaid, by the Permiſſion of the ſaid *Robert Baxter*, inſerted in the ſaid Warrant, in the Blank left for that Purpoſe, the Words and Names following, to wit, "*John James* "and *John Jones*." That the ſaid Warrant was delivered to *John James*, by virtue whereof he the ſaid *John James* alone arreſted the ſaid *John Stevenſon*. That the ſaid *John Stevenſon*, after he was ſo arreſted, reſcued himſelf, went into his Houſe, and ſhut the Doors. That the ſaid *John James* applied to the ſaid *Francis Elcock* for Arms and Aſſiſtance to retake the ſaid *John Stevenſon* (the ſaid *Francis Elcock* then being at an Houſe in the Neighbourhood). That the ſaid *John James*, the ſaid *Francis Elcock*, and ſeveral other Perſons, as Aſſiſtants to the ſaid *John James*, made freſh Purſuit, and went to the Houſe of the ſaid *John Stevenſon*, as ſoon as they could, in order to retake him the ſaid *John Stevenſon*; but that *John Evans*, named in the ſaid Warrant, never was there; and that all the Doors of the ſaid Houſe were ſhut. That the ſaid *John James*, upon his going to retake the ſaid *John Stevenſon*, and before he the ſaid *John James* got to the ſaid *John Stevenſon*'s Houſe, ſaw the ſaid *John Stevenſon* out of Doors, but going towards the ſaid Houſe; and before he the ſaid *John Stevenſon* got into the ſaid Houſe, he the ſaid *John James* called out to the ſaid *John Stevenſon* in theſe Words, "You may as well ſtay, for we "are coming for you." That when the ſaid *John James*, the ſaid *Francis Elcock*, and others, as Aſſiſtants to the ſaid *John James*, came up to the ſaid Houſe, the ſaid *John James* told the ſaid *Francis Elcock* to take care of two of the Doors of the ſaid Houſe, and the ſaid *John James* went to a Door on the other Side of the ſame Houſe, out of the Sight of the ſaid *Francis Elcock*. That the ſaid *Francis Elcock* demanded Entrance, while the ſaid *John James* was at another Door, out of Sight of him the ſaid *Francis Elcock*. That the ſaid *John Atkin*, the ſaid Plaintiff, was at the ſame Door with the ſaid *Francis Elcock*, with an Iron Crow in his Hand. That the ſaid Crow was brought there, together with other Arms, by the Direction of the ſaid *John James*. That the ſaid *Francis Elcock* bid the ſaid *John Atkin* to put the ſaid Iron Crow under the ſame Door, to break it open; whereupon the ſaid *John Atkin* put the ſaid Crow under the ſame Door for that Purpoſe, and endeavoured to lift the ſame Door off the Hinges; but failing, he the ſaid *John Atkin* then left the ſaid Crow ſticking under the ſame Door, and went towards another Door of the ſame Houſe, to prevent the ſaid *John Stevenſon* eſcaping; and left the ſaid *Francis Elcock* at the ſame Door, where the ſaid Iron Crow was. That there were two Holes in the ſame Door, through which the ſaid *John Stevenſon* might ſee who was on the Out-ſide of the ſame Door. That the ſaid *John Stevenſon* took a Gun from the Mantle-piece in his ſaid Houſe, loaded with Gun-powder and a Bullet, and ſhot and diſcharged it, and ſhot the ſaid *Francis Elcock*, through the ſame Door, in the Part mentioned in the Indictment, of which he the ſaid *Francis Elcock* died, as in the ſaid Indictment is mentioned.

And if, upon the whole Matter, the Court ſhall be of Opinion, that the ſaid *John Stevenſon* is Guilty of Murder, the Jury ſay, that the ſaid *John Stevenſon* is Guilty of Murder.

And if the Court ſhall be of Opinion, that the ſaid *John Stevenſon* is Guilty of Manſlaughter, the Jury ſay, that the ſaid *John Stevenſon* is Guilty of Manſlaughter, and not Guilty of Murder.

"*Thurſday*, *Auguſt* 6, following, the Special Verdict was argued at "the Aſſizes at *Cheſter*, before the Hon. Mr. Juſtice *Noel*, Chief Juſtice "of *Cheſter*, and *Taylor White*, Eſq. the other Juſtice, when the Court "took Time till the next Morning for delivering their Opinions; and "accordingly on *Friday* Morning, Mr. Juſtice *Noel*, in an ingenious "and pathetic Speech, ſupported by adjudged Caſes, and the Doctrine "of the wiſeſt Sages of the Law, and alſo by Arguments of Reaſon and "Conſcience, declared, That the Priſoner's Crime, found by the *Spe-*"*cial Verdict*, could amount at moſt to Manſlaughter only. Where-"upon the Priſoner was burnt in the Hand, and diſcharged from the "Indictment of Murder." *London Magazine*, for *Auguſt* 1759.

LVI. The Trial of Lawrence Earl Ferrers, for the Murder of *John Johnſon*, before the Right Honourable the House of Peers, in *Weſtminſter-Hall*, in full *Parliament*, on *Wedneſday* the 16th, *Thurſday* the 17th, and *Friday* the 18th of *April*, 1760.

Wedneſday, *April* 16, 1760.

In the Court erected in Westminster-Hall, for the Trial of *LAWRENCE* Earl *FERRERS*, for the Murder of *John Johnſon*.

ABOUT Eleven of the Clock the Lords came from their own Houſe into the Court erected in *Weſtminſter-Hall*, for the Trial of *Lawrence* Earl *Ferrers*, in the Manner following:

The Lord High Steward's Gentlemen Attendants, Two and Two.

The Clerks Aſſiſtant to the Houſe of Lords, and the Clerk of the Parliament.

Clerk of the Crown in Chancery, bearing the King's Commiſſion to the Lord High Steward; and the Clerk of the Crown in the King's Bench.

The Maſters in Chancery, Two and Two.

The Judges, Two and Two.

The Peers eldeſt Sons, Two and Two.

Peers Minors, Two and Two.

York and *Windſor* Heralds.

Four Serjeants at Arms with their Maces, Two and Two.

The Yeoman Uſher of the Houſe.

Then the Peers, Two and Two, beginning with the youngeſt Baron.

Then Four Serjeants at Arms with their Maces, Two and Two.

The Serjeant at Arms attending the Great Seal, and Purſe-Bearer.

Then *Garter* King at Arms, and the Gentleman Uſher of the Black Rod, carrying the White Staff before the Lord High Steward.

Robert Lord *Henley*, Lord Keeper of the Great Seal of *Great Britain*, Lord High Steward, alone; his Train borne.

When the Lords were placed in their proper Seats, and the Lord High Steward upon the Woolpack;

The Clerk of the Crown in Chancery, having his Majeſty's Commiſſion to the Lord High Steward in his Hand, and the Clerk of the Crown in the King's Bench, ſtanding before the Clerk's Table with their Faces towards the State, made Three Reverences; the firſt at the Table, the Second in the Midway, and the Third near the Woolpack; then kneeled down; and the Clerk of the Crown in Chancery, on his Knee, preſented

presented the Commission to the Lord High Steward, who delivered the same to the Clerk of the Crown in the King's Bench to read: Then rising, they made Three Reverences, and returned to the Table. And then Proclamation was made for Silence, in this Manner:

Serjeant at Arms. Oyez, Oyez, Oyez! Our Sovereign Lord the King strictly charges and commands all Manner of Persons to keep Silence, upon Pain of Imprisonment.

Then the Lord High Steward stood up, and spoke to the Peers.

Lord High Steward. His Majesty's Commission is about to be read: Your Lordships are desired to attend to it in the usual Manner; and all others are likewise to stand up, uncovered, while the Commission is reading.

All the Peers uncovered themselves; and they, and all others, stood up uncovered, while the Commission was read.

GEORGE R.

GEORGE the Second, by the Grace of God, of *Great Britain*, *France*, and *Ireland*, King, Defender of the Faith, and so forth. To our Right Trusty and Well-beloved Councellor *Robert* Lord *Henley*, Baron of *Grainge*, in our County of *Southampton*, Keeper of our Great Seal of *Great Britain*, Greeting. Know ye, That whereas *Lawrence* Earl *Ferrers*, Viscount *Tamworth*, late of the Parish of *Breedon*, in Our County of *Leicester* (before Our Justices, assigned by Our Letters Patent under Our Great Seal of *Great Britain*, to enquire more fully the Truth, by the Oath of good and lawful Men of Our said County of *Leicester*, and by other Ways, Means, and Methods, by which they should and might better know (as well within Liberties as without), by whom the Truth of the Matter may be the better known and enquired into, of all Treasons, Misprisions of Treasons, Insurrections, Rebellions, Counterfeitings, Clippings, Washings, false Coinings, and other Falsities of the Money of *Great Britain*, and of other Kingdoms or Dominions whatsoever, and of all Murders, Felonies, Manslaughters, Killings, Burglaries, Rapes of Women, unlawful Meetings and Conventicles, unlawful Uttering of Words, Assemblies, Misprisions, Confederacies, false Allegations, Trespasses, Riots, Routs, Retentions, Escapes, Contempts, Falsities, Negligences, Concealments, Maintenances, Oppressions, Champarties, Deceits, and all other evil Doings, Offences, and Injuries whatsoever, and also of the Accessaries of them, within the County of *Leicester* aforesaid (as well within Liberties as without), by whomsoever and in what Manner soever done, committed, or perpetrated, and by whom, or to whom, when, how, and after what Manner; and of all other Articles and Circumstances concerning the Premises, and every or any of them, in any Manner whatsoever; and the said Treasons, and other the Premises, according to the Laws and Customs of *England*, to hear and determine), stands indicted, by the Oath of good and lawful Men of Our said County of *Leicester*, of Felony and Murder, by him the said *Lawrence* Earl *Ferrers* Viscount *Tamworth* done and committed: We, considering that Justice is an excellent Virtue, and pleasing to the Most High; and being willing that the said *Lawrence* Earl *Ferrers* Viscount *Tamworth*, of and for the Felony and Murder whereof he is indicted as aforesaid before Us, in Our present Parliament, according to the Law and Custom of Our Kingdom of *Great Britain*, may be heard, examined, sentenced, and adjudged; and that all other Things which are necessary on this Occasion may be duly exercised and executed; and for that the Office of High Steward of *Great Britain* (whose Presence, upon this Occasion, is required) is now vacant (as We are informed): We, very much confiding in your Fidelity, Prudence, provident Circumspection, and Industry, have, for this Cause, ordained and constituted you Steward of *Great Britain*, to bear, execute, and exercise (for this Time) the said Office, with all Things due and belonging to the same Office in this Behalf: And therefore We command you, that you diligently set about the Premises, and (for this Time) do exercise, and execute with Effect, all those Things which belong to the Office of Steward of *Great Britain*, and which are required in this Behalf. In Witness whereof, We have caused these our Letters to be made Patent. Witness Ourself at *Westminster*, the Sixteenth Day of *April*, in the Thirty-third Year of our Reign.

By the King Himself, signed with his own Hand.

Yorke and *Yorke.*

Serjeant at Arms. God save the King!

Then *Garter*, and the Gentleman Usher of the Black Rod, after three Reverences, kneeling jointly presented the White Staff to his Grace the Lord High Steward: And then his Grace, attended by *Garter*, Black Rod, and the Purse-Bearer (making his proper Reverences towards the Throne), removed from the Woolpack, to an armed Chair, which was placed on the uppermost Step but one of the Throne, as it was prepared for that Purpose, and then seated himself in the Chair, and delivered the Staff to the Gentleman Usher of the Black Rod on his Right-Hand, the Purse-Bearer holding the Purse on the left.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. Oyez, Oyez, Oyez! Our Sovereign Lord the King strictly charges and commands all Manner of Persons to keep Silence, upon Pain of Imprisonment.

Then the Clerk of the Crown, by Direction of the Lord High Steward, read the *Certiorari*, and the Return thereof, together with the Caption of the Indictment, and the Indictment certified thereupon, against *Lawrence* Earl *Ferrers*; *in hæc verba:*

The *Certiorari* and *Return.*

GEORGE the Second, by the Grace of God, of *Great Britain*, *France*, and *Ireland*, King, Defender of the Faith, and so forth, To Our Justices, assigned by Our Letters Patent under Our Great Seal of *Great Britain*, to enquire more fully the Truth, by the Oath of good and lawful Men of Our County of *Leicester*, and by other Ways, Means, and Methods, by which they should and might better know (as well within Liberties as without), by whom the Truth of the Matter may be the better known and enquired into, of all Treasons, Misprisions of Treasons, Insurrections, Rebellions, Counterfeitings, Clippings, Washings, false Coinings, and other Falsities of the Money of *Great Britain*, and of other Kingdoms or Dominions whatsoever, and of all Murders, Felonies, Manslaughters, Killings, Burglaries, Rapes of Women, unlawful Meetings and Conventicles, unlawful Uttering of Words, Assemblies, Misprisions, Confederacies, false Allegations, Trespasses, Riots, Routs, Retentions, Escapes, Contempts, Falsities, Negligences, Concealments, Maintenances, Oppressions, Champarties, Deceits, and all other evil Doings, Offences, and Injuries whatsoever, and also of the Accessaries of them, within the County aforesaid (as well within Liberties as without), by whomsoever and in what Manner soever done, committed, or perpetrated, and by whom, or to whom, when, how, and after what Manner; and of all other Articles and Circumstances concerning the Premises, and every or any of them, in any Manner whatsoever, and the said Treasons, and other the Premises, according to the Laws and Customs of *England*, to hear and determine, and to every of them, Greeting: We, being willing, for certain Reasons, that all and singular Indictments and Inquisitions of whatsoever Felonies and Murders whereof *Lawrence* Earl *Ferrers* Viscount *Tamworth*, late of the Parish of *Breedon*, in the County of *Leicester*, is indicted before you (as is said), be determined before Us, and not elsewhere, do command you, and every of you, that you, or One of you, do send, under your Seals, or the Seal of One of you, before Us, in our present Parliament, immediately after the Receipt of this Our Writ, all and singular the Indictments and Inquisitions aforesaid, with all Things touching the same, by whatsoever Name the said *Lawrence* Earl *Ferrers* Viscount *Tamworth* is called in the same, together with this Writ, that We may further cause to be done thereon what of Right, and according to the Law and Custom of *England*, We shall see fit to be done. Witness Ourself at *Westminster*, the Eighteenth Day of *March*, in the Thirty-third Year of Our Reign.

Yorke and *Yorke.*

To the Justices assigned to enquire of all Treasons, Murders, &c. committed within the County of *Leicester*, a Writ of *Certiorari*, to certify into the Upper House of Parliament the Indictment found before them against *Lawrence* Earl *Ferrers* for Murder, returnable immediately, before the King in Parliament.

Yorke and *Yorke.*

Return. BY Order of the Lords Spiritual and Temporal, in Parliament assembled, by virtue of the within Writ to me, and others, directed, I send to our Sovereign Lord the King, in this present Parliament, under my Seal, the Indictment and Inquisition within mentioned, with all Things touching the same, in certain Schedules hereunto annexed, as I am within commanded.

H. Bathurst.

Leicestershire. BE it remembered, That at the General Session of our Lord the King, of Oyer and Terminer, holden for the County of *Leicester*, at the Castle of *Leicester*, in and for the same County, on *Friday* the Fourteenth Day of *March*, in the Thirty-third Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, and so forth, before *Henry Bathurst*, Esquire, one of the Justices of our said Lord the King, of his Court of Common Bench; *James Hewitt*, Esquire, one of the Serjeants at Law of our said Lord the King, and others their Fellows, Justices of our said Lord the King, assigned by Letters Patent of our said Lord the King, under his Great Seal of *Great Britain*, to them and others, and any Two or more of them made, of whom our said Lord the King would have the said *Henry Bathurst*, Esquire, and *James Hewitt*, Esquire, to be One, to enquire more fully the Truth, by the Oath of good and lawful Men of the County aforesaid, and by all other Ways, Means, and Methods, by which they should or might better know (as well within Liberties as without) by whom the Truth of the Matter may be the better known and enquired into, of all Treasons, Misprisions of Treasons, Insurrections, Rebellions, Counterfeitings, Clippings, Washings, false Coinings, and other Falsities of the Monies of *Great Britain*, and of other Kingdoms or Dominions whatsoever; and of all Murders, Felonies, Manslaughters, Killings, Burglaries, Rapes of Women, unlawful Meetings and Conventicles, unlawful Uttering of Words, Assemblies, Misprisions, Confederacies, false Allegations, Trespasses, Riots, Routs, Retentions, Escapes, Contempts, Falsities, Negligences, Concealments, Maintenances, Oppressions, Champarties, Deceits, and all other evil Doings, Offences, and Injuries whatsoever, and also of the Accessaries of them, within the County aforesaid (as well within Liberties as without) by whomsoever, and in what Manner soever, done, committed, or perpetrated, and by whom, or to whom, when, how, and after what Manner; and of all other Articles and Circumstances concerning the Premises, and every or any of them, in any Manner whatsoever; and the said Treasons, and other the Premises, according to the Laws and Customs of *England*, for this Time, to hear and determine, by the Oath of *John Grey*, *John Palmer*, *Thomas Boothby* the Elder, *William Pochin*, *Nathan Wrighte*, *Charles Skrymsher Boothby*, *Thomas Boothby* the Younger, *Joseph Craddock*, *Edward Farnham*, *Rogers Rudding*, *Charles Morris*, Esquires; *John Smalley*, *Richard Walker*, *John Willows*, *James Silmey*, *Thomas Ayre*, *Gabriel Newton*, and *Robert Hames*, Gentlemen; good and lawful Men of the County aforesaid, then and there sworn, and charged to enquire for our said Lord the King for the Body of the same County.

It is presented, That the Bill of Indictment hereunto annexed is a true Bill.

BLENCOWE.

Leicestershire. THE Jurors for our present Sovereign Lord the King, upon their Oath, present, That the Right Honourable *Lawrence* Earl *Ferrers*, Viscount *Tamworth*, late of the Parish of *Breedon*, in

in the County of *Leiceſter*, not having the Fear of God before his Eyes, but being moved and ſeduced by the Inſtigation of the Devil, on the Eighteenth Day of *January*, in the Thirty-third Year of the Reign of our preſent Sovereign Lord *George* the Second, by the Grace of God, of *Great Britain*, *France*, and *Ireland*, King, Defender of the Faith, and ſo forth, with Force and Arms, at the Pariſh of *Breedon*, in the County of *Leiceſter* aforeſaid, in and upon one *John Johnſon*, in the Peace of God, and of our ſaid Lord the King, then and there being, felonioufly, wilfully, and of his Malice aforethought, did make an Aſſault, and that He the ſaid *Lawrence* Earl *Ferrers*, Viſcount *Tamworth*, with a certain Piſtol of the Value of Two Shillings, then and there being charged with Gunpowder, and a leaden Bullet, which Piſtol he the ſaid *Lawrence* Earl *Ferrers*, Viſcount *Tamworth*, in his Hand then and there had and held at, againſt, and upon, him the ſaid *John Johnſon*, then and there felonioufly, wilfully, and of his Malice aforethought, did diſcharge and ſhoot off: And that he the ſaid *Lawrence* Earl *Ferrers*, Viſcount *Tamworth*, with the leaden Bullet aforeſaid, by Force of the Gunpowder aforeſaid out of the ſaid Piſtol, by him the ſaid *Lawrence* Earl *Ferrers*, Viſcount *Tamworth*, ſo as aforeſaid diſcharged and ſhot off, him the ſaid *John Johnſon*, in and upon the Left Side of the ſaid *John Johnſon*, a little under the loweſt Rib of the ſaid *John Johnſon*, then and there felonioufly, wilfully, and of his Malice aforethought, did ſtrike and wound, giving to the ſaid *John Johnſon* then and there, with the leaden Bullet aforeſaid, out of the ſaid Piſtol ſo as aforeſaid diſcharged and ſhot off, in and upon the ſaid Left Side, a little under the loweſt Rib of the ſaid *John Johnſon*, One mortal Wound, of the Breadth of One Inch and Depth of Four Inches; of which ſaid mortal Wound the ſaid *John Johnſon*, at the ſaid Pariſh of *Breedon*, in the ſaid County of *Leiceſter*, did languiſh, and languiſhing did live, until the Nineteenth Day of the ſame Month of *January*, in the Thirty-third Year aforeſaid; on which ſaid Nineteenth Day of *January*, about the Hour of Nine of the Clock in the Morning, he the ſaid *John Johnſon*, at the Pariſh of *Breedon* aforeſaid, in the County of *Leiceſter* aforeſaid, of the mortal Wound aforeſaid died: And ſo the Jurors aforeſaid, upon their Oaths aforeſaid, do ſay, That the ſaid *Lawrence* Earl *Ferrers*, Viſcount *Tamworth*, the ſaid *John Johnſon*, in Manner and Form aforeſaid, felonioufly, wilfully, and of his Malice aforethought, did kill and murder, againſt the Peace of our ſaid Lord the King, his Crown and Dignity.

Witneſſes, *Elizabeth Burgeland*, *Sarah Johnſon*, *Elizabeth Saxon*, *Thomas Kirkland*, *Elizabeth Dolman*, *William Tomlinſon*.

A true Bill.

Sworn in Court.

Lord High Steward. Is it your Lordſhips Pleaſure, that the Judges have Leave to be covered?

Lords. Ay, ay.

Clerk of the Crown. Serjeant at Arms, Make Proclamation for the Lieutenant of the *Tower* to bring his Priſoner to the Bar.

Serjeant at Arms. Oyez, Oyez, Oyez! Lieutenant of the *Tower* of *London*, Bring forth *Lawrence* Earl *Ferrers*, your Priſoner, to the Bar, purſuant to the Order of the Houſe of Lords.

Then *Lawrence* Earl *Ferrers* was brought to the Bar by the Deputy Governor of the *Tower*, having the Ax carried before him by the Gentleman-Gaoler, who ſtood with it on the Left Hand of the Priſoner, with the Edge turned from him. The Priſoner, when he approached the Bar, made Three Reverences, and then fell upon his Knees at the Bar.

Lord High Steward. Your Lordſhip may riſe.

Then the Priſoner roſe up, and bowed to his Grace the Lord High Steward, and to the Houſe of Peers; which Compliment was returned him by his Grace, and the Lords.

Then Proclamation having been again made for Silence, the Lord High Steward ſpake to the Priſoner, as follows.

Lord High Steward.

Lawrence Earl *Ferrers*,

YOU are brought to this Bar to receive your Trial, upon a Charge of the Murder of *John Johnſon*; an Accuſation, with reſpect to the Crime, and the Perſons who make it (the Grand Jury of the County of *Leiceſter*, the Place of your Lordſhip's Reſidence), of the moſt ſolemn and ſerious Nature.

Yet, my Lord, you may conſider it but as an Accuſation; for the greateſt or meaneſt Subject of this Kingdom (ſuch is the Tenderneſs of our Law) cannot be convicted capitally, but by a Charge made by Twelve good and lawful Men, and a Verdict found by the ſame Number of his Equals at the leaſt.

My Lord, in this Period of the Proceedings, while your Lordſhip ſtands only as accuſed, I touch but gently on the Offence charged upon your Lordſhip; yet, for your own Sake, it behoves me ſtrongly to mark the Nature of the Judicature before which you now appear.

It is a Happineſs reſulting from your Lordſhip's Birth and the Conſtitution of this Country, That your Lordſhip is now to be tried by your Peers in full Parliament. What greater Conſolation can be ſuggeſted to a Perſon in your unhappy Circumſtances, than to be reminded, that you are to be tried by a Sett of Judges, whoſe Sagacity and Penetration no material Circumſtances in Evidence can eſcape, and whoſe Juſtice nothing can influence or pervert?

This Conſideration, if your Lordſhip is conſcious of Innocence, muſt free your Mind from any Perturbations that the Solemnity of ſuch a Trial might excite; it will render the Charge, heavy as it is, unembarraſſing, and leave your Lordſhip firm and compoſed, to avail yourſelf of every Mode of Defence, that the moſt equal and humane Laws admit of.

Your Lordſhip, purſuant to the Courſe of this Judicature, hath been furniſhed with a Copy of the Indictment, and hath had your own Counſel aſſigned; you are therefore enabled to make ſuch Defence as is moſt for your Benefit and Advantage; if your Lordſhip ſhall put yourſelf on Trial, you muſt be aſſured to meet with nothing but Juſtice, Candour, and Impartiality.

Before I conclude, I am, by Command of the Houſe, to acquaint your Lordſhip, and all other Perſons who have Occaſion to ſpeak to the Court, during the Trial, that they are to addreſs themſelves to the Lords in general, and not to any Lord in particular.

Lord High Steward. *Lawrence* Earl *Ferrers*, Your Lordſhip will do well to give Attention, while you are arraigned on your Indictment.

Here Earl *Ferrers* was arraigned, in the Form of the ſaid Indictment againſt him, by the Clerk of the Crown in the King's Bench.

Clerk of the Crown. How ſay you, *Lawrence* Earl *Ferrers*, Are you guilty of the Felony and Murder whereof you ſtand indicted, or not guilty?

Earl Ferrers. Not guilty, my Lords.

Clerk of the Crown. Cul': prit, How will your Lordſhip be tried?

Earl Ferrers. By God and my Peers.

Clerk of the Crown. God ſend your Lordſhip a good Deliverance.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. Oyez, Oyez, Oyez! All Manner of Perſons that will give Evidence, on Behalf of our Sovereign Lord the King, againſt *Lawrence* Earl *Ferrers*, the Priſoner at the Bar, let them come forth, and they ſhall be heard; for now he ſtands at the Bar upon his Deliverance.

Lord High Steward. My Lords, the Diſtance of this Place from the Bar is ſo great, that I muſt deſire your Lordſhips Leave to go down to the Table for the Convenience of hearing.

Lords. Ay, Ay.

Then his Grace removed to the Woolpack, and delivered the White Staff to be held by the Gentleman Uſher of the Black Rod; who, during the whole Trial, always received and delivered back the White Staff upon his Knee.

Mr. *Perrott.*

May it pleaſe your Lordſhips,

THIS Noble Lord *Lawrence* Earl *Ferrers*, the Priſoner at the Bar, ſtands indicted for the felonious Killing and Murder of one *John Johnſon*; and the Indictment ſets forth, That the Right Honourable *Lawrence* Earl *Ferrers*, Viſcount *Tamworth*, on the Eighteenth Day of *January*, in the Thirty-third Year of his preſent Majeſty's Reign, with Force and Arms, at the Pariſh of *Breedon*, in the County of *Leiceſter*, in and upon one *John Johnſon*, felonioufly, wilfully, and of his Malice aforethought, did make an Aſſault; and that a certain Piſtol then and there being charged with Gunpowder and a leaden Bullet, which Piſtol he the ſaid *Lawrence* Earl *Ferrers* then and there held in his Hand, at, againſt, and upon him the ſaid *John Johnſon*, then and there felonioufly, wilfully, and of his Malice aforethought, did diſcharge and ſhoot off; and with the leaden Bullet aforeſaid, by Force of the Gunpowder aforeſaid, out of the ſaid Piſtol by him ſo diſcharged and ſhot off, the ſaid *John Johnſon* in and upon the left Side of the ſaid *John Johnſon*, a little under his loweſt Rib, then and there felonioufly, wilfully, and of his Malice aforethought, did ſtrike and wound, giving to the ſaid *John Johnſon* then and there with the leaden Bullet aforeſaid, out of the ſaid Piſtol ſo as aforeſaid diſcharged and ſhot off, in and upon the ſaid Left Side a little under the loweſt Rib of the ſaid *John Johnſon*, one mortal Wound, of the Breadth of one Inch, and Depth of Four Inches; of which ſaid mortal Wound the ſaid *John Johnſon* did languiſh, and languiſhing did live, until the Nineteenth Day of the ſame Month of *January*, in the Thirty-third Year aforeſaid; on which Day, about the Hour of Nine of the Clock in the Morning, he, the ſaid *John Johnſon*, of the mortal Wound aforeſaid, died; and ſo the Jurors, upon their Oath, do find, That the ſaid *Lawrence* Earl *Ferrers*, the ſaid *John Johnſon*, in Manner aforeſaid, felonioufly, wilfully, and of his Malice aforethought, did kill and murder, againſt the Peace of our Lord the King, his Crown and Dignity.

To this Indictment the Noble Lord, the Priſoner at the Bar, hath pleaded Not Guilty, and for his Trial hath put himſelf upon your Lordſhips his Peers here preſent.

We, who have the Honour to ſerve the Crown in this Proſecution, ſhall call our Evidence; and, if we prove the Fact charged by this Indictment, we doubt not but your Lordſhips will find him guilty, and give ſuch Judgment for the ſame as ſhall be juſt.

Mr. Attorney-General *.

May it pleaſe your Lordſhips,

I AM likewiſe of Counſel for the Crown; and it is become my Duty in conſequence of that, to open to your Lordſhips the Facts and Circumſtances of this Caſe, out of which your Lordſhips are to collect and find the Crime that is charged in this Indictment.

The noble Priſoner ſtands here arraigned before your Lordſhips for that odious Offence, malicious and deliberate Murder. There cannot be a Crime in human Society that deſerves more to be puniſhed, or more ſtrictly to be enquired after; and therefore it is, that his Majeſty, the great executive Hand of Juſtice in this Kingdom, has promoted this Inquiry, whereby all Men may ſee, that in the Caſe of Murder his Majeſty makes no Difference between the greateſt and meaneſt of his Subjects.

The Priſoner has a Right, from his Quality, to the Privilege of being tried before this noble Tribunal; if he is innocent, he has the greateſt Reaſon to be comforted, that your Lordſhips are his Judges; for that Nobleneſs and Humanity, which prompt you naturally to incline towards Mercy, will ſtrongly exert themſelves in the Protection of Innocence. But, on the other Hand, if the Priſoner is really guilty of the Charge; his Caſe is truly deplorable; becauſe your Minds cannot be deceived by the falſe Colouring of Rhetorick, nor your Zeal for Juſtice perverted by any unmanly Compaſſion.

This impartial Diſpoſition in your Lordſhips calls upon the Proſecutors to obſerve a Conduct worthy of this noble Aſſembly; not to inlarge or aggravate any Part, or advance a Step beyond their Inſtructions; but barely to ſtate the naked Facts, in order that, by that Means, your Lordſhips may be enabled the better to attend to the Witneſſes when they are called, to examine and croſs-examine, and ſift out the Truth with more Accuracy.

* *Charles Pratt*, Eſq. now Lord *Camden*.

My Lords, as I never thought it my Duty in any Caſe to attempt at Eloquence, where a Priſoner ſtood upon Trial for his Life; much leſs ſhall I think myſelf juſtified in doing it before your Lordſhips; give me Leave therefore to proceed to a Narration of the Facts.

My Lords, the deceaſed Perſon Mr. *Johnſon*, I find to have been employed by the *Ferrers* Family almoſt during the whole Courſe of his Life: He was taken into their Service in his Youth, and continued in it unfortunately to the Time of his Death.

At the Time a Bill was paſſed by your Lordſhips about Two Years ago, to ſeparate Lord *Ferrers* from his Lady, Mr. *Johnſon* was appointed Receiver of his Lordſhip's Eſtates. At that Time his Lordſhip ſeems to have entertained a good Opinion of him, becauſe I am told he was appointed Receiver at his Lordſhip's own Nomination; but, very ſoon after he became inveſted with this Truſt, when the Noble Lord found there was no poſſible Method, by any Temptation whatever, to prevail on Mr. *Johnſon* to break that Truſt, his Lordſhip's Mind grew to be alienated towards him, and his former Friendſhip was converted into Hatred.

The Firſt Inſtance of his Lordſhip's Malice, that will be produced, will be his giving him Notice to quit a beneficial Farm that Mr. *Johnſon* had obtained a Promiſe of from the Earl, or his Relations, before he was appointed Receiver; but when it appeared that the Truſtees had made good the Promiſe, and had granted him a Leaſe, my Lord was obliged to deſiſt from that Attempt.

When he found it was impoſſible to remove him from the Farm, his Reſentment againſt Mr. *Johnſon* increaſed, and he took at laſt a determined Reſolution within himſelf to commit the horrid Fact for which he now ſtands arraigned.

My Lords, I find ſeveral Cauſes aſſigned by the Priſoner for this Indignation expreſſed againſt the Deceaſed; he charged him with having colluded ſecretly with his Adverſaries, with being in the Intereſt of thoſe he was pleaſed to call his Enemies, and inſtrumental in procuring the Act of Parliament: Whether theſe Charges were juſtly founded or not, is totally immaterial; ſuch as they were, he had conceived them. His Lordſhip, who beſt knew the Malice of his own Heart, has confeſſed that he harboured theſe Suſpicions.

Another Thing he ſuſpected was, that, in Confederacy with Mr. *Burſlem* and Mr. *Curzon*, he agreed to diſappoint his Lordſhip, in regard to a certain Contract for Coal Mines. Theſe Notions, tho' void of Truth, had ſo poiſoned his Lordſhip's Mind, that he was determined at laſt to gratify his Revenge by Murder.

This Determination being once ſettled and fixed in his Mind, your Lordſhips will ſee, with what Art and Deliberation it was purſued: Notwithſtanding theſe ſeeming Cauſes of Diſguſt, he diſſembled all Appearance of Ill-will or Reſentment; his Countenance towards the Deceaſed for ſome Months ſeemed greatly to be changed, and his Behaviour was affable and good-humoured.

The poor Man, deluded with theſe Appearances, was brought to believe he was in no Danger, and that he might ſafely truſt himſelf alone with his Lordſhip.

Matters being thus prepared, on *Sunday* the 13th of *January*, the Priſoner made an Appointment for Mr. *Johnſon* to come to him on the *Friday* following.

His Lordſhip, though the Appointment was Five or Six Days before, remembered it perfectly; nay, he remembered the very Hour he was to come, and took his Meaſures accordingly; for your Lordſhips will find, that, in order to clear the Houſe, Mrs. *Clifford*, a Woman who lives with his Lordſhip, and Four Children, were directed by him, at Three o'Clock preciſely, to abſent themſelves; they were ordered to walk out to Mrs. *Clifford*'s Father, about two Miles from my Lord's Houſe, and not to return till Five, or Half an Hour after Five.

The Two Men-Servants likewiſe, the only Servants of that Sex then reſiding with him, were contrived to be ſent out of the Way; ſo that when Mr. *Johnſon* repaired to *Stanton*, my Lord's Houſe, at Three o'Clock, there was no Perſon in the Houſe, except his Lordſhip, and Three Maid-Servants.

Mr. *Johnſon*, when he came to the Houſe, rapt at the Door, and was received by his Lordſhip, and directed to wait ſome Time in the Still Room; then his Lordſhip ordered him into the Parlour, where they both entered together, and the Door was immediately locked on the Inſide.

What paſſed in that Interval, between the Time of Mr. *Johnſon*'s firſt going in, and the Time of his being ſhot, can only be *now* known to your Lordſhips by the Noble Earl's Confeſſion, which has been very ample indeed upon the preſent Occaſion.

After Mr. *Johnſon* had been there the beſt Part of an Hour, one of the Maids in the Kitchen, hearing ſome high Words in the Parlour, went to the Door to ſee if ſhe could diſcover what was doing; ſhe liſtened, and heard my Lord, as ſhe was at the Kitchen Door, ſay, Down upon your Knees; Your Time is come; You muſt die; and preſently after heard a Piſtol go off: Upon that, ſhe removed from the Kitchen, and retired to another Part of the Houſe; for ſhe did not care to venture into his Lordſhip's Preſence.

Though it appeared, afterwards, that Mr. *Johnſon* had then received that Wound of which he died, he did not then immediately drop; he aroſe, and was able to walk.

Juſt then, my Lord *Ferrers*, as he confeſſed afterwards, felt a few momentary Touches of Compaſſion: He permitted Mr. *Johnſon* to be led up Stairs to Bed, till better Aſſiſtance could be called; he ſuffered a Surgeon to be ſent for, nay, the very Surgeon that Mr. *Johnſon* himſelf had deſired; and Mr. *Johnſon*'s Children, by his Lordſhip's Order, were acquainted with the Accident, and ſent for to ſee him.

Mr. *Johnſon*'s Daughter was the firſt Perſon that came; ſhe met the noble Lord, and the firſt Greeting ſhe had from him was, that he had ſhot her Father; and that he had done it on purpoſe, and deliberately. Mrs. *Clifford*, who had been apprized of this Accident by the Servants, came not long after; and, in an Hour and an Half, or Two Hours, Mr. *Kirkland*, the Surgeon, who was from Home when the Servant was diſpatched, and at a neighbouring Village, haſtened with the beſt Expedition he could make, to *Stanton*. When he came to *Stanton* he met my Lord in the Paſſage.

Here your Lordſhips will obſerve, that the Noble Lord's Conduct and Behaviour, from this Time to the Time that Mr. *Johnſon* was removed to his own Houſe, ſeemed all along calculated for his Eſcape; and that the only Anxiety he expreſſed was the Dread of being ſeized, and brought to Puniſhment in caſe Mr. *Johnſon* ſhould die.

Upon Mr. *Kirkland*'s firſt Appearance, my Lord had told him, that he had ſhot Mr. *Johnſon*, and that he had done it coolly; he deſired he might not be ſeized till it was known with Certainty, whether Mr. *Johnſon* would die or not; and threatened, that if any Perſon attempted to ſeize him, he would ſhoot them. Mr. *Kirkland* told him, he would take Care that Nobody ſhould meddle with him.

Mr. *Kirkland* was then brought up to Mr. *Johnſon*, who was upon the Bed; the Surgeon examined the Wound, and found that the Ball had penetrated a little below the Ribs on the Left Side; he took an Inſtrument in his Hand, called a Director, in order to probe the Wound: Here my Lord interrupted him, and ſaid, You need not be at that Trouble; paſs your Inſtrument downwards; I, when I ſhot off the Piſtol, directed it that Way; and Mr. *Kirkland* found this, upon Examination, to be true; the Ball had not paſſed through the Body, but remained lodged in the Cavities of the Abdomen.

When my Lord found that the Ball was in the Body, he grew uneaſy; for he was apprehenſive that the Ball, if, it remained there, might prove fatal: He aſked Mr. *Kirkland* if it could be extracted; Mr. *Kirkland* told him, from what he obſerved, it would be impracticable to extract the Ball: but, to give him better Hopes, he told him, that many Perſons had lived a long while after they had been ſhot, though the Ball had remained within them.

Preſently after this, the Surgeon went down Stairs to prepare a Fomentation, and ſoon after returned: When he came back into the Room, Mr. *Johnſon* complained of the Strangury, and found a conſiderable Difficulty in making Water. This alramed his Lordſhip again: He then aſked Mr. *Kirkland*, What would be the Conſequence, if the Bladder or Kidneys were hurt? Mr. *Kirkland* having laid down his Rule of Conduct, wherein his Prudence deſerves to be commended, anſwered, That, though the Bladder ſhould be wounded, or the Kidneys hurt, there had been many Cures performed upon ſuch like Wounds.

This made his Lordſhip tolerably eaſy: He then began to be in better Spirits, which, I am ſorry to ſay, at that Time were ſomewhat heightened with Liquor; for, although he was cool and freſh when he did the Fact, yet the Moment it was done, he began to drink, and continued drinking, at Times, till Twelve o'Clock at Night: This Liquor, however, only contributed to raiſe his Spirits, without diſordering his Underſtanding; for he appeared to be compleat Maſter of himſelf the whole Day.

After Mr. *Kirkland* had given him ſo much Encouragement, they together went down to the Still Room; and now, his Lordſhip verily believing that Mr. *Johnſon* would recover, he grew leſs cautious in avowing the Deliberation with which he did the Fact, and declaring all the Circumſtances that attended it.

And here, becauſe I will not wrong the Noble Lord, by adding a ſingle Letter to my Brief, your Lordſhips ſhall hear his Confeſſion, from thence, in his own Words.

'*Kirkland*, ſays he, I believe *Johnſon* is more frightened than hurt; 'my Intention was to have ſhot him dead; but, finding that he did not 'fall at the firſt Shot, I intended to have ſhot him again, but the Pain 'he complained of made me forbear; there Nature did take place, in 'Oppoſition to the Reſolution I had formed. I deſire you will take Care 'of him; for it would be cruel not to give him Eaſe, now I have ſpared 'his Life.

'When you ſpeak of this afterwards, do not ſay (though I deſire he 'may be eaſed of his Pain) that I repented of what I have done: I am 'not ſorry for it; it was not done without Conſideration; I own it was 'premeditated; I had, ſome Time before, charged a Piſtol for the Purpoſe, being determined to kill him, for he is a Villian, and deſerves 'Death; but, as he is not dead, I deſire you will not ſuffer my being 'ſeized; for, if he dies, I will go and ſurrender myſelf to the Houſe of 'Lords; I have enough to juſtify the Action; they may not excuſe me, 'but it will ſatisfy my own Conſcience: but be ſure you don't go in the 'Morning without letting me ſee you, that I may know if he is likely to 'recover or not; I will get up at any Time; at Four o'Clock in the 'Morning.

'To this very ſtrange and horrid Declaration Mr. *Kirkland* anſwered, 'by promiſing his Lordſhip, that he would certainly give him the firſt 'Intelligence touching Mr. *Johnſon*'s Condition; and, as it was proper, 'for very prudent Reaſons, as well with reſpect to himſelf as Mr. *Johnſon*, to diſſemble with his Lordſhip, he proceeded further, and told 'him, that he would give a favourable Account of this Matter. The 'Noble Lord then aſked him, what he would ſay if he was called upon; 'he told him he would ſay, that though *Johnſon* was ſhot, that he was 'in a fair Way of Recovery. His Lordſhip aſked Mr. *Kirkland*, if he 'would make Oath of that? He ſaid, Yes.

'Mr. *Kirkland* then went to ſee Mr. *Johnſon* again, and found him 'better; they then went to Supper, and, during the Time they were at 'Supper, his Lordſhip mentioned ſeveral other Particulars: He ſaid, he 'was aſtoniſhed that the Bullet ſhould remain in his Body; for, ſays he, 'I have made a Trial with this Piſtol, and it pierced through a Board 'an Inch and an Half thick; I am aſtoniſhed it did not paſs through his 'Body; I took good Aim, and I held the Piſtol in this Manner; and 'then he ſhewed Mr. *Kirkland* the Manner of his holding his Piſtol.'

He alſo declared the Grounds, and Motives for his killing *Johnſon*; that he had been a Villain; that he was in the Intereſt of his Enemies; that he had joined with thoſe who had injured him, and taken away his Eſtate, by an Act of Parliament; that he had colluded with Mr. *Curzon* and Mr. *Burſlem*, with reſpect to the Coal Contract.

Another Thing he mentioned with reſpect to the Farm; ſays he, I have long wanted to drive *Johnſon* out of the Farm; if he recovers, he will go back to *Cheſhire*, where he came from. Mr. *Kirkland* ſaid, No doubt but this Accident would drive him Home again.

After they had ſupped, Mrs. *Clifford* came into the Room, and ſhe propoſed, that Mr. *Johnſon* ſhould be removed to the *Leunt*, which is the Name

Name of Mr. *Johnson*'s House, and lies about a Mile from *Stanton*; his Lordship refused to consent to that, not because he thought Mr. *Johnson* might be hurt by the Removal, but, to use his own Words, because he would have him under his own Roof, to plague the Villain.

When Supper was over, they returned back to Mr. *Johnson*, who was then under the greatest Uneasiness; he was restless, and the Complaint of the Strangury increased: Then my Lord was alarmed again; he enquired of the Surgeon what would be the Consequence, in case the Guts were shot through? Mr. *Kirkland* gave him a favourable Answer that revived his Spirits; he went out of the Room, and invited Mr. *Kirkland* to take a Bottle of Port; they then drank together, and during that Time, the same, or the like Expressions were repeated. I will not trouble your Lordships with them again; but he all along declared, he did not do it hastily, but coolly and deliberately; that his Intention was to have killed him: And that the Reason why he did it at that Time was, because he would not sign a Paper of Recantation, acknowledging all the Injuries he had done his Lordship.

They then again returned to Mr. *Johnson*, after they had drank out the Bottle: Whether the Liquor was prevalent or not, I don't know; your Lordships will observe what followed: His Behaviour to the poor Man, though he lay there under the Surgeon's Hands, was totally changed, and his Resentment grew outrageous; my Lord again attacked him upon the same Charge as before, compelled him to acknowledge before all the Company (of which his Daughter was one) that he was a Villain; nay, he was about to drag him out of Bed upon the Floor, which would hardly have been prevented, if Mr. *Johnson*, who was tutored by a Wink from Mr. *Kirkland*, had not said, I do confess I am a Villain: My Lord at last went to Bed; but, before he departed, he said, with great Earnestness to Mr. *Kirkland*, May I rely upon you? Are you sure there is no Danger? May I go to Bed in Safety? Mr. *Kirkland* said, Yes, your Lordship may. When his Lordship was gone, poor *Johnson* begged to be removed to his own House. Mr. *Kirkland* wished it as much; for, besides that he could not have that free Access to his Patient that was necessary, if he was to remain there, he thought himself in the utmost Peril. My Lord had confessed too much, and *Kirkland* too little; so that if Mr. *Johnson* had died there, no Man in Mr. *Kirkland*'s Situation would have wished to have been alone with his Lordship, considering the dangerous Conversation that had passed between them.

Mr. *Kirkland*, therefore, immediately went to the *Lount*, procured Six or Seven armed Men, and came back by Two o'Clock in the Morning. They removed Mr. *Johnson*, put him into a great Chair, and wrapped him up in Blankets, and so conveyed him Home. Towards Morning the poor Man's Symptoms grew worse, and Mr. *Kirkland* then went away. Mr. *Johnson* lay languishing till Seven or Eight in the Morning, and then died.

In the mean Time Mr. *Kirkland* had procured a Number of armed Men to go down to *Stanton*, and to seize his Lordship. When they came there, my Lord was just out of Bed; he had his Garters in his Hand, and was seen passing towards the Stable. The Horses were all saddled, and every Thing got in Readiness for his Escape.

Mr. *Springthorpe* advanced towards him; and when his Lordship found he was really to be attacked, he fled back to his House, and there stood a Siege of Four or Five Hours. While he was thus beset, he appeared at the Garret Windows, and, thinking himself secure in that Place, he began to parley, and asked, What they wanted with him? They told him, Mr. *Johnson* was dead, and that they were come to secure him. He said, he knew that was false; for Mr. *Johnson* was not dead: That he wished it might be true: That he would not believe it, unless Mr. *Kirkland* would declare it: That he would pay no Regard to any body else. He did not think fit to surrender; but continued in the House, till he thought he had an Opportunity of escaping through the Garden. He was there discovered by one *Cutler*, a Collier, who was a bold Man, and determined to take him: He marched up to him; and though his Lordship was armed with a Blunderbuss, Two or Three Pistols, and a Dagger, he submitted to the Collier's taking him, without making the least Resistance: And the Moment he was in Custody, he declared he gloried in the Fact; and again declared, that he intended to kill *Johnson*. He was then carried to Mr. *Kinsey*'s House, and remained there till after the Coroner sat upon the Body.

I must mention to your Lordships, that upon Mr. *Hall*, a Clergyman's being introduced to him, he told him, he knew his Duty as well as he or any other Clergyman: That the Fact he had committed was coolly and deliberately done. So that your Lordships see his Declarations were consistent and uniform, from the Beginning to the End.

I shall neither aggravate nor observe.

These are the Circumstances which attended this horrid Murder. I have opened them faithfully from my Instructions. The Case is rather stronger than I have made it.

The Witnesses are to acquaint your Lordships, whether I have opened the Case truly. If the Evidence comes out as I have represented it to your Lordships, then your Lordships Sentence must be agreeable to Law. The noble Earl at the Bar must be found Guilty.

If he has any Defence, God forbid that he should not have a fair Opportunity of making it. Let him be heard with Patience. The Prosecutors will be as glad as your Lordships to find him innocent.

The Evidence is to determine; and upon that Evidence we shall leave it.

Mr. Sollicitor General, The Hon. *Charles Yorke*, Esq; MY Lords, we will now proceed to call our Witnesses. Call *Elizabeth Burgeland*.

[*Who came to the Bar, and one of the Clerks held the Book to her, upon which she laid her Hand.*]

Clerk of the Crown. Hearken to your Oath.

The Evidence that you shall give on Behalf of our Sovereign Lord the King's Majesty, against *Lawrence* Earl *Ferrers*, the Prisoner at the Bar, shall be the Truth, the whole Truth, and nothing but the Truth. So help you GOD.

Then she kissed the Book.

Mr. Sollicitor General. My Lords, This Witness was in the House at the Time when the Fact is charged to have been committed.

Lord High Steward. If your Lordships please, the Clerk may go down to the Bar, and repeat to your Lordships what is said by Lord *Ferrers* or the Witnesses.——*Lords.* Ay, Ay.

Earl Ferrers. My Lords, There was something said by the Gentleman, Counsel for the Crown, that is a little false, relating to a Lease said to be given by Sir *William Meredith* to Mr. *Johnson*; I did not know of that Lease previous to this Fact; there were other Matters mentioned that are not right; I will not take up your Lordships Time to answer them now, but leave that Matter till I come to my Defence.

Mr. Sol. Gen. My Lords, Whatever his Lordship thinks material in his Defence, he will have many Opportunities to offer.

Mr. Sol. Gen. You was a Maid-Servant in Lord *Ferrers*'s House the 11th of *January* last?——*Burgeland.* Yes.

Mr. Sol. Gen. Did you know one Mr. *Johnson?*——*Burge.* Yes.

Mr. Sol. Gen. Do you know any Thing of Mr. *Johnson*'s being employed by Lord *Ferrers?* Did he use to attend him?

Burge. He sometimes attended my Lord *Ferrers.*

Mr. Sol. Gen. Did you know any Thing of his being expected to wait on Lord *Ferrers* at any Time in *January* last?——*Burge.* Yes.

Mr. Sol. Gen. What do you know of it?

Burge. I know he came to the House.

Mr. Sol. Gen. Do you know what Day in *January?*

Burge. I don't know what Day.

Mr. Sol. Gen. About what Time of the Day was it?

Burge. About Three o'Clock in the Afternoon.

Mr. Sol. Gen. On what Day of the Week was it?

Burge. On *Friday.*

Mr. Sol. Gen. When Mr. *Johnson* came, who let him in?

Burge. I let him in.

Mr. Sol. Gen. What did he say?

Burge. He asked whether his Lordship was within; I told him he was in his Room.

Mr. Sol. Gen. What happened after that? Did my Lord expect him?

Burge. I believe he did.

Mr. Sol. Gen. When he was let in, did you go with him?

Burge. No; he walked up to the Room Door, and knocked at it himself.

Mr. Sol. Gen. At the Door of the Room where Lord *Ferrers* was sitting?——*Burge.* Yes.

Mr. Sol. Gen. Did he go in then?

Burge. No; he did not go in then.

Mr. Sol. Gen. Did Lord *Ferrers* speak to him?

Burge. Yes; and told him to walk into the other Room.

Mr. Sol. Gen. Do you know any Thing of what passed between them?

Burge. I cannot say any Thing about it.

Mr. Sol. Gen. You said Lord *Ferrers* expected Mr. *Johnson*, how do you know he expected him?

Burge. Mrs. *Clifford* told me in the Morning, that Mr. *Johnson* was to come to his Lordship that Day.

Mr. Sol. Gen. Did you hear, or do you know, any Thing of what passed between Lord *Ferrers* and Mr. *Johnson*, when Mr. *Johnson* went into my Lord's Room?——*Burge.* No.

Mr. Sol. Gen. Was the Door locked or open, after he went into the Room?——*Burge.* Locked.

Mr. Sol. Gen. How came you to observe that?

Burge. I heard it locked.

Mr. Sol. Gen. Where did you go after Mr. *Johnson* was in the Room with Lord *Ferrers?*——*Burge.* Into the Kitchen.

Mr. Sol. Gen. Who was with you there?

Burge. The other Maid-Servant.

Mr. Sol. Gen. What was her Name?

Burge. Elizabeth Saxon---There was another Maid-Servant in the Kitchen when he went in.

Mr. Sol. Gen. Who was she?——*Burge. Elizabeth Dolman.*

Mr Sol. Gen. After that, did you hear any Thing?

Burge. I did not hear any Thing myself.

Mr. Sol. Gen. Did you afterwards hear any Thing of what happened?---Do you know whether Mr. *Johnson* came out of the Room?

Burge. I cannot tell any Thing of it.

Mr. Sol. Gen. Did you go into the Room?

Burge. I did not go into the Room; I was not out of the Kitchen.

Mr. Sol. Gen. Did you hear any Noise?

Burge. No; I heard no Noise at all.

Mr. Sol. Gen. Did you hear any Pistol go off, or any Noise?

Burge. I heard a Pistol go off.

Mr. Sol. Gen. What did you do then?

Burge. When I heard the Pistol go, I run into the Yard, and the other Maid-Servant with me.

Mr. Sol. Gen. What happened afterwards?

Burge. We staid in the Yard a while, a few Minutes, and came back to the Wash-House.

Mr. Sol. Gen. Was the Room Door open after you heard that Noise?

Burge. I did not stay till it was open.

Mr. Sol. Gen. Did you stay till Lord *Ferrers* came?

Burge. My Lord came when we were in the Wash-House, and called.

Mr. Sol. Gen. What did he say?

Burge. He hooped and hallooed, Where are you all?

Mr. Sol. Gen. What did he say then?

Burge. I went out, and said, We are here, my Lord; he asked me, Where we had been? I said, in the Bleaching-Yard.

Mr. Sol. Gen. Did he give you any Order?

Burge. He ordered that we should walk down to the House.

Mr. Sol. Gen. Did he give any other Order?

Burge. He sent up a Maid-Servant into the Yard to fetch the Man in.

Mr. Sol. Gen. Did he say any Thing of Mr. *Johnson?*

Burge. Not till I got into the Room.

Mr. Sol. Gen. What did he say then?

Burge. He went up to Mr. *Johnson*, and asked how he did?

Mr.

Mr. Sol. Gen. What did Mr. *Johnson* say?

Burgeland. That he was a dying Man, and desired he would send for his Children.

Mr. Sol. Gen. Did any Thing else pass?

Burge. That is all I know.

Mr. Sol. Gen. Who else was in the House besides the Servants you have named and yourself?

Burge. There was Nobody in the House but us Three when Mr. *Johnson* came; and but Two in the Kitchen when it was done.

Mr. Sol. Gen. What other Servants did my Lord use to keep?

Burge. One Man-Servant, an old Man; I don't know whether he was a Servant.

Mr. Sol. Gen. Did any other Person live with him?

Burge. Mrs. *Clifford*, and the four young Ladies.

Mr. Sol. Gen. Were they all out at the Time when this happened?

Burge. Yes; they were all out but the Two Maids.

Mr. Sol. Gen. Were they out by Accident, or by Order?

Burge. I do not know any Thing of any Order.

Mr. Sol. Gen. Did you give Mr. *Johnson* any Assistance to carry him up to his Room?

Burge. Yes; I took him up to Bed by the Arm, by his Lordship's Order.

Earl *Ferrers.* Was not the Door locked before Mr. *Johnson* came?

Burge. Yes.

E. *Fer.* Has it been locked before?

Burge. It has several Times, when my Lord has been upon Business.

E. *Fer.* Was not Mr. *Johnson* at my House on the *Monday?*

Burge. Yes, he was there on the *Monday.*

E. *Fer.* Did you hear any Dispute or Words between Mr. *Johnson* and me on the *Monday?*

Burge. No, I did not hear any at all.

E. *Fer.* Had not I packed up my Trunks, intending to go to *London* the Week following?——*Burge.* Yes.

E. *Ferrers.* On the *Monday* while he was there, and sent to the Carriages?——*Burge.* Yes.

Mr. *Gould.* Our next Witness is *Elizabeth Saxon.*

(*Who was sworn in like manner*).

Mr. *Gould.* Did you live with Lord *Ferrers* in *January* last?

Saxon. Yes.

Mr. *Gould.* Did you know *John Johnson?*---*Sax.* Yes.

Mr. *Gould.* Do you remember Mr. *Johnson*'s coming to Lord *Ferrers* in *January?*---*Sax.* Yes.

Mr. *Gould.* Upon what Day?---*Sax.* The Eighteenth.

Mr. *Gould.* What Day of the Week was it?---*Sax.* On *Friday.*

Mr. *Gould.* Who was in the House when he came?

Sax. Nobody, only Three Maids and my Lord.

Mr. *Gould.* What Time of the Day did he come?

Sax. About Three o'Clock.

Mr. *Gould.* What was become of the rest of my Lord's Family?

Sax. I don't know: Mrs. *Clifford* and the Misses were gone out.

Mr. *Gould.* How long were they gone out before Mr. *Johnson* came?

Sax. About Half an Hour.

Mr. *Gould.* Do you know the Reason of their going away?

Sax. No; my Lord came into the Still-House, and said, they might go and fetch a Walk.

Mr. *Gould.* How long was it before they did go upon the Walk?

Sax. They went directly.

Mr. *Gould.* What Time of Day did my Lord give this Leave?

Sax. It was about Three o'Clock.

Mr. *Gould.* Was any thing mentioned where they were to go?

Sax. Mrs. *Clifford* asked him, whether they might go to her Father's? And my Lord said, Yes.

Mr. *Gould.* Was any thing mentioned how long they might stay?

Sax. He said, they might stay till Five, or Half an Hour after.

Mr. *Gould.* What Men-Servants belonged to the House?

Sax. There is but One Boy and an old Man.

Mr. *Gould.* Where were they?——*Sax.* I cannot tell.

Mr. *Gould.* Were they in the House?——*Sax.* No.

Mr. *Gould.* When Mr. *Johnson* came in, in what Room was my Lord *Ferrers?*——*Sax.* In his own Room.

Mr. *Gould.* Where did Mr. *Johnson* go when he came into the House?

Sax. He went up to my Lord's Room.

Mr. *Gould.* Did my Lord appear?—*Sax.* My Lord came to the Door.

Mr. *Gould.* Did you hear any thing said by my Lord to Mr. *Johnson?*

Sax. No.

Mr. *Gould.* Where did Mr. *Johnson* go when my Lord came out?

Sax. My Lord came out, and ordered him to go into the Still-house.

Mr. *Gould.* What became of my Lord then?

Sax. He went into his Room.

Mr. *Gould.* How long did he stay there before he came out again?

Sax. I don't know: May-be a few Minutes; Not long; Ten Minutes, or such a Matter.

Mr. *Gould.* When he came out, did he speak to Mr. *Johnson?*

Sax. I don't know that he did: I did not hear him.

Mr. *Gould.* Did you see Mr. *Johnson* when my Lord came out a second Time?——*Sax.* No.

Mr. *Gould.* What became of Mr. *Johnson?* Did he go into any Room with my Lord *Ferrers?*——*Sax.* I know he went into my Lord's Room.

Mr. *Gould.* Was the Door locked or not?

Sax. He locked to the Door after Mr. *Johnson* was in.

Mr. *Gould.* Did you hear the Door locked?

Sax. Yes, I heard it locked.

Mr. *Gould.* What did you hear pass in that Room?

Sax. Nothing at all; I did not hear any Thing.

Mr. *Gould.* Did you hear any Expression, any Words used by my Lord to Mr. *Johnson?*——*Sax.* No.

Mr *Gould.* Did you hear any Noise?

Sax. Yes; I heard them very loud; I heard my Lord say, Down on your other Knee, and declare what you have acted against Lord *Ferrers*; and then the Pistol went off; and I and the other Maid were frightened, and run away.

Mr. *Gould.* Did you hear my Lord, or Mr. *Johnson*, say any Thing more in the Room, than what you have mentioned?——*Sax.* No.

Earl *Ferrers.* Was it not customary for Mrs. *Clifford* to speak to me before she went out?

Saxon. She said, My Lord, where must we go to?

Earl *Ferrers.* Was it customary to speak to me?—*Sax.* Yes.

Earl *Ferrers.* How came you to be at my Door at that Time?

Saxon. I was not at my Lord's Door.

Lord *Mansfield.* Who was the other Maid that was with you when you over-heard what passed in my Lord's Room?

Sax. The other Witness that was here?

Lord *Mansfield.* Had that other Servant the same Opportunity to hear as you had? Was she as near the Door, listening in the same Way you was?

Sax. No, she was not.

Earl *Ferrers.* Do you know what Time Mrs. *Clifford* was to return?

Sax. About Five o'Clock, or Half an Hour after Five.

Earl *Ferrers.* Did not Mrs. *Clifford* very often go out about that Time after Dinner, about Three or Four o'Clock?—*Sax.* Yes.

Earl of *Morton.* You said in the First Part of your Evidence, that you heard my Lord say to Mr. *Johnson*, Down on your other Knee. My Lord *Ferrers* asked you, how you came to be near the Door. You said, that you was not. Where did you hear it?

Sax. I was at the Kitchen Door: I was no nearer than the Kitchen.

Earl of *Morton.* You say, that Lord *Ferrers* locked his Door?

Sax. Yes.

Earl of *Morton.* Was it customary for him to lock it when People were with him, or when he was alone?——*Sax.* I don't know.

Earl of *Morton.* Did you ever know Lord *Ferrers* lock his Door when Mr. *Johnson* was with him?—*Sax.* No.

Earl *Ferrers.* Did you never know that I locked the Door when I had Company with me?

Sax. No; I don't know that his Lordship did it ever since I came.

Earl of *Hardwicke.* You have said, that Lord *Ferrers* told Mr. *Johnson* to kneel on the other Knee; and that you heard it, though you was no nearer than the Kitchen Door: What Distance was there between the Kitchen Door and the Door of the Room where Lord *Ferrers* was?

Sax. Not a great Way.

Earl of *Hardwicke.* What Distance was it?

Sax. It might be Ten or a Dozen Yards, may-be.

Earl *Ferrers.* Was there not a thick Wall between that Room and the Kitchen, and a Chimney?——*Sax.* Yes.

Elizabeth Dolman *sworn in like Manner.*

Mr. *Norton.* Was you Servant to Lord *Ferrers* in *January* last?

Dolman. Yes.

Mr. *Norton.* Did you know Mr. *Johnson* the Deceased?---*Dolman.* Yes.

Mr. *Norton.* Do you remember his coming there in *January* last?

Dolman. Yes.

Mr. *Norton.* What Day of the Month was it?

Dolman. The Eighteenth.

Mr. *Norton.* What Time of the Day?—*Dolman.* About Three o'Clock.

Mr. *Norton.* Who was in the House of Lord *Ferrers* at that Time?

Dolman. Three Maids.

Mr. *Norton.* Nobody else?——*Dolman.* No.

Mr. *Norton.* Was not his Lordship there?——*Dolman.* Yes.

Mr. *Norton.* Do you know where the rest of the Family was at that Time?

Dolman. I know nothing of that: I believe Mrs. *Clifford* and the Children were gone out.

Mr. *Norton.* Do you know whether Mr. *Johnson* was expected at Lord *Ferrers*'s that Day?——*Dolman.* I don't know.

Mr. *Norton.* Was you in the House when Mr. *Johnson* came in?

Dolman. I was in the Kitchen.

Mr. *Norton.* Who let him in?——*Dolman. Elizabeth Burgeland.*

Mr. *Norton.* Who did he ask for?——*Dolman.* Lord *Ferrers.*

Mr. *Norton.* Did you or *Elizabeth Burgeland* shew him to Lord *Ferrers?*

Dolman. Elizabeth Burgeland.

Mr. *Norton.* You was there?——*Dolman.* I was in the Kitchen.

Mr. *Norton.* Did you hear any thing that passed between Lord *Ferrers* and Mr. *Johnson?*——*Dolman.* No.

Mr. *Norton.* Did you hear a Pistol go off?——*Dolman.* Yes.

Mr. *Norton.* At that Time where were Lord *Ferrers* and Mr. *Johnson?*

Dolman. In my Lord's Room.

Mr. *Norton.* How long had Mr. *Johnson* been in my Lord's Room before you heard the Report of the Pistol?

Dolman. May-be about half an Hour.

Mr. *Norton.* Was you there when Mr. *Johnson* went into the Room?

Dolman. I was in the Kitchen.

Mr. *Norton.* Did you hear the Door locked?——*Dolman.* Yes.

Mr. *Norton.* How did you hear it? Was there a Spring, or was the Key turned?——*Dolman.* It was turned with the Key.

Mr. *Norton.* Did you hear the Key turned, and the Door locked?

Dolman. Yes.

Mr. *Norton.* How soon did you see Mr. *Johnson* after the Pistol went off?

Dolman. I did not see Mr. *Johnson* till after he was laid upon the Bed.

Mr. *Norton.* Did you see Lord *Ferrers* after Mr. *Johnson* was laid upon the Bed?——*Dolman.* Yes.

Mr. *Norton.* Did you hear any Conversation between my Lord and Mr. *Johnson* at the Time Mr. *Johnson* was upon the Bed?

Dolman. Lord *Ferrers* ordered me to go up and see what Mr. *Johnson* would have done.

Mr. *Norton.* Then his Lordship was not in the Room at that Time?

Dolman. Not then; he came in after.

Mr. *Norton.* What passed then? What did you hear between them?

Dolman. I went up Stairs, and asked Mr. *Johnson* how he did. He said, he was very poorly.

Mr. *Norton.* Was Lord *Ferrers* there then?——*Dolman.* No.

Mr. *Norton.* How soon did he come in?

Dolman. He did not come in till after I had fetched a Bed out of the Garret, and laid it on the Bedstead.

Mr. *Norton.* Did you hear his Lordship say any Thing to Mr. *Johnson?*

Dolman. Yes; his Lordship told him, that he would shoot him through the Head.

Mr. *Norton.* Did Mr. *Johnson* make any Reply to that?

Dolman. He said, No Matter how soon, my Lord.

Mr. *Norton.* What Time of the Night was this?

Dolman. It might be between Four and Five o'Clock.

Earl *Ferrers.* Did not I send you for the Bed, and order it to be well aired?——*Dolman.* Yes.

Lord *Ravensworth.* How long did you live with my Lord *Ferrers* before this supposed Accident?

Dolman. It might be Two Months.

Lord *Ravens.* Did Mr. *Johnson* ever, during the Time you lived with my Lord *Ferrers* before the 18th of *January*, to your Knowledge, come to Lord *Ferrers?*

Dolman. Yes; I have seen him there.

Lord *Ravens.* I should be glad to know, whether from your own Knowledge, or from any Conversation with others, you had any Reason to suspect or believe that Lord *Ferrers* bore Mr. *Johnson* any Ill-will; or did his Lordship ever make any Complaint, to your Knowledge, in regard to Mr. *Johnson?*

Dolman. No; I never had.

Lord *Ravens.* At what Time did Mr. *Johnson* come to Lord *Ferrers?*

Dolman. About Three o'Clock.

Lord *Ravens.* When Lord *Ferrers* and Mr. *Johnson* went into the Room, did Lord *Ferrers* appear to be in Liquor?

Dolman. No, not at all.

Lord *Ravens.* When you was in the Room, and Mr. *Johnson* said he was but poorly, did you imagine he was shot?—*Dolman.* No.

Lord *Ravens.* Did Lord *Ferrers* take Mr. *Johnson* by the Wig, before he said he would shoot him through the Head?—*Dolman.* Yes.

Lord *Ravens.* Did you hear the Pistol go off; and where?

Dolman. I was in the Yard; and I heard the Pistol go off.

Lord *Mansfield.* Did you hear any Part of the Conversation between Lord *Ferrers* and the Deceased before the Pistol went off?

Dolman. I did not.

Lord *Mansfield.* Was you near enough to have heard it, if any such Conversation had passed?—*Dolman.* I was not.

Lord *Mansfield.* Had *Elizabeth Saxon*, from the Place where she was, a better Opportunity of hearing what passed?—*Dolman.* I cannot say.

Lord *Mansfield.* Where was you at that Time?

Dolman. I was in the Yard.

Lord *Mansfield.* Where was *Elizabeth Saxon?*

Dolman. She was in the Kitchen, I believe.

Lord *Mansfield.* What was the Distance between the Kitchen Door and the Room where Lord *Ferrers* and the Deceased were?

Dolman. I cannot justly tell.

Lord *Mansfield.* Might a Person that was at the Kitchen Door hear any Conversation or Words which passed between Two People in that Room?—*Dolman.* Yes.

Lord *Mansfield.* Was it as far off as to that Bench?—*Dolman.* Yes.

Earl *Ferrers.* Did you ever hear any Conversation that passed in my Room, at any Time when I had Company and you was in the Kitchen?

Dolman. I have heard Talking.

Earl *Ferrers.* Could you distinguish what was said?

Dolman. I never took Notice.

A Lord. Was you at the Kitchen Door when my Lord *Ferrers* and Mr. *Johnson* were in his Room?—*Dolman.* I was in the Kitchen.

A Lord. Did you hear Lord *Ferrers* tell Mr. *Johnson* to kneel on the other Knee?—*Dolman.* No; I heard no such Thing.

A Lord. Was you with the other Witness at the Time she says she heard these Words?—*Dolman.* I was not.

Lord *Mansfield.* I desire to know of this Witness, whether at the Time that the Pistol went off, she was not in the Yard; and the Maid, that heard the Conversation, at the Kitchen Door?

Dolman. I was in the Yard then.

Lord *Mansfield.* Where was you when you heard the Key lock the Door?—*Dolman.* I was in the Kitchen.

Lord *Ravensworth.* You say you was in the Room when Lord *Ferrers* went up to Mr. *Johnson*, and he pulled Mr. *Johnson* by the Wig, and said, he would shoot him; how long was that from the Time that you heard the Pistol go off?—*Dolman.* I cannot justly say.

Lord *Ravens.* What Space of Time was there, from the Time that you saw Mr. *Johnson* in the Room, to the Time that Lord *Ferrers* came and pulled him by the Wig, and said, he would shoot him through the Head?

Dolman. I cannot say, he had lain upon the Bed some Time.

Sarah Johnson *sworn.*

Mr. *Perrott.* You are the Daughter of *John Johnson*, to whom this Accident happened?—*Johnson.* Yes.

Mr. *Per.* Was your Father concerned in Lord *Ferrers*'s Estate?

Johnson. Not that I know of.

Mr. *Per.* Was he his Steward?

Johnson. He did live with him, but not within these Two Years.

Mr. *Per.* Did he receive any Rents?

Johnson. For Nobody but Lord *Ferrers.*

Mr. *Per.* Did he rent any Farm that was Part of the Estate of Lord *Ferrers?*—*Johnson.* Not that I know of.

Mr. *Per.* Do you remember his going to Lord *Ferrers*, at any Time in *January* last?—*Johnson.* On the 18th of *January.*

Mr. *Per.* Do you know whether Lord *Ferrers* had been with your Father any short Time before that 18th of *January?*

Johnson. Lord *Ferrers* was at our House on the *Sunday* before.

Mr. *Per.* Did you hear any Conversation that passed between Lord *Ferrers* and your Father, on that *Sunday?*

Johnson. I did not; I came home before he was gone.

Mr. *Per.* Did you hear Lord *Ferrers* say any Thing to Mr. *Johnson?*

Johnson. No; I was not in the Room.

Mr. *Per.* Did not you know before the 18th of *January*, that your Father was to go on that Day to Lord *Ferrers*'s?

Johnson. I heard my Father say, that he was to go to Lord *Ferrers*'s on the *Friday.*

Mr. *Per.* Do you know upon what Occasion he was to go?

Johnson. No.

Mr. *Per.* Upon whose Appointment?—*Johnson.* No.

Mr. *Per.* Was you sent for to Lord *Ferrers*'s on the 18th of *January?*

Johnson. Yes.

Mr. *Per.* At what Time?

Johnson. I think it was between Four and Five o'Clock.

Mr. *Per.* Who sent for you?—*Johnson.* I believe it was Lord *Ferrers.*

Mr. *Per.* Who was it that came for you?

Johnson. A Man that was at Work there.

Mr. *Per.* What Message was brought to you?

Johnson. That I must come down to the Hall to Lord *Ferrers.*

Mr. *Per.* Then was any Thing said about your Father?

Johnson. I asked, what he wanted me for? and he said, my Father was taken very ill.

Mr. *Per.* When you got there, did you see my Lord *Ferrers?*

Johnson. Yes.

Mr. *Per.* What did he say to you?

Johnson. I cannot say: I asked him how my Father was; he ordered one of the Maids to go up Stairs, and shew me where my Father was.

Mr. *Per.* Was Lord *Ferrers* in the Room when you was with your Father?—*Johnson.* He followed me up directly.

Mr. *Per.* In what Condition did you find your Father?

Johnson. He was in Bed; but he did not say any Thing to me.

Mr. *Per.* Did Lord *Ferrers* say any Thing?

Johnson. When Lord *Ferrers* came up, he said, he thought he had not shot him.

Mr. *Per.* Was any Thing done upon that?

Johnson. Some Time after that, Lord *Ferrers* came up again; and I, or he, turned the Cloaths down; and he said, he saw he had shot him; and throwed something out of a Bottle; I don't know what it was; he poured something upon it out of a Bottle.

Mr. *Per.* Who poured that out of the Bottle?—*Johnson.* Lord *Ferrers.*

Mr. *Per.* Did he tell you how the Accident happened?

Johnson. He did not then say any Thing about that.

Mr. *Per.* Did he at any Time?

Johnson. He said, he did not know what he had done; he had shot him; he said, it was what he designed.

Mr. *Per.* Was that the same Day or afterwards?

Johnson. The same Day.

Mr. *Per.* Did Lord *Ferrers* say any Thing about your Father's Family?

Johnson. He said he would take Care of his Family, if my Father died.

Mr. *Per.* Was that all; was there no If?

Johnson. He said he was in hopes I would not let any body come to take him; that he would take Care of the Family; that he would not go out of the House till my Father was buried, if he should die.

Mr. *Per.* Do you know of any Thing more that passed between Lord *Ferrers* and you about your Father?

Johnson. My Lord, when Mr. *Kirkland* was searching the Wound, shewed him which Way he held the Pistol when he let it off.

Mr. *Per.* Did Lord *Ferrers* say at that Time it was an Accident?

Johnson. No; he said he designed it.

Mr. *Per.* Did he give any Reason for it?

Johnson. I did not hear him give any Reason for it.

Mr. *Per.* Do you know whether your Father was ever served with any Notice to quit a Farm?---*Johnson.* Yes.

Mr. *Per.* What Farm was that?——*Johnson.* The Farm he lived in.

Mr. *Per.* Whose Estate was it?—*Johnson.* Lord *Ferrers*'s.

Mr. *Per.* Who gave him that Notice?

Johnson. Either Lord *Ferrers* or Mr. *Clifford*; Mr. *Clifford* gave it me; they were both together.

Paper produced.

Mr. *Per.* Is that the Paper?—*Johnson.* Yes.

Paper read.

"I DO hereby give you Notice to quit your Farm at *Lady-Day* next ensuing, or Six Months after the Date hereof, *November* the 7th, 1758, agreeable to your Lease granted to me,

"*Richard Clifford.*"

Mr. *Per.* Was Lord *Ferrers* by when that was given to you?

Johnson. Yes.

Mr. *Per.* Did you hear any Thing said about that Farm?

Johnson. No.

Mr. *Per.* (*Shewing her the Body of the Paper*) Whose Hand-writing is that?—*Johnson.* This is Lord *Ferrers*'s, I believe.

Mr. *Per.* Did you ever see Lord *Ferrers* write?—*Johnson.* No.

Mr. *Per.* When you was up in the Room with Mr. *Johnson*, do you remember any body attempting to pull the Cloaths off?

Johnson. Lord *Ferrers* attempted to pull them off.

Mr. *Per.* What Time was that?

Johnson. I cannot say; about Ten or Eleven o'Clock.

Mr. *Per.* Do you know of any Occasion that was given for my Lord's attempting to pull the Cloaths off your Father?

Johnson. I cannot say what was the Reason of it.

Mr. *Per.* What had passed before that?

Johnſon. I cannot tell: Lord *Ferrers* ſeemed to be very angry before; but I cannot tell what about.

Mr. *Perrott.* Did my Lord *Ferrers* pull off the Cloaths?

Johnſon. He did not pull them off.

Mr. *Per.* How did that happen?—*Johnſon.* I catched hold of them.

Mr. *Per.* Do you remember any Thing that Lord *Ferrers* ſaid at the Time that he attempted to pull off the Cloaths?

Johnſon. He ſaid, he knew him to be a Villain, and that he had acted Things againſt him, that were not right.

Mr. *Per.* Did your Father ſay any Thing to you about Lord *Ferrers*'s having ſhot him?

Johnſon. I don't remember he did.

Mr. *Per.* Did not your Father tell you, that Lord *Ferrers* had ſhot him; and that he believed he ſhould die?

Johnſon. I heard him ſay he believed he ſhould die; but I did not hear him ſay, that Lord *Ferrers* had ſhot him. I do not remember it. My Lord ſaid, he knew the Piſtol to be a good one, he had ſhot through a Board with it.

Mr. *Per.* Was any body by when Lord *Ferrers* ſaid that he had ſhot him, and that it was what he deſigned?—*Johnſon.* Mr. *Kirkland* was by.

Earl *Ferrers.* Do you think that I was ſober when I came into the Room where your Father was?

Johnſon. At the Time I came in, I think his Lordſhip was.

Mr. *Per.* At the Time of this Confeſſion?

Johnſon. I cannot tell: I think he was not quite ſober when he ſaid that.

Lord *Talbot.* I believe the Confuſion of this unhappy Witneſs has occaſioned an apparent, though not an intentional, Variation in her Evidence; therefore I deſire ſhe may be aſked again about the Farm.

Mr. *Per.* Did you know of your Father's renting a Farm of Lord *Ferrers?*—*Johnſon.* He rented no Farm but what he had of Lord *Ferrers.*

Mr. *Per.* And did he rent one of him?—*Johnſon.* Yes.

Mr. *Per.* You was aſked at firſt about the Leaſe; he might have the Farm, and not the Leaſe.

Johnſon. He had a Leaſe; but I believe he had it but the laſt Year.

Lord *Ravenſworth.* I agree with the Noble Lord, that there is a particular Tenderneſs in the Situation of this Witneſs; but imagine your Lordſhips are deſirous of knowing as many Particulars as may be relating to this unhappy Affair; therefore I deſire this Witneſs may be aſked, whether ſhe, at any Time near the Time of the Deceaſe of her Father, did hear her Father expreſs any Degree of Uneaſineſs, or Apprehenſion, from his being to wait upon Lord *Ferrers?*

Johnſon. No, I never heard him ſay, that he was afraid of going to Lord *Ferrers*'s.

Mr. Att. Gen. My Lords, we will now call Mr. *Curzon* to prove the Body of the Notice that has been read, to be all of Lord *Ferrers*'s Handwriting.

Earl *Ferrers.* I do not deny it. I hope the Witneſſes may be detained by your Lordſhips, in caſe I ſhould think proper to call them again.

Mr. Att. Gen. My Lord, we will take Care that they ſhall be forthcoming.

Thomas Kirkland ſworn.

Mr. Att. Gen. What is your Profeſſion, or Occupation?

Kirkland. A Surgeon.

Mr. Att. Gen. Where do you chiefly practiſe?

Kirk. At *Aſhby de la Zouch.*

Mr. Att. Gen. How far is that from Lord *Ferrers*'s Houſe at *Stanton?*

Kirk. Two computed Miles.

Mr. Att. Gen. Do you know the Noble Earl at the Bar?—*Kirk.* Yes.

Mr. Att. Gen. How long have you known him?

Kirk. I have known him many Years. I have been employed for his Lordſhip about Nine Years.

Mr. Att. Gen. Did you know Mr. *Johnſon* the deceaſed?

Kirk. Yes

Mr. Att. Gen. How long did you know him?

Kirk. I have known him a great many Years. I have been intimately acquainted with him Ten or Eleven.

Mr. Att. Gen. Had he any Employ under my Lord *Ferrers*, or any Part of his Family?—*Kirk.* I believe ſo.

Mr. Att. Gen. What was his Employ?—*Kirk.* Steward.

Mr. Att. Gen. Did you, in the Month of *January* laſt, ſee Mr. *Johnſon* or my Lord *Ferrers?*—*Kirk.* I ſaw them together.

Mr. Att. Gen. At what Time in that Month in particular?

Kirk. The Eighteenth of *January.*

Mr. Att. Gen. What Day of the Week?—*Kirk.* On *Friday.*

Mr. Att. Gen. Upon what Occaſion did you ſee the one or the other?

Kirk. I ſaw Mr. *Johnſon* to take Care of a Wound he had received in his Left Side.

Mr. Att. Gen. Who ſent for you?

Kirk. They told me that Lord *Ferrers* had ſent for me.

Mr. Att. Gen. Who was ſent for you? What was his Name?

Kirk. I have ſince found that his Name is *Henry Wales.*

Mr. Att. Gen. At what Time did you receive that Meſſage?

Kirk. About Five o'Clock in the Afternoon.

Mr. Att. Gen. Where was you at that Time?

Kirk. At *Caleorton.*

Mr. Att. Gen. How far is that from *Stanton?*

Kirk. A Mile and a Half, or a Mile.

Mr. Att. Gen. Did you go directly to *Stanton?*

Kirk. I went firſt to the *Lount.*

Mr. Att. Gen. What Place was that?

Kirk. The Place where Mr. *Johnſon* lived.

Mr. Att. Gen. How far is that from *Stanton?*

Kirk. I think Half a Mile, or it may be a little more.

Mr. Att. Gen. Did you hear any Thing there?

Kirk. I firſt heard at the *Lount*, that Mr. *Johnſon* was ſhot; the Boy that came for me, told me that he was ſent to me from my Lord.

Mr. Att. Gen. Did you, when you came to the *Lount*, and had had this Intelligence, proceed to *Stanton?*——*Kirk.* Yes.

Mr. Att. Gen. When you came there, who did you ſee?

Kirk. I met one of the Servant Girls in the Cloſe next to the Yard.

Mr. Att. Gen. What was the Girl's Name?

Kirk. I cannot tell; it was dark.

Mr. Att. Gen. Did any thing paſs there?

Kirk. She ſaid my Lord had been charging Guns and Piſtols.

Mr. Att. Gen. What happened next?

Kirk. I heard my Lord calling out in the Yard, Who is there? I immediately ſpoke to his Lordſhip; he ordered me to come along. I went to him; he told me, he had ſhot *Johnſon*, and deſired I would go and take Care of him. As we went along, his Lordſhip deſired I would not ſuffer him to be ſeized, becauſe *Johnſon* was not dead; and if any body offered to ſeize him, he would ſhoot them.

Mr. Att. Gen. What Anſwer did you make to that?

Kirk. I told his Lordſhip, that Nobody ſhould meddle with him. I then went up Stairs; and upon ſeeing Mr. *Johnſon*, and that he had loſt no Blood, I bled him.

Mr. Att. Gen. Did Mr. *Johnſon* make any Complaint?

Kirk. He complained of a violent Pain in his Bowels.

Mr. Att. Gen. Did he at that Time ſay that he had received any Wound, and where was it?——*Kirk.* I looked, and found the Wound below the loweſt Rib, on his left Side.

Mr. Att. Gen. How large was that Wound?

Kirk. I put my little Finger into it. I then took a Director to ſearch the Wound. My Lord told me, Mr. *Kirkland*, you muſt paſs your Inſtrument ſlaunting downwards, I held the Piſtol in this Manner when I ſhot him. After that my Lord aſked me, whether I could find the Ball? I ſaid no, it was lodged in the Abdomen; and after this he again aſked me, if I could not extract it? I told his Lordſhip, I believed it would be better to remain where it was (indeed I looked upon it impracticable to extract it). My Lord aſked me then, what would be the Conſequence of the Ball's lying in the Abdomen? I told him, that Balls often lay there many Years, without giving any Diſturbance: With this my Lord ſeemed ſatisfied, and ſaid, he knew they would.

Mr. Att. Gen. Was there any Surprize expreſſed by any body at the Ball's being lodged, or any Thing ſaid?

Kirk. I cannot ſay there was.

Mr. Att. Gen. Was any Thing ſaid concerning the Goodneſs of the Piſtol?——*Kirk.* My Lord aſked me, if the Ball had not gone through? I told him no. He ſaid, he wondered it had not; for this Piſtol had carried a Ball through a Board, and broke the Bricks, or Wall, I don't know which.

Mr. Att. Gen. Was Mr. *Johnſon* by, and did he hear what paſſed?

Kirk. Yes, he did.

Mr. Att. Gen. Did this provoke him to utter any Thing?

Kirk. He did. My Lord went out of the Room at that Time, and Mr. *Johnſon* ſaid, What a Villain this is!

Mr. Att. Gen. Did you order any Thing to be prepared for the Dreſſing of the Wound?

Kirk. I dreſſed the Wound; it had already been dreſſed. There was a Dreſſing upon it. I ordered a Fomentation, and what other Things I thought proper. I then went down Stairs. My Lord told me, he thought *Johnſon* was more frighted than hurt.

Mr. Att. Gen. Did you both go down Stairs?

Kirk. No, we did not.

Mr. Att. Gen. You ſaid it had been dreſſed before, what was that Dreſſing?

Kirk. I believe, though I am not certain, it was *Arquebuſade.*

Mr. Att. Gen. Was there any Plaiſter found upon it?

Kirk. To the beſt of my Remembrance there was not.

Mr. Att. Gen. Was there a Rag upon it?

Kirk. I believe there was; a Rag that had been dipt in *Arquebuſade.* After my Lord's telling me, that *Johnſon* was more frighted than hurt, he ſaid, he intended to have ſhot him dead, and that, ſeeing he did not fall at firſt, he intended to ſhoot him again; but the Pain he complained of made him forbear. Says he, There Nature did take Place, in Oppoſition to the Reſolution I had formed. And ſays he, It is cruel not to give him Eaſe, now I have ſpared his Life; therefore I deſire you would do all you can for him. One Thing I omitted to mention, while I was up Stairs. My Lord deſired I would take all the Care imaginable of Mr. *Johnſon*; that he would ſend one of his Servants for any Thing I wanted. —I forgot to relate to your Lordſhips, that my Lord was in Liquor when I ſaw him. He deſired, when I ſpoke of this Affair, that I would not ſay, though he deſired me to eaſe him of his Pain, that he repented of what he had done. He was not ſorry for it; for he owned it was premeditated; that he intended to ſhoot him, for he ſaid he was a Villain, and deſerved Death. But, ſays he, as he is not dead, I deſire you will not ſuffer my being ſeized; for, if he dies, I will go and ſurrender myſelf to the Houſe of Lords: I have enough to juſtify the Action: Perhaps they may not excuſe me, but it will ſatisfy my own Conſcience.

Mr. Att. Gen. Did he ſay any Thing about his going away, or not going away, the next Morning?

Kirk. He told me thus: *Kirkland*, be ſure you don't go away in the Morning before I have ſeen you. I will get up at Four o'Clock, or at any Time that you call. I told his Lordſhip I would let him know before I went.

Mr. Att. Gen. What particular Complaint did Mr. *Johnſon* labour under when you went?——*Kirk.* A Pain in his Bowels.

Mr. Att. Gen. What other Complaints had he?

Kirk. A Strangury. A Difficulty of making Water.

Mr. Att. Gen. What did my Lord *Ferrers* ſay upon that?

Kirk. He aſked me: "*Kirkland*, don't you think that the Bladder or "Kidneys are wounded?" And what would be the Conſequence? I let it in ſuch a Light as to make him believe that they might, and no bad Conſequence enſue.

Mr.

Mr. Att. Gen. Was that, or was it not, your Rule, upon which you repreſented Things in this Light?

Kirk. I, immediately from the Time of my ſeeing Mr. *Johnſon*, thought he would be dead; but I thought it prudent to deceive my Lord for our Safety.

Mr. Att. Gen. Was my Lord ſatisfied with this flattering Account that you gave?——*Kirk.* Yes, he ſeemed ſatisfied.

Mr. Att. Gen. Were any Orders given to get Things in Readineſs? any Orders for the Horſes?

Kirk. I don't know any Thing but what the Servants told me.

Mr. Att. Gen. Did any Diſcourſe paſs between you relating to their Seizure of my Lord's Perſon?

Kirk. My Lord did deſire that I would take Care he was not ſeized, and I promiſed him I would.

Mr. Att. Gen. Did you tell him how you meant to repreſent it?

Kirk. My Lord aſked me, what I ſhould ſay upon the Occaſion, if I was called upon? I told his Lordſhip that I ſhould ſay, that, though Mr. *Johnſon* was ſhot, yet there was a great Probability of his recovering; and that I thought there was no Neceſſity of ſeizing his Lordſhip. His Lordſhip then aſked me, if I would make Oath of that before a Juſtice of the Peace, if I was called upon? I ſaid, Yes.

Mr. Att. Gen. Where was this? and about what Part of the Night did the laſt Converſation paſs?——*Kirk.* It was in the Parlour.

Mr. Att. Gen. What Time was it? Was it an Hour before Supper?

Kirk. I think this was before Supper; but it was repeated before and after Supper.

Mr. Att. Gen. Did my Lord, in this Diſcourſe, ſay any Thing relating to Mr. *Johnſon*?

Kirk. He told me, that Mr. *Johnſon* had long been a Villain to him. He ſaid, he began his Villainy in 1753; that he aſſiſted in procuring the Act of Parliament; that he was in the Intereſt of his Enemies; that, on Mr. *Johnſon*'s firſt coming there in the Afternoon, he ordered him to ſettle an Account. He then told him, *Johnſon*, you have been a Villain to me; if you don't ſign a Paper, confeſſing all your Villainy, I'll ſhoot you. My Lord told me *Johnſon* would not ſign one. Therefore, ſays he, I bid him kneel down on his Knees to aſk my Pardon. I ſaid, *Johnſon*, if you have any thing to ſay, ſpeak quickly. Then, ſays he, I fired at him. I know he did not think I would have ſhot him; but I was determined to do it. I was quite cool. I took Aim; for I always aim with a Piſtol in this Manner.

Mr. Att. Gen. Did any Thing paſs in reference to the Farm?

Kirk. My Lord told me he had long wanted to drive *Johnſon* out of his Farm; and that he imagined, after he recovered, he would go into *Cheſhire*, from whence he came, and give him no more Diſturbance. He ſaid he had long intended to ſhoot him: That the chief Reaſon he did it at this Time was, an Affair between Mr. *Curzon*, Mr. *Burſlem*, and his Lordſhip. But the greateſt Part of this Diſcourſe was at the Time that my Lord was full of Liquor.

Mr. Att. Gen. Was he ſo full of Liquor as to be deprived of his Underſtanding?

Kirk. I think not; he ſeemed to underſtand very well what he did.

Mr. Att. Gen. Was he in Liquor when you firſt ſaw him?

Kirk. Yes; not much.

Mr. Att. Gen. Did he continue drinking during the Time you ſaw him?

Kirk. He was drinking Porter; they ſaid it was Porter.

Mr. Att. Gen. Did you go to Mr. *Johnſon* again?

Kirk. Yes; after Supper I went up Stairs to Mr. *Johnſon*; nothing material paſſed; but my Lord enquired what I thought of Mr. *Johnſon*; and upon my ſetting Things in the Light I thought I ſhould, my Lord ſeemed very well ſatisfied.

Mr. Att. Gen. Was any Thing ſaid about the Bowels or Guts?

Kirk. My Lord aſked, if the Bowels were wounded, what would be the Conſequence? I ſaid, ſome had had Wounds in their Bowels and recovered.

Mr. Att. Gen. There was an Expreſſion uſed, that the Bullet was lodged in the Abdomen; was that your's or my Lord's Expreſſion?

Kirk. It was my Expreſſion.

Mr. Att. Gen. Did you and my Lord ſit together in the Evening?

Kirk. Yes.

Mr. Att. Gen. Was any Wine brought?

Kirk. Yes; Mrs. *Clifford* brought a Bottle of Wine, and then his Lordſhip again repeated, that he had ſhot *Johnſon*, and that he intended it.

Mr. Att. Gen. Was there any Thing paſſed between you relative to my Lord's Circumſtances?

Kirk. A little before he went to Bed, before I went to Mr. *Johnſon* the laſt Time, my Lord ſaid, *Kirkland*, I know you can ſet this Affair in ſuch a Light, that I ſhall not be ſeized if you will; I owe you a Bill, you may have ſome of your Money now, and the reſt when you want it; I told his Lordſhip I did not want Money, I ſhould be glad to receive it when it was moſt convenient to him.

Mr. Att. Gen. Did you afterwards ſee my Lord and Mr. *Johnſon* together?——*Kirk.* Yes.

Mr. Att. Gen. What paſſed?

Kirk. My Lord went up to the Bedſide, and ſpoke it temperately; *Johnſon*, you know you have been a Villain to me; Mr. *Johnſon* made no Anſwer, but deſired my Lord to let him alone at that Time: My Lord kept calling of him Villain; his Paſſion roſe, and he began to pull the Bed-Cloaths, and ſaid, Have you not been a Villain? Mr. *Johnſon* ſaid, My Lord, I may have been wrong as well as others: Upon this, my Lord run up in a violent Paſſion to the Bedſide, I thought he would have ſtruck him; but upon Mr. *Johnſon*'s declaring he might have been a Villain to his Lordſhip, my Lord went to the Fireſide.

Mr. Att. Gen. How came Mr. *Johnſon* to make that Anſwer?

Kirk. I winked at him, and he made the Anſwer.

Mr. Att. Gen. Was Miſs *Johnſon* in the Room?

Kirk. Yes; my Lord went to her, after he had abuſed her Father, and ſaid, Though he has been a Villain to me, I promiſe you before *Kirkland*, who I deſire to be a Witneſs, that I will take Care of your Family, if you do not proſecute.

Mr. Att. Gen. Did my Lord go out of the Room?

Kirk. Yes; he went down Stairs; he ſent for me, and told me, he was afraid he had made Miſs *Johnſon* uneaſy; he deſired I would tell her, he would be her Friend: We came up Stairs together; his Lordſhip aſked at the Top of the Stairs, whether I thought Mr. *Johnſon* would recover: I replied, Yes; he ſaid, Then I may go to Bed in Safety; he went to Bed directly.

Mr. Att. Gen. What paſſed after?

Kirk. The firſt Thing I did I went to Mr. *Johnſon*, who deſired, for God's Sake, that I would remove him; while we were talking, I heard my Lord open the Door, and call up his Pointer: Mr. *Johnſon* was a good deal alarmed at it, fearing my Lord ſhould come again; but my Lord ſhut the Door; then he again intreated me to remove him.

Mr. Att. Gen. Was any Propoſal made to remove him before that?

Kirk. Yes; Mrs. *Clifford* came down before that into the Still-Room, and ſaid, Cannot *Johnſon* be removed? My Lord replied, No, he ſhall not be removed, till he be either better or dead: And ſome time after that he ſaid, he was glad he had him in the Houſe, that he could plague the Raſcal; or ſome ſuch Words.

Mr. Att. Gen. Why did you propoſe to remove him?

Kirk. I thought it prudent for many Reaſons to remove him; I imagined, Mr. *Johnſon* would die; and if my Lord came and found him dying, his Reſentment would riſe againſt me; beſides, Mr. *Johnſon* was in a good deal of Apprehenſion of being again ſhot; I really apprehended he might die through Fear, for he was a Man of a very weak Conſtitution; upon this I went to the *Lount* and got a Parcel of Fellows, and placed Mr. *Johnſon* in an eaſy Chair, and carried him upon Poles to the *Lount*, where he got without being much fatigued.

Mr. Att. Gen. Did you apprehend that the moving would be prejudicial to him, conſidering the Condition he was in?

Kirk. It is impoſſible to ſay it might not; but there was much more Danger in leaving him at *Stanton*; and he expreſſed Satisfaction on my removing him: When he came there, he deſired he might be removed from one Room where he was, into another; for he ſaid, my Lord might come and ſhoot him there, the Window was facing the Bed; I told him, he might make himſelf eaſy, I would place a Centry at each Door.

Mr. Att. Gen. At what Time was Mr. *Johnſon* removed?

Kirk. I believe about Two o'Clock in the Morning; I am not quite certain of the Hour.

Mr. Att. Gen. How long did he live after that?

Kirk. He lived, as I was informed, till about Nine; I did not leave him till Seven o'Clock.

Mr. Att. Gen. In what Condition was he when you left him?

Kirk. Weak and low, and cold in the Extremities.

Mr. Att. Gen. What was your Judgment about him?

Kirk. That he would be dead; he thought ſo himſelf.

Mr. Att. Gen. What happened after he was dead?

Kirk. Nothing more than my examining the Body.

Mr. Att. Gen. What did you do upon that?

Kirk. I examined it the next Day when the Coroner's Inqueſt was taken.

Mr. Att. Gen. Did you give an Account of the Wound?

Kirk. The Ball had paſſed juſt under the loweſt Rib, on the Left Side, through One of the Guts, and through a Bone we call the Os Inominatum, and lodged in the Bone called the Os Sacrum.

Mr. Att. Gen. Do you apprehend that Mr. *Johnſon* died of that Wound?

Kirk. I do; I am clear in it.

Mr. Att. Gen. Was you there when the Earl was ſeized?

Kirk. I was not; I went to aſk Advice what was to be done.

Earl *Ferrers.* You ſaid that when I aſked you to extract the Ball, that it was lodged in the Abdomen, and that I wondered at it.

Kirk. That Queſtion was aſked before I told your Lordſhip it was lodged; I remember the Queſtion was aſked.

Earl *Ferrers.* When I told you I had ſhot it through a Deal, was it not mentioned with Surprize?

Kirk. The Surprize ſeemed to be, that it had not alſo gone through the Man.

Earl *Ferrers.* At the Time that we were talking this over a Bottle of Wine, did you talk with me as a Friend; or did you intend to betray me?

Kirk. I do own, my Lord, that I intended to deceive you; and I thought it abſolutely neceſſary.

Earl *Ferrers.* Did you intend to give this in Evidence?

Kirk. I knew I ſhould be called upon on this Occaſion.

Earl *Ferrers.* Did you not take Advantage of my being in Liquor?

Kirk. No, I could not, my Lord; what you ſaid was quite voluntary.

Earl *Ferrers.* Did I ſay I had come to a Reſolution to do it deliberately?

Kirk. I do not remember.

Earl *Ferrers.* Did you never hear me ſay, that I did not intend to kill him?---*Kirk.* Your Lordſhip did.

A Lord. Did you, at any Time, hear Mr. *Johnſon* ſay, that Lord *Ferrers* had ſhot him?

Kirk. As ſoon as Mr. *Johnſon* had got Home, I ſaid to him, Was my Lord in Liquor when he ſhot you? He was, when I firſt ſaw him. Mr. *Johnſon* ſaid, No, he was not: I imagined he got what Liquor he had afterwards. I did not think he would have ſhot me. I thought he only wanted me to ſign a Paper. I aſked him, Was you down on your Knee when my Lord ſhot you? He ſaid, I think when my Lord ſhot me I was riſing; though I cannot be ſure whether I was or not, being hurried.

Mr. Att. Gen. At the Time of this Relation of Mr. *Johnſon*'s, was any other Perſon preſent?

Kirk. No, there was none; we were by ourſelves in the Room.

Mr. Att. Gen. Did you hear my Lord ſay to Miſs *Johnſon*, that he would take Care of them?

Kirk. Yes, I heard my Lord ſay ſo to Miſs *Johnſon*.

Mr. Att. Gen. He ſaid to you, I owe you a Bill?

Kirk. My Lord ſaid, You can ſet this Matter right: If you do, I owe you a Bill; you may have ſome Money now, and the reſt when you want it.

Mr. Att. Gen. Did you ever hear Mr. *Johnſon* expreſs any Apprehenſion of my Lord *Ferrers*?

Kirkland. Mr. *Johnſon*, in Converſation at different Times, has ſaid to me, he did not think my Lord *Ferrers* would do him any Harm.

Lord *Talbot.* My Lords, this Witneſs has told you, that in one of his Converſations with Lord *Ferrers* his Lordſhip declared, that he did not intend to kill Mr. *Johnſon*; and alſo that Lord *Ferrers* ſhewed him the Poſition in which he held the Piſtol, when his Lordſhip thought the Inſtrument went wrong, as Mr. *Kirkland* was probing the Wound; I would aſk, whether the Converſation was previous or ſubſequent to the probing the Wound?

Kirk. He told me, before I entered the Director into the Wound, You muſt paſs it in that Manner. The other Converſation was ſubſequent to this.

Lord *Talbot.* Do you believe that his Lordſhip's ſhewing the Poſition of the Piſtol, in order to acquaint you with the Direction of the Ball, was with an Intention to facilitate your Operation?

Kirk. I believe it was.

Mr. Att. Gen. Did he appear in Liquor?

Kirk. He was in Liquor at firſt; but it got more upon him.

Mr. Att. Gen. As that unhappy Fury roſe, the more Liquor he had, the more he ſeemed to perſiſt in the Action?---*Kirk.* Yes.

Mr. Att. Gen. But when he was calmer, in his better Senſes, he ſaid, he did not wiſh to kill him?

Kirk. No; he ſaid at firſt, that he intended to kill him.

A Lord. When he told you the Direction of the Ball, did he not mean that tenderly, to aſſiſt the unfortunate Man?

Kirk. I took it, that he was directing me to enquire into the Nature of the Wound.

A Lord. Could he direct you with any other View than to aſſiſt?

Kirk. I remember when I told my Lord the Ball could not be extracted, he ſaid, I do not intend to direct you; purſue your own Method, and do the beſt you can for him.

A Lord. You mentioned that he ſent to you?---*Kirk.* Yes.

Lord *Mansfield.* You have ſaid, that, from the firſt to the laſt, Lord *Ferrers* told you that he deſigned to kill the Deceaſed; now, in Anſwer to a Queſtion lately aſked, you ſay, he ſaid, he did not intend to kill him; upon what Occaſion did he ſay that?

Kirk. I think we ſat by the Fire in the Still-Room, but I am not quite certain, and his Lordſhip ſaid, that he did not intend to ſhoot him dead; I intended only to make him ſmart, and ſhoot him into the Hip, or Side.

Lord *Mansfield.* Could ſuch a Wound as this be given to a Man without a certain Hazard of his Life?

Kirk. It was certain Death to ſuch a Conſtitution as Mr. *Johnſon*'s.

Lord *Mansfield.* How long after this Time was it, that he told you that you could ſet that Matter right?

Kirk. He mentioned it at the very Beginning, and ſeveral Times after, till the End of the Evening.

Lord *Mansfield.* Did your Fear of Lord *Ferrers* ariſe from his being in Liquor?

Kirk. I ſhould not have been afraid of Lord *Ferrers* if he had not been in Liquor; I thought, if he had found Mr. *Johnſon* had died, that, as I had deceived him, I ſhould have had his Reſentment.

Lord *Mansfield.* Did you ſee Lord *Ferrers* in the Morning?

Kirk. No. I did not.

Mr. *Springthorpe* ſworn.

Mr. *Gould.* My Lords, we call this Witneſs to give an Account of the Manner of ſeizing Lord *Ferrers*, and what paſſed upon that Occaſion.

Mr. *Gould.* Was you preſent at the Time of taking Lord *Ferrers*?

Springthorpe. I was.

Mr. *Gould.* What Day was it?---*Spring.* On *Saturday* Morning.

Mr. *Gould.* What Time in the Morning?

Spring. I believe it was between Ten and Eleven o'Clock.

Mr. *Gould.* Had you a Multitude of People with you?

Spring. The firſt Part of the Time I had not; but before he was taken there were a great many.

Mr. *Gould.* Was you armed?

Spring. I had a Piſtol I took from Mr. *Burſlem*'s.

Mr. *Gould.* Where did you go firſt?

Spring. I went to ſee Mr. *Johnſon*; he was my Friend, and I found he was dead. Mr. *Burſlem* deſired I would go and help to take Lord *Ferrers*: I condeſcended to do it. When I came to the Hall Yard, my Lord in a few Minutes came; he ſeemed to be going to the Stable, with his Stockings down, and his Garters in his Hands; his Lordſhip ſeeing me, demanded to know what I wanted. I preſented my Piſtol to his Lordſhip, and I ſaid it was he I wanted, and I would have him; he put his Hand, whether he was going to put his Garters in his Pocket, or to pull out a Piſtol, I cannot ſay; but he ſuddenly run into the Houſe: I never ſaw more of him for two Hours; in about two Hours he came to the Garret Window; I went under the Window; he called; I aſked what he wanted; he ſaid, How is *Johnſon?* I ſaid he was dead; he ſaid, You are a lying Scoundrel, G- -d d---n you. I told him he was dead; he ſaid, I will not believe it till *Kirkland* tells me ſo. I ſaid he was dead; he ſaid, Then diſperſe the People, and I will go and ſurrender: Let the People in, and let them have ſome Victuals and Drink. I told him I did not come for Victuals, but for him, and I would have him. He went away from the Window, ſwearing he would not be taken. Two Hours after that, there was a Report that he was upon the Bowling-green; I was at this Part of the Houſe; I run there, and, by the Time I got there, I ſaw two Colliers had hold of his Lordſhip. I ſaid, I would take care Nobody ſhould hurt him. I took from a Man that had hold of him, a Piſtol and a Powder-Horn; I ſhot the Piſtol off, and it made a great Impreſſion againſt the Stones. I heard my Lord ſay, he had ſhot a Villain and a Scoundrel, and, clapping his Hand upon his Boſom, he ſaid, I glory in his Death. That is all I know of the Matter.

Francis Kinſey ſworn.

Mr. *Norton.* You keep a Public-Houſe at *Aſhby de la Zouch?*

Kinſey. Yes.

Mr. *Norton.* Was Lord *Ferrers* brought to your Houſe when he was apprehended?---*Kinſey.* Yes.

Mr. *Norton.* Did you hear him ſay any Thing about killing of *Johnſon?*---*Kinſey.* I heard very little of it.

Mr. *Norton.* Do you remember one Mr. *Hall*, a Clergyman, coming to your Houſe at that Time?---*Kinſey.* Yes.

Mr. *Norton.* Did he deſire to be admitted to Lord *Ferrers?*---*Kinſey.* Yes.

Mr. *Norton.* Did you hear what paſſed between Mr. *Hall* and my Lord *Ferrers?*---*Kinſey.* A great many Words paſſed.

Mr. *Norton.* What paſſed?

Kinſey. I heard Mr. *Hall* intimate to his Lordſhip, as a Clergyman, that his Lordſhip ſeemed to be pretty much in Liquor at that Time, and deſired he would not make Uſe of thoſe Expreſſions. He told Mr. *Hall* he was extremely obliged to him for his good Advice; he apprehended what it was; however, he told Mr. *Hall* that he knew his Duty, perhaps, as well as a Juſtice of Peace.

Mr. *Norton.* Was Mr. *Hall* a Juſtice of Peace?

Kinſey. Yes. I did not hear much more ſaid between Mr. *Hall* and my Lord *Ferrers*. Mr. *Hall* ſtaid with his Lordſhip ſome Time in the ſame Room; then he came down Stairs, and I never ſaw him afterwards.

Mr. *Norton.* Did he ſay any Thing about killing of Mr. *Johnſon?*

Kinſey. He aſked, a great many Times, if I had heard that *Johnſon* was dead; I told him a good many Times, that I heard he was dead: He ſaid, I will not be convinced till I hear it from the Coroner.

Mr. *Norton.* Dd he ſay any Thing elſe?

Kinſey. His Lordſhip behaved very well with me, and decently, from the *Saturday*, to the *Monday* at Ten o'Clock.

Mr. Att. Gen. My Lords, we reſt it here for the Crown.

L. H. S. My Lord *Ferrers*, the Counſel for the Crown have done; now is the Time for your Lordſhip to make your Defence; and if you have any Witneſſes to examine, now is your Time to call them.

Earl *Ferrers.* My Lords, there have been a great Variety of Circumſtances that have appeared through the Courſe of this Evidence. I really do not recollect any Thing that happened ſince the Time relative to the Affair; and I ſhould hope your Lordſhips would give me a farther Day to make my Defence.

L. H. S. Your Lordſhip hath had a great deal of Time, and you have had Counſel aſſigned you, and Orders for ſummoning your Witneſſes. It is now the Time to proceed to your Defence.

Earl *Ferrers.* I hope your Lordſhips will be ſo good as to give me till To-morrow, as there are ſome Circumſtances that I could wiſh to conſult my Counſel about.

Lord *Mansfield.* My Lords, as your Lordſhips cannot debate here upon the Application that has been made by the Noble Lord at the Bar, to adjourn the Trial till To-morrow, I could wiſh he would open to your Lordſhips the Nature of his Defence, or ſome Reaſon why he is not prepared to go on now; otherwiſe, when your Lordſhips adjourn, you will have nothing to debate upon, but barely whether there ſhall be this Delay becauſe it is aſked; and it may be a dangerous Precedent to eſtabliſh, that a Trial ſhall be adjourned, as of courſe, if deſired, juſt when the Evidence in Support of the Proſecution is cloſed. If he ſhould give your Lordſhips a Reaſon for it, then it will be in your Lordſhips Diſcretion, whether that Reaſon is ſufficient to induce your Lordſhips to adjourn 'till To-morrow. I think he ſhould open the Nature of his Defence, and ſtate ſome Ground for the Delay he aſks.

Elizabeth Burgeland called in again.

A Lord. Do you know of any particular Quantity of ſtrong Liquor, of any Kind, that Lord *Ferrers* had drank that Day?

Burgeland. No. I cannot tell any Thing of it: He drank ſome Brandy in his Tea, in the Morning.

A Lord. Who is the Perſon that kept the Key of the ſtrong Liquor?

Burge. Mrs. *Clifford.*

A Lord. Do you know of any that he had that Day?

Burge. I cannot tell any Thing about it.

A Lord. Was it uſual for my Lord to drink Brandy in his Tea?

Burge. He did not drink Tea every Morning; but, when he drank Tea, I believe he did put Brandy in it.

A Lord. Was Mrs. *Clifford* returned to the Hall before the Surgeon, Mr. *Kirkland?*——*Burge.* Yes.

A Lord. How long?

Burge. I cannot juſtly ſay; it may be near, or near upon two Hours.

A Lord. Had you, or any Perſon, carried any ſtrong Liquor to my Lord before Mr. *Kirkland* came?

Burge. I cannot tell any Thing about it.

A Lord. At what Time did Lord *Ferrers* dine that Day?

Burge. At Two o'Clock.

A Lord. When you ſaw Lord *Ferrers*, after the Fact, was he drunk, or ſober?

Burge. I did not obſerve he was much in Liquor then; but, ſoon after, he was quite fuddled.

A Lord. The firſt Time you ſaw him after the Piſtol went off, how was he then?

Burge. I did not obſerve that he was much in Liquor at the Time when it was done.

A Lord. Did you ſee him any Part of that Day, before you heard the Piſtol go off, or before Mr. *Kirkland* came to the Houſe, appear intoxicated with Liquor?

Burge. I ſaw him at Dinner; I never ſaw him after till it was done.

A Lord. How was he at Dinner?

Burge. My Lord was ſober at Dinner.

Earl *Ferrers.* My Lords, by the Kind of Defence recommended to me, it will be impoſſible to go on at preſent; there are ſeveral Witneſſes to be examined, and really, my Lords, I am quite unprepared.

Earl of *Hardwicke.* I believe it is expected by your Lordſhips, that the Noble Lord at the Bar ſhould now open to you the Nature of his Defence.

Lord High Steward. My Lord *Ferrers*, it is required that you ſhould open the Nature of your Defence; my Lords will be able to judge, from that, whether it will be proper to give your Lordſhip Time to make your Defence, agreeable to your Requeſt.

Earl *Ferrers*. My Lords, I can hardly expreſs myſelf, the very Circumſtance ſhocks me ſo much; but I am informed, from ſeveral Circumſtances, of an Indiſpoſition of Mind.

Then the Lord High Steward returned back to the Chair.

Lord *Raveinſworth* My Lords, I move your Lordſhips to adjourn to the Chamber of Parliament.

Lord High Steward. Is it your Lordſhips Pleaſure to adjourn to the Chamber of Parliament?——*Lords*. Ay, ay.

Lord High Steward. This Houſe is adjourned to the Chamber of Parliament.

The Lords, and others, returned to the Chamber of Parliament, in the ſame Order they came down; and, after ſome Time, the Houſe was adjourned again into *Weſtminſter Hall*, and the Peers being there ſeated, and the Lord High Steward in his Chair, and the Houſe reſumed, the Serjeant at Arms made Proclamation for Silence, as uſual.

Lord High Steward. My Lord *Ferrers*, you are to proceed to your Defence.

Earl *Ferrers*. My Lords, the Kind of Defence I mentioned to your Lordſhips before, I really don't know how myſelf to enter upon; it is what my Family have conſidered for me, and they have engaged all the Evidence that are to be examined upon this unhappy Occaſion, who I really have not ſeen; I do not well know what they have to ſay: I ſhould, therefore, hope your Lordſhips will give me all the Aſſiſtance that is poſſible in their Examination.

My Lords, I believe that what I have already mentioned to your Lordſhips, as the Ground of this Defence, has been a Family Complaint; and I have heard that my own Family have, of late, endeavoured to prove me ſuch. The Defence I mean is occaſional Inſanity of Mind; and I am convinced, from recollecting within myſelf, that, at the Time of this Action, I could not know what I was about. I ſay, my Lords, upon reflecting within myſelf, I am convinced, that at that Time I could not know what I was about.

It has been too plainly proved, that, at the Time this Accident happened, I was very ſober, that I was not diſordered with Liquor: Your Lordſhips will obſerve, from the Evidence both of Mr. *Kirkland* and Miſs *Johnſon*, that it plainly appeared that this Man never ſuſpected there was any Malice, or that I had any.

Mr. John Bennefold *ſworn*.

Earl *Ferrers*. How long have you known me?

Bennefold. Above theſe Twenty Years.

Earl *Fer*. Was you ever employed by me in any Shape?—*Ben*. Yes.

Earl *Fer*. In what Shape?

Ben. In receiving his Lordſhip's Rents, when they were ſent him out of the Country.

Earl *Fer*. Did you know any of the Family beſides me?—*Ben*. Yes.

Earl *Fer*. Do you remember my Uncle, or any other of the Family?

Ben. Yes, the late Lord *Ferrers*, *Henry*.

Earl *Fer*. What Diſorder had he?——*Ben*. Lunacy.

Earl *Fer*. How many Years before he died?

Ben. Several Years before he died, at *Kenſington Gore*.

Earl *Fer*. Did you know Lady *Barbara Shirley*?---*Ben*. No.

Earl *Fer*. Did you never hear that ſhe was diſordered?

Ben. Yes, I have.

Earl *Fer*. Pleaſe to obſerve what you know of my Conduct, as to the State of my Mind, without having any particular Queſtions aſked you?

Ben. His Lordſhip has always behaved in a very ſtrange Manner, very ſlighty, very much like a Man out of his Mind, more particularly ſo within theſe Two Years paſt, ſuch as being in Liquor, and ſwearing and curſing, and the like, and talking to himſelf, very much like a Man diſordered in his Senſes; and then he has behaved himſelf as well as any other Gentleman at Times.

Earl *Fer*. Do you know of any particular Time, or of any particular Action?

Ben. Nothing in particular, more than the particular Circumſtances of my Lady, and expreſſing great Hardſhips, and Diſſatisfaction with the Act of Parliament.

Earl *Fer*. Have you obſerved irrational Behaviour when I have not been in Liquor?——*Ben*. Yes, I have.

Earl *Fer*. Was it frequent or ſeldom?——*Ben*. It was often.

Earl *Fer*. Can you recollect any particular irrational Behaviour in me when I have not been in Liquor?

Ben. I cannot ſay that I can recollect any particular Paſſage.

Earl *Fer*. Did you ever ſee me walking about the Room, talking to myſelf; making Motions with my Head, and talking to myſelf?

Ben. Yes, a great many Times.

Earl *Fer*. Did you think that I was diſturbed in my Mind?

Ben. Yes.

Mr. Attorney General. My Lords, I ſhould be glad to know what is this Witneſs's Trade and Occupation?

Ben. I am now Clerk of *St. James*'s Pariſh; I was a Peruke-maker by Trade.

Mr. Att. Gen. Was you acquainted with my Lord *Ferrers* in the Country or in Town?——*Ben*. In Town.

Mr. Att. Gen. Was you admitted to my Lord's Friendſhip or Familiarity?——*Ben*. To both.

Mr. Att. Gen. In Converſation at any Time, have you obſerved my Lord to give you irrational or inſenſible Anſwers?

Ben. I cannot ſay he has given me any inſenſible Anſwers.

Mr. Att. Gen. I ſhould be glad to know whether you have any Reaſon to believe, from his Behaviour, that he did not underſtand enough to diſtinguiſh Right from Wrong?

Ben. That is a Queſtion I am in ſome Doubt of anſwering.

Mr. Att. Gen. I have aſked as to your Opinion; if you will recollect what Diſcourſe has paſſed between you, you will be able to give an Anſwer; now, from your Diſcourſe and Converſation, do you think or believe he was in that State of Mind as not to know Right from Wrong at any Time?

Ben. That is a Queſtion I cannot anſwer to.

Mr. Att. Gen. You will be pleaſed to recollect, that you told me, when I aſked you, that my Lord never gave you an irrational Anſwer; why cannot you give your Opinion as to his Sanity?

Ben. My Lord's Behaviour appeared in general in ſuch Manner as I have mentioned.

Mr. Att. Gen. My Lords, This Witneſs did not mention any particular Act, only talking to himſelf, and Motions with his Head; I am queſtioning him upon thoſe Kind of Acts that proceed from Words or Speeches: Did you ever, from his Words or Speeches, conceive that he was not himſelf?

Ben. No further than by being diſpleaſed, often talking to himſelf, like a Man that was out of his Mind.

Mr. Att. Gen. Did my Lord manage his Affairs by himſelf?

Ben. He managed them himſelf; he gave me Directions.

Mr. Att. Gen. Were thoſe Directions reaſonable and ſenſible?

Ben. Sometimes they were, though thought unreaſonable and inſenſible by the Perſons he wrote to.

Mr. Att. Gen. Can you recollect any Inſtances, and the Perſons that thought them ſo?

Ben. I cannot recollect any Circumſtance relating to Family Matters; his Mother, when I have carried ſuch Meſſages, has thought him to be in a wrong Mind, in writing to her in the Manner he did.

Mr. Att. Gen. Did Mrs. *Shirley* ever treat him as an inſane Perſon, or talk of ſending for a Phyſician to him?---*Ben*. Not that I know of.

Mr. Att. Gen. Did any other Perſon think my Lord ſo inſane as to want that?

Ben. I cannot recollect any Perſon in particular.

Mr. Att. Gen. Was it eaſy to impoſe upon his Lordſhip in his Affairs, or difficult?

Ben. It was not eaſy to impoſe upon his Lordſhip that I know of.

Mr. Att. Gen. As you have known him ſo long, and have been admitted to his Familiarity, I wiſh you would recollect One ſingle irrational Expreſſion that you have ever heard him make uſe of.

Ben. I cannot recollect any in particular.

Mr. Att. Gen. You ſay that he ſeemed diſpleaſed with his Lady, and with the Act of Parliament; pleaſe to recollect, whether, upon that Occaſion, his Behaviour was ſuch as betrayed his Inſanity, or any thing that was irrational?

Ben. My Lord expreſſed a good deal of Diſſatisfaction at the Act of Parliament.

Mr. Att. Gen. What was the Diſſatisfaction? and was it general as well as particular?

Ben. In relation to the Eſtate's being taken away, and Receivers being put upon it.

Mr. Att. Gen. Do you apprehend that that Sort of Expreſſion denoted Inſanity or Sanity?

Ben. That I cannot take upon me to determine.

Mr. Att. Gen. Pleaſe to recollect yourſelf, and give me an Anſwer to the Queſtion: You ſaid that he expreſſed a Diſſatisfaction, becauſe his Eſtate was taken from him, and a Receiver put upon it; I deſire to know whether thoſe Expreſſions beſpeak a Man in his Senſes or out of his Senſes?

Ben. I cannot ſay whether that denoted him to be in his Senſes or out of his Senſes.

Mr. Att. Gen. Are thoſe Expreſſions the Expreſſions of a Fool, or of a Man of Underſtanding upon the Subject?

Ben. I ſhould think, of a Man of Underſtanding.

Mr. Att. Gen. You have not been able to anſwer as to any particular Speeches that denoted him to be inſane; now do you remember any Act of his, of any Kind, that denoted a diſordered Mind?

Ben. I cannot ſay I can; I was not ſo often with him, though I have known him long.

Mr. Att. Gen. Then I deſire to know, whether Lord *Ferrers*, from the Converſation you had with him, appeared to be rather of better Parts than an ordinary Kind of Man?

Ben. Yes, to be ſure.

Mr. Thomas Gooſtrey *ſworn*.

Earl *Ferrers*. How long have you known Lord *Ferrers*?

Gooſtrey. About Ten Years.

Earl *Fer*. How long have you been concerned for him?

Gooſ. About that Time.

Earl *Fer*. Have you ſeen any Inſtances of any thing like Inſanity in me?

Gooſ. I think I have.

Earl *Fer*. Pleaſe to mention the Inſtances.

Gooſ. I have been called upon very unexpectedly; I ſhould have recollected myſelf, if I had had any Apprehenſion of being called upon.

Earl *Fer*. Then mention the Inſtances.

Gooſ. I know nothing within this Twelve Months paſt: Lord *Ferrers* always appeared to me to be of a very remarkable Diſpoſition; and though Lord *Ferrers* was extremely ſenſible, and thoroughly acquainted with his Affairs, yet I have frequently had Directions from him to do Things that in my Opinion were either fruitleſs, or oppoſite to his Intereſt, and upon thoſe Occaſions I have always found it in vain to endeavour to diſſuade his Lordſhip from it; and as I always found that Lord *Ferrers* was extremely ſenſible, and thorough Maſter of his Affairs, I have never been capable of accounting for his Behaviour, otherwiſe than by apprehending that he has been at Times out of his Mind.

Earl *Fer*. Do you remember any Inſtance where I appeared to be out of my Mind, and what?

Gooſ. I remember that all of a ſudden he took it into his Head that he ſhould be capable of impeaching a Family Settlement that he had long acquieſced under, and by which he was only Tenant for Life of his Eſtate; and though he had adviſed with many Lawyers upon the Occaſion, and they were all of Opinion that it was impoſſible he could ſucceed, yet he perſiſted in his Reſolution of bringing a Suit to deſtroy that Settlement; and upon thoſe Occaſions I have always found Lord *Ferrers* extremely ſtrange; and when he has touched upon that Subject, his Converſation has been very wild, and inconſiſtent with what I have looked upon a Man of Senſe and Underſtanding to be; and I remember One Inſtance, which

which was, when Lord *Ferrers* returned from my Lord *Weſtmoreland*'s, my Lord *Ferrers* followed me upon that Occaſion into the City, and he came into the Room where I was with a great deal of Company. I perceived, by his Appearance, that ſomething diſturbed him, and therefore haſtily came up to him, and got him out of the Room. When I came up to him, I aſked him what was the Matter; and did at firſt apprehend he had been in Liquor, but I ſoon perceived that he was perfectly ſober. He then told me a ſtrange inconſiſtent Story of his having been down at my Lord *Weſtmoreland*'s, and of his having been ill treated by Sir *Thomas Stapleton*, and the Intent of his coming to me was, to draw an Advertiſement to be inſerted in all the Papers, tending to challenge Sir *Thomas Stapleton*, and to poſt him for a Coward if he did not give him Satisfaction. I was extremely uneaſy; and with Difficulty did diſſuade him from it, upon a Promiſe to wait upon him the next Day; but then looking upon him to be out of his Senſes, I did not call upon him the next Day. From thence I declined being concerned for him, as looking upon him to be a Perſon out of his Senſes: That is all; I have never ſeen his Lordſhip from that Time to this, except when I had the Honour to wait upon his Lordſhip in the *Tower*.

Earl *Ferrers*. Did you know Mr. *Johnſon*?

Gooſtrey. Very well.

Earl *Fer*. Was I in Friendſhip with Mr. *Johnſon*?

Gooſ. I have often ſeen Lord *Ferrers* and Mr. *Johnſon* together, and have likewiſe had Occaſion to talk of Mr. *Johnſon* with my Lord: I always obſerved that his Lordſhip had the greateſt Regard and Eſteem for Mr. *Johnſon*; and I have, in the Courſe of my Buſineſs that I have done for Lord *Ferrers*, always found that Mr. *Johnſon* was very exact and regular in his Accounts.

Earl *Fer*. Did you ever hear me at any Time find Fault with Mr. *Johnſon*, or expreſs any Diſſatisfaction at him?

Gooſ. Never, but always the Reverſe.

Earl *Fer*. Do you know if Mr. *Johnſon* would have conſented to have been Receiver under the Act of Parliament, without conſulting me?

Gooſ. I heard Mr. *Johnſon* declare, that when it was propoſed to him to be Receiver, that he refuſed to be ſo, without firſt conſulting his Lordſhip; and afterwards I ſaw Mr. *Johnſon*, and he told me that it was at his Lordſhip's particular Requeſt that he conſented to be a Receiver.

Mr. Sollicitor General. My Lords, I muſt beg Leave to aſk this Witneſs a Queſtion or Two.

Mr. Sol. Gen. Mr. *Gooſtrey* gave your Lordſhips as a Reaſon for his Opinion that Lord *Ferrers* was inſane, that his Lordſhip would very frequently ſend Directions in the Courſe of his Affairs, which Mr. *Gooſtrey* thought fruitleſs, or oppoſite to his Intereſt; in particular, he mentioned an Inſtance relative to his impeaching or ſetting aſide a Family Settlement;

Now, I ſhould be glad to aſk Mr. *Gooſtrey*, Whether he thinks that the Manner of Lord *Ferrers*'s receiving his Advice to diſſuade him from endeavouring to ſet aſide that Settlement, proceeded from a Tenaciouſneſs of his Opinion, or from the Inſanity of his Mind?

Gooſ. To ſay that it might be owing to Inſanity of Mind, might be going too far; but it was from his remarkable Diſpoſition, his obſtinate and improper Behaviour, his remarkable Tenaciouſneſs of his Opinion, which was not conſiſtent with the good Senſe I have known him Maſter of.

Gooſ. If I may explain what I ſaid before, I ſhould rather think it tended to Inſanity than any thing elſe, as it was ſo inconſiſtent with the good Senſe and Underſtanding that I have always met with from his Lordſhip.

Mr. Sol. Gen. Was it from any particular Circumſtance which paſſed between you and Lord *Ferrers*, that you thought the Manner of receiving your Advice was owing to a Tendency in Lord *Ferrers* to Inſanity?

Gooſ. My Reaſon is, that his Lordſhip had been adviſed by many Lawyers, that, by his long Acquieſcence under that Settlement, and the many Acts he had done confirming it, that there was no Poſſibility of ſucceeding in it.

Mr. Sol. Gen. Mr. *Gooſtrey*, You have had a great deal of Buſineſs, and been employed by many Clients, as well as Lord *Ferrers*; have not you, in the Courſe of your Experience and Tranſactions, met with ſeveral Clients of a Temper to proceed againſt the Advice of Counſel and Friends?

Gooſ. I never did in my ſmall Experience meet with any Perſon that did ſo, that was poſſeſſed of the good Senſe and Underſtanding that I have at other Times found in my Lord *Ferrers*.

Mr. Sol. Gen. Have you never met with Perſons unſuſpected of Lunacy, who acted in the Manner Lord *Ferrers* did upon that Occaſion?

Gooſ. I do not know I ever had any other Client that was under ſuch Circumſtances; I do not know that I ever met with any Client that would commence a Suit after Counſel adviſed the contrary.

Mr. Sol. Gen. How did the Suit end?

Gooſ. It never proceeded ſo far as to have an Anſwer; for, in the mean time, the unhappy Diſpute between Lord and Lady *Ferrers* broke out, and that diverted his Thoughts from it.

Mr. Sol. Gen. You mentioned an Inſtance of attending Lord *Ferrers*, with regard to the ill Treatment he had received from Sir *Thomas Stapleton*; upon that Occaſion do you think that my Lord's inſiſting to have a Challenge inſerted in the Papers, by way of Advertiſement, proceeded from Inſanity, or from mere Violence of Temper?

Gooſ. I did then think it Inſanity; he being perfectly ſober, I could impute it to nothing elſe, and from thenceforth I declined being concerned for him.

Mr. Sol. Gen. Might it not be from Violence of Temper?

Gooſ. It was many Hours after the Accident happened that he came to me.

Mr. Sol. Gen. Did you ever obſerve any thing frantick in my Lord's Behaviour?

Gooſ Many times.

Mr. Sol. Gen. Upon what Occaſion?

Gooſ. Upon Occaſion of his going from the Buſineſs we have been talking upon, I have often found him in Converſation loſe himſelf intirely.

Mr. Sol. Gen. Did he loſe himſelf from Paſſion, or for Want of Underſtanding?

Gooſ. He had nothing to ruffle his Temper but that particular Thing; it was from his talking to himſelf; I made it a Rule never to contradict him; and, during the Ten Years I was concerned for him, I never had a Word with him.

Mr. Sol. Gen. You endeavoured to diſſuade him from this Suit which he was going to proſecute as to the Settlement; How did he reaſon upon the Occaſion?

Gooſ. Quite wild and inconſiſtent, and, upon this Occaſion, in my Opinion, ſhewed Want of Reaſon.

Mr. Sol. Gen. Do you recollect what he ſaid, and how he argued? Mention the Particulars.

Gooſ. He treated it as if he had been impoſed upon, and drawn in improperly to do it.

Mr. Sol. Gen. Do you think that ſuch a Way of arguing ſhewed his Inſanity and Want of Senſe?

Gooſ. I thought it did, becauſe it appeared to me to be inconſiſtent with the Facts.

Mr. Sol. Gen. Might it not ariſe from a Difference in Opinion between you and him?

Gooſ. I ſhould think not, becauſe I always looked upon his Lordſhip to be a much more ſenſible Man.

Mr. Sol. Gen. How long have you known him?

Gooſ. I ſaid Ten Years; but I believe it may be Eleven.

Mr. Sol. Gen. Do you know of any Inſtance in which his Friends or Family ever entertained the ſame Opinion of him as you do?

Gooſ. Never, as to taking out a Commiſſion of Lunacy.

Mr. Sol. Gen. As from the Converſation you had with him you think he was inſane, did not you repreſent it to the Family?

Gooſ. Never; his Family knew it as well as I.

Mr. Sol. Gen. As you was of that Opinion, did you adviſe a Commiſſion of Lunacy?

Gooſ. Never.

Mr. Sol. Gen. In the Time of your being concerned for him in his Affairs, did you prepare any Deed, Conveyance, or Leaſe for him?

Gooſ. In ſome Things I have.

Mr. Sol. Gen. Did you ever prepare any Mortgage upon his Eſtate?

Gooſ. Never that I remember.

Mr. Sol. Gen. Did you ever attend the Execution of any ſuch Deeds?

Gooſ. I was concerned in ſuffering a Recovery, and cutting off the Entails in the Settlement.

Mr. Sol. Gen. In caſe of a Client's being inſane, would you have ſuffered ſuch Acts to be done?

Gooſ. There was no ſuch Thing happened in my Time; I never knew of any Act that my Lord did to his Prejudice in the Execution of any Deed in my Time.

Mr. Sol. Gen. I aſk you, if you had been deſired to be a Party, or preſent at the Execution of any ſuch Deed, whether you would have ſuffered it under ſuch Circumſtances?

Gooſ. Moſt certainly I ſhould not.

Mr. Sol. Gen. Was you ever a Witneſs to the Execution of any Deed by Lord *Ferrers*?——*Gooſ*. I have.

Mr. Sol. Gen. Did you ever tranſact any Mortgage for him?

Gooſ. I do not recollect.

Mr. Sol. Gen. Did you never get any Loan of Money for him?

Gooſ. Never. If the Gentlemen will find it out, I will not diſown it.

Mr. Sol. Gen. Has my Lord lately raiſed a conſiderable Sum of Money upon his Eſtate?

Gooſ. No, I never negotiated any ſuch, nor was I privy to it.

Mr. Sol. Gen. Was you employed to procure any Money?

Gooſ. Never, to my Memory.

Mr. Sol. Gen. Did you never converſe with his Lordſhip upon the Subject?——*Gooſ*. Never.

Mr. Sol. Gen. Did you, or did you not, in your Conſcience and Opinion, upon the whole Matter, think my Lord *Ferrers* inſane, or a proper Object to be under the Care of a Phyſician, or of the Court of Chancery?

Gooſ. I am in great Doubt whether my Lord was ſo inſane as that a Commiſſion of Lunacy could be taken out; I ſhould think a Commiſſion of Lunacy could not be taken out againſt him.

Mr. Sol. Gen. Why? becauſe he was not inſane?

Gooſ. I look upon it that he was inſane only at particular Times, and in particular Inſtances.

Mr. Sol. Gen. If he was inſane only at Times, would he not have been a proper Object of a Commiſſion of Lunacy?

Gooſ. I cannot ſay at the Times I have ſeen. If a Jury had been to inquire touching his Sanity, I am ſure they would have found him a Lunatic.

Mr. Sol. Gen. Mention the Times of which you ſpeak.

Gooſ. I meant that particular Time when his Lordſhip came to me in the City, as I have mentioned.

My Lord *Ferrers* did propoſe to diſpoſe of his *Northamptonſhire* Eſtate. I do recollect there was once a Negociation of a Loan of Ten Thouſand Pounds from Sir *Thomas Clarges*. I was no otherwiſe concerned in it, than only to ſee that the Deed which Lord *Ferrers* executed was a proper One. Mr. *Howell* of *Lincoln's Inn* was the Perſon concerned.

Mr. Sol. Gen. You recollect the Negotiation of a Loan, and your being adviſed with?

Gooſ. I do recollect I was adviſed with, and I believe my Lord was then in *Leiceſterſhire*.

Mr. Sol. Gen. What Advice did you give?

Gooſ. The Money to be borrowed by my Lord was not to be put into his Pocket, but to pay off another Mortgage.

Mr. Sol. Gen. What Advice did you give?

Gooſ. I do not recollect any particular Advice; I remember there was a Draught of a Deed; I believe it was laid before me.

Mr. Sol. Gen. Did you, or did you not, adviſe the Execution of it?

Gooſtrey

Gooſtrey. I neither adviſed one way nor the other; I was no otherwiſe concerned than to ſee that the Draught was proper.

Mr. Sol. Gen. You ſay my Lord aſked your Advice; did you give him your Opinion with reſpect to the Propriety of the Deed?

Gooſ. I dare ſay if my Lord aſked it, I did; I don't remember he did; 'tis moſt likely he did.

Lord *Hillſborough.* Why did you make it a Rule never to contradict my Lord *Ferrers?*

Gooſ. Becauſe if I had contradicted him, I ſhould have led his Lordſhip into a ſtrange wild Way of Reaſoning, that I had often experienced by his reaſoning with himſelf only.

Earl *Fer.* Was you ever concerned for any of the Family but me?

Gooſ. For Lady *Anna Eleonora Shirley* I was concerned.

Earl *Fer.* Do you know of any Thing elſe?

Gooſ. Not that I recollect.

Lord *Ravenſworth.* Do you know Lord *Ferrers*'s Mother, or any of his Relations?

Gooſ. I know them all.

Lord *Raven.* Do you mean that you know them as one that has tranſacted Buſineſs with them, and that you can ſpeak your Opinion touching them?

Gooſ. Yes; I have had Buſineſs with them frequently.

Lord *Raven.* Did you at any Time, or at different Times, ſpeak to Lord *Ferrers*'s Mother, or any of his Relations, to give them your Opinion of the Management of Lord *Ferrers?*

Gooſ. I never did; I ſhould have thought it very unneceſſary, becauſe I was thoroughly ſatisfied that the Family knew it as well as myſelf.

Lord *Raven.* My Lords, I have attended to Mr. *Gooſtrey*'s Evidence, and am deſirous of getting every Thing from him that I can; and therefore deſire he will tell your Lordſhips, whether, during the Time he did Buſineſs for Lord *Ferrers*, he ever ſignified to any of his Lordſhip's Family his own Sentiments touching his Lordſhip?

Gooſ. If I had been concerned for the Family, I ſhould not have heſitated a Moment to have done it. I believe Mr. *Shirley* in particular knew that the Reaſon I declined being longer concerned in Lord *Ferrers*'s Affairs, was from an Apprehenſion that he was not in his Senſes.

Lord *Raven.* You declined being concerned for him upon his Behaviour about the Settlement?

Gooſ. No, upon his returning from Lord *Weſtmoreland*'s.

Lord *Raven.* Should you have thought that alone ſufficient, if, previous to that, you had not ſeen Marks that induced you to have a Suſpicion of his Sanity, and to take the Reſolution you did?

Gooſ. I don't know whether, if that had been the only Inſtance in which I had found my Lord behave in that odd Manner, I ſhould then have given up his Affairs; but he had ſeveral Times before acted ſo inconſiſtent, as to induce me to think it was out of my Power to be of any Service to him.

Lord *Raven.* How long is it ſince he was at Lord *Weſtmoreland*'s?

Gooſ. About a Year and an Half.

Lord *Raven.* You ſay that you have known him between Ten and Eleven Years; during the whole Time was you concerned in his Affairs?

Gooſ. There was ſomething or other moving in his Affairs all the while; it was with the greateſt Difficulty that I kept him within the Bounds I did.

Lord *Raven.* Do you mean that, from the firſt Time of your being concerned in his Affairs, you looked upon him in that Light, or only in that Inſtance?

Gooſ. Soon after I was concerned in his Affairs, I wiſhed I had not engaged; but as I had got into them, it was difficult to recede, and for that Purpoſe I went on.

Lord *Raven.* In your Opinion, and from your beſt Recollection, did you obſerve theſe Symptoms in Lord *Ferrers* the whole Time you attended him, the Major Part of the Time, or more particularly at the latter Part?

Gooſ. Moſt certainly his Lordſhip was greatly affected with the Separation of Lady *Ferrers*; and at that Time I obſerved it.

Lord *Raven.* Do you think it proceeded from Liquor?

Gooſ. I very ſeldom ſaw him in Liquor.

Lord *Raven.* At the Times you recollect, was he ſober?

Gooſ. Perfectly ſober, at the Times I ſpeak of.

Earl of *Morton.* Did you ever ſee him in ſuch a Condition, that he was incapable of judging between a moral and an immoral Act?

Gooſ. I cannot ſay I ever did.

Then the Lord High Steward returned back to his Chair.

Lord Privy Seal. My Lords, I move your Lordſhips to adjourn to the Chamber of Parliament.

Lord High Steward. Is it your Lordſhips Pleaſure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

Lord High Steward. This Houſe is adjourned to the Chamber of Parliament.

The Lords, and others, returned to the Chamber of Parliament, in the ſame Order they came down; and, after ſome Time, the Houſe being there reſumed, reſolved to proceed further in the Trial of Lawrence *Earl* Ferrers, *in* Weſtminſter-Hall, *To-morrow, at Ten of the Clock in the Morning; and ordered that the ſaid* Lawrence *Earl* Ferrers *ſhould be remanded Priſoner to his Majeſty's* Tower *of* London, *there to be kept in ſafe Cuſtody; and that he be brought again to the Bar of this Houſe in* Weſtminſter-Hall, *To-morrow, at Ten of the Clock in the Morning.*

Thurſday, April 17, 1760. The Second Day.

THE Lords, and others, came from the Chamber of Parliament into *Weſtminſter-Hall*, in the ſame Order as on *Wedneſday* laſt; and the Peers were there ſeated, and the Lord High Steward in his Chair.

Lord High Steward. My Lords, The Houſe is reſumed. Is it your Lordſhips Pleaſure, that the Judges may be covered?

Lords. Ay, ay.

Then the Serjeant at Arms made Proclamation for Silence, as uſual; and afterwards the following Proclamation,

Serjeant at Arms. Oyez, Oyez, Oyez! Lieutenant of the *Tower*, bring forth your Priſoner, *Lowrence* Earl *Ferrers*, to the Bar, purſuant to the Order of the Houſe of Lords.

The Deputy-Governor of the *Tower* brought the Priſoner to the Bar, in the like Form as before; and then he kneeled down.

Lord High Steward. Your Lordſhip may riſe.

Lord High Steward. Earl *Ferrers*, your Lordſhip will proceed in your Defence.

Thomas Huxley ſworn.

Earl *Ferrers.* Did you know the late Earl *Ferrers?*

Huxley. I did.

Earl *Fer.* How long did you know him?

Hux. About Fourteen Years.

Earl *Fer.* What was the Matter with him?

Hux. He was a Lunatic.

Earl *Fer.* Was he under Confinement?

Hux. He was under Confinement.

Earl *Fer.* Was he a Lunatic all that Time?—*Hux.* He had Intervals.

Earl *Fer.* Was he not recovered of his Underſtanding ſometimes, ſo as to return to his Seat in Parliament?

Hux. Not in that Time that I was with his Lordſhip.

Earl *Fer.* Was he a Lunatic home to the Time of his Death?

Hux. He was.

Earl *Fer.* Did you know Lady *Barbara Shirley?*—*Hux.* I did not.

Earl *Fer.* Or Lady *Betty Shirley?*—*Hux.* I did know Lady *Betty Shirley.*

Earl *Fer.* Is ſhe living?—*Hux.* She is dead.

Earl *Fer.* How long has ſhe been dead?

Hux. To the beſt of my Knowledge about Seventeen or Eighteen Years.

Earl *Fer.* Had ſhe any Diſorders that you know of?

Hux. As I have been told by her Servants, ſhe frequently appeared to be very much diſordered.

Mr. Attorney General. My Lords, I ſhould be ſorry to ſtop the Courſe of the Noble Earl's Evidence, but this is Hearſay.

Earl *Fer.* Did you know any other of the Family that were diſordered in their Senſes?

Hux. Nothing more than by Hearſay.

Earl *Fer.* How long have you known the preſent Earl *Ferrers?*

Hux. But a very few Years.

Earl *Fer.* What Relation was the late Earl *Ferrers* to the preſent Lord?

Hux. His Uncle.

Mr. Att. Gen. My Lords, we will not trouble your Lordſhips to croſs-examine this Witneſs.

Mrs. *Wilhelmina Deborah Cotes* ſworn.

Earl *Ferrers.* Did you know Lady *Barbara Shirley?*

Cotes. Perfectly well.

Earl *Fer.* What Relation was ſhe to the preſent Earl *Ferrers?*

Cotes. His Aunt.

Earl *Fer.* How long did you know Lady *Barbara* before her Death?

Cotes. She is now living.

Earl *Fer.* Was ſhe afflicted with any, and what, Diſtemper?

Cotes. Lunacy.

Earl *Fer.* Is ſhe confined as a Lunatic at this Time?

Cotes. She was always looked upon as a Lunatic, and proper Care has been taken of her.

Earl *Fer.* Do you know any other of the Family that has been afflicted with Lunacy?—*Cotes.* Only by Hearſay.

The Honourable and Reverend Mr. *Walter Shirley* ſworn.

Earl *Ferrers.* What Relation are you to me?—*Shirley.* Brother.

Earl *Fer.* Do you know any, and which, of the Family, that have been afflicted with Lunacy; if you do, pleaſe to mention their Names?

Shir. I believe the Priſoner at the Bar has that Misfortune.

Earl *Fer.* What is your Reaſon for ſuch Belief?

Shir. I have many Reaſons for it. The firſt is, That I have ſeen him ſeveral Times talking to himſelf, clenching his Fiſts, grinning, and having ſeveral Geſtures of a Madman, without any ſeeming Cauſe leading thereto. I have likewiſe very frequently known him extremely ſuſpicious of Plots and Contrivances againſt him from his own Family; and, when he was deſired to give ſome Account what the Plots were that he meant, he could not make any direct Anſwer.—Another Reaſon I have for thinking him ſo is, his falling into violent Paſſion, without any adequate Cauſe.

Earl *Fer.* Do you believe that, at ſome Times, I have been hurried into violent Fits, ſo as not to know the Diſtinction between a moral and immoral Act?

Shir. I believe, at thoſe Times when my Lord has been tranſported by this Diſeaſe of Lunacy, that he has not been able to diſtinguiſh properly between moral Good and Evil.

Earl *Fer.* Has any other of the Family, beſides myſelf, been afflicted with Lunacy?

Shir. I have heard———(ſtopt)

Earl *Fer.* Pleaſe to inform their Lordſhips, whether, at the Time I have been tranſported with ſuch violent Fits, they have been the Effects of Drink, and whether they have happened when I was ſober?

Shir. Frequently when my Lord has been ſober, much more ſo when he has been a little inflamed with Liquor.

Earl *Fer.* Do you know of any Intention in the Family to take out a Commiſſion of Lunacy againſt me?

Shir. I heard it talked of.

Earl *Fer.* How long ago?

Shir. I think I can recollect it was at the Time of his Lordſhip's committing the Outrage at Lord *Weſtmoreland*'s Houſe that it was propoſed to be done; but afterwards they were afraid to go through with it; and the Reaſon given was, leſt, if the Court of Judicature ſhould not be thoroughly ſatisfied of my Lord's Lunacy upon Inſpection, that the Damage would be very great to thoſe that ſhould attempt it.

Earl *Fer.* Why was the Family afraid that I ſhould appear in the Courts of Judicature to be in my Senſes?

Shir. Becauſe my Lord had frequently ſuch long Intervals of Reaſon, that, we imagined, if he, on the Inſpection, appeared reaſonable, the Court would not grant the Commiſſion againſt him.

Earl

Earl *Ferrers*. What Damage do you mean that the Family was apprehenfive of, in caſe the Court ſhould refuſe a Commiſſion?

Shirley. We apprehended my Lord would ſue us for *Scandalum Magnatum*.

Earl *Fer*. Was the Family apprehenſive of any other Kind of Damage?

Shirley. I know of none.

Mr. Att. Gen. My Lords, I did not intend to have troubled this Gentleman; but from what he has ſaid, your Lordſhips will permit me to aſk him Two or Three Queſtions; I ſhall do it very tenderly, and with as much Propriety as I can.---In giving his Account of the Noble Lord's State of Mind, as far as I could collect it, ſaid, That he had more Reaſons than One why he deemed him to be inſane.

Mr. Att. Gen. Mr. *Shirley*, You ſaid that the Firſt Ground was, that his Lordſhip would, at Times, talk to himſelf, grin, and uſe certain Geſtures, proper only to Madmen---Now, as to this Firſt Mark of Inſanity, Was this frequently the Caſe with his Lordſhip?

Shirley. Very frequently.

Mr. Att. Gen. Did he, at thoſe Times ſpeak loud, or uſe any intelligible Language to himſelf?——*Shirley*. He did not.

Mr. Att. Gen. Did he, at ſuch Times, offer to commit any Miſchief, or betray any Marks of Diſorder, while in that Situation?

Shirley. I do not recollect any.

Mr. Att. Gen. Then, as far as I can underſtand you, at thoſe Times, his Behaviour in thoſe Intervals was perfectly innocent.——*Shirley*. Yes.

Mr. Att. Gen. At ſuch Times have you ever entered into Diſcourſe with him?——*Shirley*. No, I do not remember.

Mr. Att. Gen. Did you never aſk him a ſingle Queſtion when you have ſeen him walking backwards and forwards in the Way you mention?

Shirley. I don't remember I have.

Mr. Att. Gen. Did you never hear him ſpeak at ſuch Times to other Perſons?——*Shirley*. Not whilſt he continued in thoſe Attitudes.

Mr. Att. Gen. I don't aſk you whether he converſed the Time that he was mute, but within a Quarter or Half an Hour?

Shirley. I am not certain.

Mr. Att. Gen. Your next Ground for ſuppoſing him to be inſane was, That he was accuſtomed to be tranſported into Paſſions without any adequate Cauſe, Were thoſe the Words?

Shirley. Without any ſeeming Cauſe.

Mr. Att. Gen. Was not adequate the Expreſſion you uſed?

Shirley. Yes.

Mr. Att. Gen. I ſhould be glad to know whether you deem every Man that is tranſported with Anger, without an adequate Cauſe, to be a Madman?

Shirley. I deemed it as a Sign of Madneſs in him; but there were other Cauſes.

Mr. Att. Gen. I aſk you a general Queſtion, and I do not expect a particular Anſwer. Whether you deem a Perſon that is tranſported with Fury without Reaſon, to be a Madman?

Shirley. I think a Perſon may be tranſported to Fury without an adequate Cauſe, that is no Madman.

Mr. Att. Gen. Then pleaſe to recollect ſome particular Inſtance of this frantic Paſſion, and ſtate it.

Shirley. I really cannot command my Memory ſo far.---I have not ſeen my Lord theſe Two Years, till the Time of this unhappy Confinement.

Mr. Sol. Gen. Then I am to underſtand you, that you cannot recollect one particular Inſtance---Am I, or not?

Shirley. I cannot recollect any at this Time.

Mr. Att. Gen. Then as to the Suſpicion of Plots without any Foundation---Will you pleaſe to enumerate any of thoſe?

Shirley. He never himſelf would give any particular Account of what he ſuſpected, only that he did ſuſpect that the Family was in ſome Combination againſt him; and when I have aſked him, What it was that he meant? he would never give me a direct Anſwer to that Queſtion.

Mr. Att. Gen. Does that Kind of Behaviour, as you deſcribe it, denote a Man out of his Senſes?

Shirley. I thought ſo.---I was ſo fully poſſeſſed of that Opinion, that I declared to other People long ago, that I thought him a Madman.

Mr. Att. Gen. Pleaſe to inform their Lordſhips, whether the unfortunate Earl lived well or ill with his Family?

Shirley. Indeed, he did not live in Friendſhip with his Family.

Mr. Att. Gen. Were there not Diſputes on both Sides?

Shirley. Yes, there were; his younger Brothers and Siſters were under the unhappy Conſtraint of ſuing for their Fortunes.

Mr. Att. Gen. Then pleaſe to inform their Lordſhips, whether, in Truth, there was not a Combination in the Family againſt him?---I do not mean a Criminal one.

Shirley. I am very certain that was not what my Lord alluded to.

Mr. Att. Gen. If you are certain of that, you can inform their Lordſhips what it was that he alluded to?

Shirley. I will give a Reaſon why I am certain it was not that; becauſe it appeared to be ſome ſecret Combination: That was a Thing publickly known.

Mr. Att. Gen. How did you collect that the Combination was ſecret?

Shirley. By my Lord's Manner of expreſſing himſelf.

Mr. Att. Gen. Can you recollect the Phraſe or the Words he uſed?

Shirley. I cannot.

Mr. Att. Gen. In another Part of your Examination you was aſked, whether the Earl could diſtinguiſh between Good and Evil? You ſaid he could not diſtinguiſh them properly.---Was he at that Time leſs able to diſtinguiſh properly between Good and Evil than any other Man that is tranſported into a violent Paſſion?

Shirley. I never ſaw any Man ſo tranſported.

Mr. Att. Gen. Did he expreſs himſelf in inſenſible Words, ſo as that you could diſcover the State of his Mind; and that it was that of a Madman, and not a Man in Paſſion?

Shirley. I conſidered it as Madneſs.

Mr. Att. Gen. Can you recollect any Expreſſion, in any Fit of Paſſion that my Lord was in, that might not as well have come from the Mouth of any other paſſionate Man?

Shirley. Indeed I cannot.

Mr. Att. Gen. You recollect an old Adage, *Ira furor brevis eſt*: Do you believe that his was ſuch Madneſs as is there poetically deſcribed?

Shirley. I believe that it really proceeded from Madneſs.

Mr. Att. Gen. Have you ever ſeen him ſo tranſported upon any other Occaſion than that of Anger? Have you ſeen any Appearance of that Kind when he was cool and calm?

Shirley. I have ſeen him break into Paſſions without any ſeeming Cauſe.

Mr. Att. Gen. You ſaid you could not remember any Inſtance, when the Queſtion was aſked you; can you now?

Shirley. I remember once being at a Hunting Seat at *Quarendon* in *Leiceſterſhire*, as I choſe to avoid the Bottle, I went up Stairs to the Ladies; Lady *Ferrers*, at that Time, lived with him; and, without any previous Quarrel, my Lord came up Stairs into the Room; and, after ſtanding for ſome Time with his Back to the Fire, he broke out into the groſſeſt Abuſe of me, inſulting me, and ſwearing at me; and I cannot to this Day or Hour conceive any Reaſon for it.

Mr. Att. Gen. Had you never any Diſpute or Quarrel with your Brother?——*Shirley*. Not at that Time.

Mr. Att. Gen. Might not you have had ſome Quarrel a few Days before?——*Shirley*. No.

Mr. Att. Gen. Are you confident of that?——*Shirley*. I am confident.

Mr. Att. Gen. Had he no Suſpicion at that Time of your intereſting yourſelf with reſpect to my Lady *Ferrers*?

Shirley. There was then no Quarrel exiſting.

Mr. Att. Gen. Had there never been a Quarrel between my Lord and my Lady?

Shirley. I think not; it was ſoon after his Marriage.

Richard Phillips ſworn.

Earl *Ferrers*. How long have you known me?

Phillips. About Eighteen Years.

Earl *Fer*. Are you a Tenant, or what Relation do you ſtand in to me?

Phil. I am a Tenant to your Lordſhip.

Earl *Fer*. Did you ever ſee me mad?

Phil. Your Lordſhip aſked me one Day, whether I ever ſaw you mad? I ſaid, I hoped not.

Earl *Fer*. How long ago is that?

Phil. It may be Nine or Ten Years.

Earl *Fer*. Upon what Occaſion was it that I aſked you that Queſtion; and what did I ſay further?

Phil. Your Lordſhip ſaid that you was a Madman, but could not help it; and when it was off you, you was ſorry for it.

Earl *Fer*. Did I at any Time lament the Misfortune of my Family, in reſpect of Madneſs?

Phil. Your Lordſhip told me that it was in your Family.

Earl *Fer*. At the Time that you ſpeak of, Ten or Eleven Years ago, was I upon a Viſit at any Place that might make it neceſſary for me to caution People againſt my own Madneſs, that they might not be affronted at my Behaviour?

Phil. Your Lordſhip came then to live in the Houſe where I live. I thought you ſpoke thoſe Words in a Way to caution me, that I ſhould not be ſurprized, in caſe you had ſuch Fits.

Earl *Fer*. Did you hear *Johnſon* the Deceaſed ſay that he thought me mad?——*Phil*. I have.

Earl *Fer*. When was it?——*Phil*. Some time ago.

Mr. Att. Gen. My Lords, That is not Evidence, to ſpeak of what he heard Mr. *Johnſon* ſay.

Earl *Fer*. I thought, as the Evidence of Declarations of the Deceaſed was admitted againſt me, it would have been admitted for me.

Mr. Att. Gen. My Lords, though the Declarations of the Deceaſed, whilſt a dying Man, and after the Stroke is given, are to be admitted as legal Evidence; yet a Depoſition of what he or any other Perſon ſaid before the Accident, is clearly Hearſay Evidence, upon the ſame Foundation with all other Hearſay Evidence; and, with Submiſſion to your Lordſhips, ought not to be admitted.

Mr. Att. Gen. The Queſtion is objected to by me; if my Noble Lord or his Counſel inſiſt upon it, the next Step is to hear his Counſel upon the Objection; then we are to anſwer it, and they are to reply; and then it is for your Lordſhips Judgment.

Earl *Fer*. I wave the Queſtion.

Gold Clarges, Eſq; ſworn.

Earl *Ferrers*. How long have you known me?

Clarges. From the Time of your Birth.

Earl *Fer*. Did you look upon me to be afflicted with any and what Diſtemper?

Clarges. Indeed I have looked upon your Lordſhip as a Lunatick for many Years.

Earl *Fer*. Has that Diſtemper increas'd of late Years, and how long?

Clarges. I think it has.

Earl *Fer*. How long?----*Clarges*. For theſe Two Years or more, ever ſince the unhappy Difference between my Lady and my Lord.

Earl *Fer*. Have you ſeen me in violent Fits of Lunacy?

Clarges. I cannot ſay I have; and the Reaſon that I have ſeen few extravagant Actions of his Lordſhip was this, as I look'd upon him to be diſordered in his Mind, I avoided being in Company, or having any Converſation with him as much as poſſible.

Earl *Fer*. Have you particularly remarked that I am of a very jealous or ſuſpicious Nature?----*Clarges*. That I have often.

Earl *Fer*. Has it been remarkably ſo in me more than in any other People?----*Clarges*. Much more ſo.

Earl *Fer*. Did you know any of my Relations being ſo afflicted?

Clarges. I remember *Henry* Earl *Ferrers* was.

Earl *Fer*. Had he a Commiſſion taken out againſt him?

Clarges. He had.

Earl *Fer*. Was he after that reſtored to his Senſes for any Time, ſo as to return to Parliament?

Clarges. He was; he returned to Parliament about a Year and an Half, I believe, or thereabouts.

Earl *Ferrers.* What Relation was he to me?----*Clarges.* Uncle.

Earl *Fer.* Was his Return to Parliament after he had been confined for Lunacy?-----*Clarges.* Yes.

Earl *Fer.* Had he, after that Year and an Half's being in Parliament, any Relapse?-----*Clarges.* Yes.

Earl *Fer.* What became of him then?

Clarges. Another Commission was taken out, and he was confined to the Time of his Death.

Earl *Fer.* His being in Parliament a Year and a Half was after the first Commission issued against him?---*Clarges.* Yes.

Earl *Fer.* Do you know of any other of the Family being afflicted with that Distemper?-- *Clarges.* I have heard, but do not know it.

Lord *Ravensworth.* Have you avoided being in Company with Lord *Ferrers*, or having any Thing to do with him, for some Time past?

Clarges. I did, as much as I could.

Lord *Raven.* Please to inform their Lordships, whether you, at any Time previous to that, lived in any Degree of constant Correspondence and Intimacy with Lord *Ferrers?*

Clarges. Not much since he arrived to Manhood.

Lord *Raven.* Whether previous to his Arrival at Manhood, did you see a great deal of Lord *Ferrers?*

Clarges. A great deal, almost from his Cradle; for I being a Relation of his Family, was constantly with his Father and with him in the Country, and most Part of my Time I spent with them.

Lord *Raven.* Whether in that Time, previous to his Manhood, did you observe any Thing in Lord *Ferrers* from his Behaviour, or any of his Deportment, that was particularly remarkable?

Clarges. I have.

Lord *Raven.* You have known him during his Infancy and before his Manhood: Did you observe any thing remarkable constitutionally (if I may call it so), and singular in his Behaviour, during the Time you knew him?

Clarges. I have seen great Oddities in him beyond what I have seen in any other Man.

Lord *Raven.* What Age was this present unfortunate Earl at the Time of the Death of his Father?

Clarges. I believe about Twenty-two or Twenty-three,

Lord *Raven.* You say you was intimate with his Father: Had you at any Time any Conversation with the Father of the present Earl, relative to that which appeared to you to be singular in his Son?

Clarges. I cannot say I ever had.

Lord *Raven.* Please to recollect, as far as possible, any Symptoms, be they of what Kind soever, that made you think Lord *Ferrers* so very singular in his Nature?---*Clarges.* I cannot specify any particular Thing.

Lord *Raven.* You say that you have several Times seen that in my Lord, which made you think my Lord to be very singular?---*Clarges.* Yes.

Lord *Raven.* Do you recollect any Thing?

Clarges. It is a great while ago; I cannot particularly specify any Thing.

Earl of *Morton.* This Witness has told your Lordships, that he has known the Noble Lord at the Bar from his Cradle---I desire he may be asked, if he ever observed any Defect of Understanding in the Noble Lord at the Bar?

Clarges. Not to my Knowledge; not whilst he was with me.

Earl of *Morton.* Upon no Occasion when you saw him?

Clarges. No, I cannot say I have.

Earl of *Morton.* Did you ever perceive the Noble Lord at the Bar so far deprived of his Senses, as not to know that Robbery or Murder was an Offence against the Law of God and Man?

Clarges. No, to be sure, my Lords; I cannot say that I ever did.

Peter Williams sworn.

Earl *Ferrers.* How long have you known me?

Williams. I have known your Lordship these Sixteen or Seventeen Years.

Earl *Fer.* Do you know of any Distemper that I am afflicted with?

Wil. Of late I have.

Earl *Fer.* What Distemper is that?

Wil. I have often observed your Lordship, when I have been in your Company, to be spitting in the Glass, and biting your Lips, and Stamping about the Room, which induced me to believe your Lordship was not in your right Senses; and further to convince me it was so, there was a Mare that your Lordship sent to me on the 17th *January* 1749, and remained with me to the first of *April* following: One Day, being *Sunday*, your Lordship came to my House, about Four or Five in the Afternoon, with Two Servants; your Lordship armed with a Tuck stuck upon a Stick, the Two Servants with Guns and other offensive Weapons: Upon entering into the Yard, your Lordship jumped off the Horse, and bid one of your Servants, you called *Tom*, knock the Padlock off the Stable Door.--He did so. My Wife hearing a Noise in the Yard, she came to know the Reason; and without any Ceremony your Lordship felled her to the Ground with your Fist: Upon my seeing this, I went into the Yard, and ask'd your Lordship what you meant by this Behaviour?

Earl *Fer.* My Lords, I desire to stop this Witness; I only meant to ask him a general Question.

Earl *Fer.* Have you observed, that That which you call a Distemper in me has increased lately?

Wil. Yes, in my Opinion I think it did: When your Lordship came to me, you, without any further Ceremony ——— —— (Stopp'd by Lord *Ferrers*).

Lord *Ravensworth.* My Lords, in Justice to myself and to your Lordships, I hope that the Witness may go on, tho' the Prisoner desires he may be stopp'd.

Lord *Mansfield.* If any of your Lordships have any Questions to ask the Witness, you will do it: The Prisoner will ask him such as he thinks proper.

Earl *Fer.* Do you know of any Design in the Family to take out a Commission of Lunacy against me?

Wil. I cannot say I do.

Earl *Fer.* Did you ever tell me that the Family wanted to prove me mad?---*Wil.* I don't remember I did.

Earl *Fer.* Did you yourself consider me as a Madman?

Wil. I considered your Lordship so at this Juncture, and many Times before.

Earl *Fer.* What Time did you mean by this Juncture?

Wil. I mean the Juncture of his Lordship's coming on Horseback with Guns and other offensive Weapons to take away the Mare.

Earl *Fer.* What Time was that?

Wil. *Sunday* the 1st of *April* 1759; I mistook when I said 1749.

Earl *Fer.* Was it the general Reputation of the Country that I was mad?

Wil. It was; I have heard several People say, where is the mad Lord that us'd to be at your House?

Earl *Fer.* How long before this Accident, in regard to Mr. *Johnson*, was it, that my Lord came to your House arm'd in this Manner?

Wil. I believe it was about a Twelvemonth.

Earl *Fer.* You said it was 1749 before?---*Wil.* I meant 1759.

Elizabeth Williams sworn.

Earl *Fer.* How long have you known Lord *Ferrers?*

Williams. A great many Years.

Earl *Fer.* Do you know of any Distemper that Lord *Ferrers* is afflicted with, and what is it?--*Wil.* He never appeared like any other Gentleman.

Earl *Fer.* Wherein did he differ from other People in general?

Wil. He always was a-musing and talking to himself.---He spit in the Looking-glass, tore the Pictures, swearing he would break my Bureau open, and would break all the Glasses in my House, and would throttle me if I would not let him do it.

Earl *Fer.* Had he any particular Reason for this Conduct?

Wil. None that I ever saw, but like a delirious Man.

Earl *Fer.* Did you keep a Public-House?---*Wil.* Yes.

Earl *Fer.* How near did you live to my Lord?

Wil. My Lord was at my House, and boarded with me.

Earl *Fer.* Are you the Wife of the last Witness?--*Wil.* Yes.

Earl *Fer.* Where did Lord *Ferrers* live, at the Time he behav'd in that odd Manner you speak of?

Wil. He had Lodgings at *Muswell-Hill.*

Earl *Fer.* How far did you live from him?

Wil. Two Miles, to the best of my Knowledge; he frequently used to come; I have made him Coffee and sent up a Dish, he always drank it out of the Spout, which surprized me, that I thought him delirious.

Earl *Fer.* How long ago is that?

Wil. I believe it is about Twelve Months ago, to the best of my Knowledge.

Earl *Fer.* Have you often seen Lord *Ferrers* behave in that Manner?

Wil. I never saw him behave like any other Gentleman in my Life.

Earl *Fer.* Was the Coffee hot when he drank it out of the Spout?

Wil. Hot.---He always went about the Town like a Madman, throttled me, and threw me down in the Yard, one Day when he took the Horse away.

Earl *Fer.* Did you think Lord *Ferrers* a Madman?

Wil. I know he was by all his Appearance.

Earl *Fer.* Was he generally thought so by other People?

Wil. By all the whole Town.

A Lord. When he threatened to break open your Bureau, and to use you ill if you did not let him do it, was he in Liquor?

Wil. Sober as I am now.

A Lord. Did you ever, upon any Occasion when he committed these Outrages, observe that he had been drinking?

Wil. Never; he never drank in a Morning but a little Tea or Coffee, or some Broth.

Earl *Fer.* Have you ever seen me commit any other Acts of Outrage besides those you have mentioned?

Wil. A great many more that are worse.

Earl *Fer.* Name them.

Wil. Swearing, cursing, and damning us; and wishing us all at Hell, and himself at Hell; and threatened to break the Glasses; and talked to himself for Hours together in Bed.

Earl *Fer.* Was he drunk or sober at those Times?

Wil. Very rarely; but he seemed more to be disturbed in his Mind.

Earl *Fer.* Mention the Circumstance about my coming for the Mare.

Wil. My Lord came for the Mare, it was at Church-Time, and brought his Servants, and a Hammer in his Hand, and Guns, with a Tuck in his Hand, and broke the Stable Door open by Violence of Arms, and knocked me down with his Arm, and run the Tuck into my Husband, fetched the Blood, I was obliged to have a Surgeon to attend him; and took the Mare away by Force of Arms; and if any body came to hinder him, he said he would blow their Brains out. He always had Pistols Nobody knew of. I never saw any Gentleman that came to my House before, that had those Things about them. I us'd to like to take them out of the Bed-chamber, but was afraid to touch them, for fear of what he should do to me himself, by seeing his Mind so disturbed.

Earl *Fer.* Were those Outrages committed when he was drunk or sober?

Wil. Sober for the general; and when he took the Mare away, as sober as he is now.

Earl of *Hardwicke.* Inform their Lordships, whether, before my Lord came in this Manner to get the Mare out of the Stable, he had before sent any Servant to demand the Mare, and had been refus'd?

Wil. Yes, he had, the Boy was gone to Church. We always kept it under Lock, because there was more of his Lordship's Horses; and Nobody was to go into the Stable but his Lordship's Ostler.

The Honourable Mr. *Robert Shirley* sworn.

Earl *Fer.* What Relation are you to me?---*Shirley.* Brother.

Earl *Fer.* When was the last Time that you and I had any Conversation together?

Shirley. Almoſt Four Years ago, between Three and Four Years.

Earl *Fer.* At that Time in what Light did you look upon me?

Shir. Rather turn'd in your Head.

Earl *Fer.* Was there any Diſorder in the Family? and what was that?

Shir. Lord *Henry Ferrers* had Madneſs.

Earl *Fer.* Do you know Lady *Barbara Shirley?*---*Shir.* I do not.

Earl *Fer.* Do you know, of your own Knowledge, any other beſides Earl *Henry* that was a Lunatic?---*Shir.* No.

Earl *Fer.* Have you any Reaſon to believe that I have been afflicted with the like Diſorder?---*Shir.* I have.

Earl *Fer.* Pleaſe to name your Reaſons.

Shir. My Reaſons are, that when I liv'd at *Burton-upon-Trent*, your Lordſhip came to my Houſe with concealed Piſtols in your Pockets; Pockets that were made on Purpoſe for that Uſe I apprehend; and that you likewiſe had a Snick-or-ſnee Knife, as it is called; and I apprehended myſelf and all the Family in great Danger at that Time; and I was obliged to ſhut the Doors againſt you; upon that I wrote to my Brother, Captain *Waſhington Shirley*, that I apprehended you to be a Lunatic, and would join with him in taking out a Commiſſion againſt you.

Earl *Fer.* Have you any other Reaſons to believe me a Lunatic than my carrying Piſtols?---*Shir.* Yes.

Earl *Fer.* Name all your Reaſons.

Shir. Your Lordſhip has frequently aſked my Opinion in relation to your Affairs, which I have told you to the beſt of my Capacity; but you was always ſo unſteady and jealous of me and your Friends, when we were endeavouring to ſerve you, that you would never venture to truſt us in any Thing in which we could be of Service to you. I have likewiſe ſeen you in ſeveral ſtrange Poſtures, walking about with great Confuſion of Mind, and was often very abſent for a conſiderable Time; when I have been aſking you a Queſtion, I could hardly get an Anſwer from you.

Earl *Fer.* Was it uſual for me to go armed?

Shir. I believe for Four Years paſt, or very near, you have hardly ever gone without concealed Piſtols about you.

Earl *Fer.* Did I uſe to go arm'd formerly when you knew me?

Shir. I never knew that his Lordſhip went arm'd, till he came to my Houſe at *Burton-upon-Trent*, which was the laſt Time I ſaw him.

Earl *Fer.* Do you know any Thing more?

Shir. I have further to ſay, that my Father made a Settlement in 1741, which you ſubjected yourſelf to, and acquieſced under for near Twenty Years; and then preferred a Bill, in order to ſet that Settlement aſide; and, contrary to the Opinion of your Solicitor and Counſel, you ſtill would inſiſt upon doing it, and obliged me to put in an Anſwer for myſelf and my Son.

Earl *Fer.* Do you know of my being ſubject to Fits of violent Rage?

Shir. I cannot ſay but I have.

Earl *Fer.* Did you ever ſee me ſo outrageous as not to know the Difference between Good and Evil?

Shir. I really cannot particularize any Thing, 'tis ſo long ago; but upon Occaſions I have ſeen you extremely paſſionate and warm; and ſo much ſo, that I believe you did not know what you did ſometimes.

Earl *Fer.* Do you think that theſe violent Paſſions you ſpeak of, aroſe from conſtitutional Defects?

Shir. I really believe ſo.

Earl *Fer.* If you have any Thing more to offer, mention it yourſelf; I have no more Queſtions to aſk you.

Shir. I have nothing more to offer.

Lord *Cadogan.* How long was it before this Accident, that you wrote to Captain *Waſhington Shirley* about taking out a Commiſſion of Lunacy againſt my Lord?

Shir. It is upwards of Two Years ago ſince I wrote to him.

Doctor *John Monroe* ſworn.

Earl *Ferrers.* Did you know the late Earl *Ferrers?*---*Monroe.* I did.

Earl *Fer.* Did you know him in any and what Diſtemper?

Mon. I attended him as a Phyſician when he was under the unhappy Influence of Lunacy.

Earl *Fer.* Have you heard all the Evidence that has been given in this Cauſe, on the Charge againſt Earl *Ferrers*, on both Sides?

Mon. I have.

Earl *Fer.* You are deſired to mention what are the uſual Symptoms of Lunacy.

Mon. Uncommon Fury, not cauſed by Liquor, but very frequently raiſed by it; many others there are which tend to Violence againſt other Perſons or againſt themſelves: I do not know a ſtronger, a more conſtant, or a more unerring Symptom of Lunacy than Jealouſy, or Suſpicion without Cauſe or Grounds: There are many others too long to enumerate.

Earl *Fer.* Has the carrying of Arms been generally a Circumſtance of Lunacy?

Mon. I have known it to be ſo, but not generally.

Earl *Fer.* Pleaſe to inform their Lordſhips whether any, and which of the Circumſtances which have been proved by the Witneſſes are Symptoms of Lunacy.

Mr. Attorney General. My Lords, if the Noble Lord means to inſiſt upon that Queſtion, I object to it.

Lord High Steward. Lord *Ferrers*, do you deſire your Counſel to be heard upon that?---Earl *Ferrers.* I do.

Earl of *Hardwicke.* My Lords, this Queſtion is too general, tending to aſk the Doctor's Opinion upon the Reſult of the Evidence, and is very rightly objected to by the Counſel for the Crown: If the Noble Lord at the Bar will divide the Queſtion, and aſk whether this or that particular Fact is a Symptom of Lunacy, I dare ſay they will not object to it.

Mr. Attorney General. My Lords, I ſhall not.

Earl *Fer.* My Lords, I ſubmit to have it go on in the Way recommended by Lord *Hardwicke.*

Earl *Fer.* Pleaſe to inform their Lordſhips, whether Quarrelling with Friends without Cauſe is a Symptom of Lunacy.

Mon. Very frequently one.

Earl *Fer.* Whether being naturally ſuſpicious is a Symptom of Lunacy?

Mon. Yes, it is without Cauſe a conſtant one.

Earl *Fer.* Whether going arm'd where there is no Danger is a Symptom of Lunacy?

Mon. That muſt be according to the Circumſtances.

Earl *Fer.* Whether going generally arm'd where there is no apparent Danger is a Symptom of Lunacy?---*Mon.* I ſhould think it was.

Earl *Fer.* Whether ſpitting in the Looking-glaſs, clenching the Fiſt, and making Mouths, is a Symptom of Lunacy?

Mon. I have frequently ſeen ſuch in Lunatic Perſons.

Earl *Fer.* Whether walking in the Room, talking to himſelf, and making odd Geſtures, are Symptoms of Lunacy?

Mon. Very common ones.

Earl *Fer.* Is Quarrelling without Cauſe a Symptom of Lunacy?

Mon. It is a very frequent Attendant upon ſuch unhappy Complaints, and they are generally malicious.

Earl *Fer.* Whether drinking Coffee hot out of the Spout of the Pot is a Symptom of Lunacy?

Mon. I ſhould think it one in the preſent Caſe; it is not a general one.

Earl *Fer.* Whether Lunatics, when they are angered with or without Cauſe, know what they are doing?

Mon. Sometimes, as well as I do now.

Earl *Fer.* Is it common to have ſuch a Diſorder in Families in the Blood?---*Mon.* Unfortunately too common.

Earl *Fer.* Whether Lunatics in their Intervals are conſcious of their being Lunatics?

Mon. They are conſcious of it; many, both in and out of their Intervals; very few that are not.

Earl *Fer.* Whether Lunatics are apt to be ſeized with Fits of Rage on a ſudden?---*Mon.* Very often.

Earl *Fer.* Without any apparent Cauſe?

Mon. Without any apparent Cauſe.

Earl *Fer.* Is there any other Way of diſcovering whether a Man is Lunatic or not, but by the Irregularity of his Behaviour or his Pulſe?

Mon. By the Irregularity of his Behaviour; I know of no other Method; the Pulſe diſcovers nothing in general.

A Lord. Pleaſe to inform their Lordſhips, whether a Perſon under an immediate Viſitation from God of Madneſs, has not commonly a Fever?

Mon. Seldom or never, unleſs it may be at the firſt Attack of the Diſtemper, or in ſome very violent Fit.

Roger Griffith ſworn.

Earl *Fer.* How long have you known me?

Griffith. About Twelve Months.

Earl *Fer.* Did you know me when I lived at *Muſwell Hill?*

Griffith. Yes, very well.

Earl *Fer.* When was that?--*Griffith.* It was about Twelve Months ago.

Earl *Fer.* At that Time was I generally reputed a Madman, or a Man in his Senſes?

Griffith. Generally reputed a Lunatic; ſome ſaid, crack'd in his Head.

Earl *Fer.* My Lords, I deſire Leave to call Mr. *Gooſtrey*, to aſk him a Queſtion I forgot Yeſterday.

Mr. *Gooſtrey* ſworn again.

Earl *Fer.* Have you obſerv'd me remarkably jealous and ſuſpicious, and for what?

Gooſtrey. Very remarkably ſo all the while I had the Honour to be concerned for him, and much more than any other Perſon. In the courſe of Time that I was concern'd for his Lordſhip, he has been at different Times———

Lord High Steward. You are not to go into a Detail.

Earl *Fer.* My Lords, I have done with my Evidence; but it is impoſſible for me to ſum up, and what I have to offer to your Lordſhips I have reduced into Writing, and deſire the Clerk may read it.

Lord High Steward. Is it of your Lordſhip's own Writing?

Earl *Fer.* My Lords, the Attorney got it copied.

Clerk reads.

My Lords,

IT is my Misfortune to be accuſed of a Crime of the moſt horrid Nature.

My Defence is, in *general*, that I am *Not Guilty:* The Fact of *Homicide* is proved againſt me by Witneſſes, who, for aught I can ſay to the contrary, ſpeak truly.

But if I know myſelf at this Time, I can truly affirm, I was ever incapable of it, *knowingly:* If I have done and ſaid what has been alledged, *I muſt* have been depriv'd of my Senſes.

I have been driven to the miſerable Neceſſity of proving my own Want of Underſtanding; and am told, the Law will not allow me the Aſſiſtance of Counſel in this Caſe, in which, of all others, I ſhould think it moſt wanted.

The more I ſtand in need of Aſſiſtance, the greater Reaſon I have to hope for it from your Lordſhips.

Witneſſes have been called to prove my Inſanity---To prove an unhappy Diſorder of Mind, and which I am griev'd to be under the Neceſſity of expoſing.

If they have not directly prov'd me ſo Inſane as not to know the Difference between a *moral* and an *immoral* Action, they have at leaſt prov'd that I was *liable* to be *driven* and *hurried* into *that unhappy Condition* upon very ſlight Occaſions.

Your Lordſhips will conſider whether my *Paſſion, Rage, Madneſs* (or whatever it may be called) was the Effect of a weak or diſtemper'd Mind, or whether it aroſe from my own Wickedneſs, or Inattention to my Duty.

If I could have controul'd my Rage, I am anſwerable for the Conſequences of it.---But *if I could not*, and if it was the mere Effect of a diſtempered Brain, I am *not* anſwerable for the Conſequences.

My Lords, I mention theſe Things as *Hints*-- I need not, indeed I *cannot*, enlarge upon this Subject: Your Lordſhips will conſider all Circumſtances, and I am ſure you will do me Juſtice.

If

If it be but a Matter of *Doubt*, your Lordships will run the Hazard of doing me *Injustice*, if you find me Gilty.

My Lords, If my Insanity had been of *my own seeking*, as the sudden Effect of *Drunkenness*, I should be *without Excuse*. But it is proved, by the Witnesses for the Crown, *that I was not in Liquor*.

Mr. *Kirkland*, who drank and conversed with me, in order to betray me, (Mr. Attorney may commend his *Caution*, *but not his Honesty*) represents me as the most irrational of all Madmen, at the Time of my doing a Deed which I reflect upon with the utmost Abhorrence.

The Counsel for the Crown will put your Lordships in Mind of every Circumstance *against* me; I must require of your Lordships' Justice, to recollect every Circumstance on the *other Side*.

My Life is in your Hands, and I have every Thing to hope, as my Conscience does not condemn me of the Crime I stand accused of; for I had no preconceived Malice; and was hurried into the Perpetration of this fatal Deed by the *Fury* of a disordered Imagination.

To *think* of this, my Lords, is an Affliction, which can be aggravated only by the Necessity of making it my Defence.

May God Almighty direct *your* Judgments, and correct *my own!*

Earl *Fer.* My Lords, I will mention One Circumstance, which I did speak of Yesterday; it was said, that I knew of a Lease *Johnson* had, but it has never been proved; therefore, I imagine, that what I asserted, that I did not know of it, must be admitted as Truth.

Lord High Steward. Earl *Ferrers*, Hath your Lordship any thing further to offer?

Earl *Fer.* No.

Mr. Sollicitor General.

My Lords,

IT is now my Duty, to lay before your Lordships some Observations upon the Evidence offered both for the King and the Prisoner, in Reply to the Defence made against the Charge.

The Fact of killing Mr. *Johnson* (the Person named in the Indictment), is admitted as well as proved. The Noble Lord at the Bar only denies the Consequence; that the Fact is Murder. For, he tells your Lordships, that, upon considering all the Circumstances, he is satisfied, that he was incapable, knowingly, of doing what he did; and therefore insists upon an Incapacity and Insanity of Mind in his Defence.

My Lords, It is certainly true, that the Fact is not Murder without Malice; so natural Justice says; so the Law says, on which the Indictment is framed: And Malice must depend, in every Case, upon the Will and Understanding of the Party. If the Defence is founded in Truth; as the Noble Prisoner at the Bar has seen the Anxiety of your Lordships to give it all due Weight, through the whole Course of his Trial; so now, in the Conclusion, he will receive from you, as his Judges, the full Benefit of that Defence in his Acquittal. If it is not founded in Truth, I am persuaded, that no other Consideration, respecting the Rank and Quality of the Noble Prisoner, and his Relation to your Lordships, will turn your Attention from the Evidence, nor make the least Impression upon the Firmness of your Justice.

Before I observe upon the Evidence, I will presume, with your Lordships Indulgence, to state to you the Legal Notion of that Defence, which has been urged and attempted in Proof.

My Lords, The Law of *England*, which is wisely adapted to punish Crimes with Severity, for the Protection of Mankind, and for the Honour of Government, provides, at the same Time, with the greatest Equity, for the Imbecillity and Imperfections of Human Nature. Therefore, my Lord Chief Justice *Hale* (the Weight and Authority of whose Writings are known to your Lordships and to the whole Kingdom) explains the Law upon this Subject, at large, with his usual Clearness and Accuracy. It is in his First Volume of the History of the Pleas of the Crown, (fol. 30), where he traces all the Distinctions, which the Nature of this Question admits, as it concerns the Trial of Criminals for Capital Offences. I will collect the Substance of what he says, and submit it to your Lordships, as founded not only in Law and Practice, but in the most unerring Rules of Reason and Justice.

My Lords, He begins with observing, that "There is, 1st, A Partial "Insanity of Mind, and there is, 2dly, A Total Insanity. 1st, Par- "tial Insanity is, either in respect to Things, when they, who are com- "petent as to some Matters, are not so as to others; or else it is Partial "in respect to the Degree. This is the Condition of many, especially "of Melancholy Persons. As to such, a Partial Insanity will not ex- "cuse them; for (he says) that Persons who are Felons of themselves, "and other Felons, are under a Degree of it, when they offend." It is difficult to draw the Line, which divides Perfect from Partial Insanity; and he refers it to the Discretion of the Judge and Jury, who must duly weigh and consider the Whole; "Left on one Side, there be a Kind of "Inhumanity towards the Defects of Human Nature; or, on the other "Side, too much Indulgence given to great Crimes." Then, my Lords, he speaks of the general Rule, which he would chuse to lay down, as the best Measure of his own Judgment; and it is, "That a Person, who "has ordinarily as great a Share of Understanding, as a Child of Four- "teen Years of Age, is such a Person, as may be guilty of Treason or "Felony. 2dly, As to Total Insanity or Alienation of Mind, which "is perfect Madness, this (Lord *Hale* agrees) will plainly excuse from "the Guilt of Felony and Treason."

But he distinguishes under the Head of Total Insanity, between "that "Species, which is fixed and permanent; and Lunacy, which comes "by Periods or Fits."

Of this latter Kind he expresses himself thus: "Crimes committed by "Lunaticks, in such their Distempers, are under the same Judgment, "as those committed by Men partially insane. The Person, who is ab- "solutely mad for a Day, killing a Man in that Distemper, is equally "not Guilty, as if he were mad without Intermission. But such Per- "sons, as have their lucid Intervals, have usually, in those Intervals at "least, a competent Use of Reason; and Crimes committed by them "are of the same Nature, and punishable in the same Manner, as if they "had no such Defect."

My Lords, Afterwards, he treats of that Insanity which arises from Drunkenness, and lays it down, that "By the Law of *England*, such a "Person shall have no Privilege from this voluntary contracted Madness, "but shall have the same Judgment, as if he were in his right Senses". (unless it be occasioned by Medicine unskilfully administred, or Poison accidentally taken). Indeed, if by such Practices an habitual, fixed Frenzy be caused, it puts the Man in the like Condition, with respect to Crimes, as if that Frenzy were at first involuntarily contracted.

My Lords, The Result of the whole Reasoning of this wise Judge and great Lawyer (so far as it is immediately relative to the present Purpose) stands thus. If there be a total permanent Want of Reason, it will acquit the Prisoner. If there be a total temporary Want of it, when the Offence was committed, it will acquit the Prisoner: But if there be only a partial Degree of Insanity, mixed with a partial Degree of Reason; not a full and complete Use of Reason, but (as Lord *Hale* carefully and emphatically expresses himself) a competent Use of it, sufficient to have restrained those Passions, which produced the Crime; if there be Thought and Design; a Faculty to distinguish the Nature of Actions; to discern the Difference between moral Good and Evil; then, upon the Fact of the Offence proved, the Judgment of the Law must take Place.

My Lords, The Question therefore must be asked; Is the Noble Prisoner at the Bar to be acquitted from the Guilt of Murder, on account of Insanity? It is not pretended to be a constant general Insanity. Was he, under the Power of it, at the Time of the Offence committed? Could he, did he, at that Time, distinguish between Good and Evil?

The same Evidence, which establishes the Fact, proves, at the same Time, the Capacity and Intention of the Noble Prisoner. Did he weigh the Motives? Did he proceed with Deliberation? Did he know the Consequences?

My Lords, He weighed the Motives. The Two Witnesses, who speak most strongly and materially to this Part of the Cause, as well as to every other, are, *Sarah Johnson* the Daughter of the Deceased, and Mr. *Kirkland* the Surgeon.

The Circumstances proved by their Evidence shew, that the Malice conceived, on this unfortunate Occasion, was steady, cool, and premeditated. Mr. *Johnson* had acted, for many Years, as Steward to collect the Rents of such Lands as Lord *Ferrers* had in Possession; and he was himself Tenant of One of the Farms. At the Time of passing the Act of Parliament, Two Years ago, relative to the Noble Lord's Estate and Affairs, Mr. *Johnson* stood so well in his Opinion and Favour, as to be recommended by his Lordship to be Receiver, for the various Trusts and Purposes in the Act. Something passed on that Occasion, which disgusted the Noble Lord, and made him jealous, that *Johnson* had taken Part against him. From that Moment, he entertained Resentment and Hatred in his Heart. More lately still, he took Offence against *Johnson*, as to a Contract for the Sale of Coals upon Part of the Estate, in which his Lordship thought (as he seems to be knowing and attentive in his private Business) that there had been some Collusion, to impose upon him.

My Lords, The first Instance of his Resentment appeared to you from the Evidence of *Sarah Johnson*, the Daughter: That, in the *November* preceding the killing of her Father, Lord *Ferrers*, accompanied by Mr. *Clifford*, delivered a Paper to *Johnson*, the Body of which was voluntarily admitted by my Lord to be of his own Hand-writing. It was a Notice to *Johnson* to quit the Farm which he rented, and *Clifford* was the intended Successor. This Step proceeded from Resentment, and it was so explained afterwards by himself to *Kirkland*, when he said, that he had long wanted to drive *Johnson* out of the Farm, and make him return to *Cheshire*, from whence he came. My Lords, It is very plain, that the Noble Lord took his Resolution——

Earl *Ferrers.* Mr. Sollicitor, you mistake; the Notice was given a Twelvemonth ago last *November*; it was not given in the last *November*.

Mr. *Sollicitor General.* My Lords, I am extremely obliged to the Noble Lord at the Bar, for setting me right in the least Circumstance; and hope that he will always do it, whenever I mistake. I mean to be as exact as I am able. My Lords, The View with which I mention the Notice to turn *Johnson* out of the Farm, is this: Lord *Ferrers*, in order to shew the Improbability of his conceiving Malice against *Johnson*, has relied upon it, that he was always known to entertain the greatest Regard and Friendship for that unfortunate Man. My Lords, I admit the Friendship and Kindness down to the Time of passing the Act of Parliament: And I said, that his Lordship had recommended *Johnson* to be Receiver. But soon after the passing of that Act, he certainly changed his Opinion. It is sufficient, therefore, that the Notice to quit the Farm (which was the first strong Mark of his Resentment proved in Evidence) was given, subsequent to the Proceedings of the Legislature. Whether the Notice was given last *November*, or in the Year preceding, the Observation, as applied to this Purpose, remains in its full Force.

My Lords, I was saying, that, it was plain, his Lordship gradually wrought himself up to a Resolution of destroying Mr. *Johnson*. The Daughter, *Sarah Johnson*, proves, that his Lordship declared, in her Hearing, when she went to *Stanton*, in the Evening of the 18th of *January*, to see her dying Father, that he designed it. He declared to *Kirkland*, that since the Year 1753, *Johnson* had been a Villain; that he had done Things not right; that his Lordship fully intended to shoot *Johnson* dead, as a Villain who deserved Death; and that it was premeditated. He complained farther to *Kirkland*, that *Johnson* had colluded with his Enemies to obtain the Act of Parliament; but added, that the chief Reason, which had just then provoked him, was, the Contract with Mr. *Curzon*, in relation to the Profits of his Coals. He upbraided *Johnson* that Evening, upon his Death-bed, in like Terms of Reproach. And though the Witness said, that his Lordship might then be raised with Liquor in some Degree, yet he did not lose his Understanding; and the Manner, in which he spoke, was temperate.

My Lords, Can there be a clearer Proof, that the Noble Prisoner weighed the Motives of this Action? Neither these, nor any other Motives, will justify it; but the Evidence shews, that his Conduct was not absurd, but rational and consistent. The same Crime has been committed in all Ages, upon Grounds as slight, by Men who never thought of setting up the Defence of Lunacy. Motives like those suggested, might easily and naturally work upon one, the Course of whose Life (as explained by the Witnesses) betrays so many Marks of ungoverned Passion;

sion; though the same Motives would not have inflamed Tempers, less susceptible of Violence than his own.

My Lords, He proceeded with equal Deliberation to commit the Fact. The Attention, Thought, and Care, with which he acted, are remarkable.

It appears, that he had appointed a particular Day for Mr. *Johnson* to wait upon him. *Friday* the 18th of *January* was fixed by the Order of Lord *Ferrers*; and the Appointment was made some Days beforehand. *Elizabeth Burgeland* has told your Lordships, that Mr. *Johnson* was expected at *Stanton* in the Forenoon of that very Day. *Sarah Johnson* tells your Lordships, that she heard her Father declare, on the *Sunday* preceding, that he was to attend Lord *Ferrers* on *Friday*. *Kirkland* proves, that the Noble Prisoner himself said to the Witness at *Stanton*, that, upon *Johnson*'s coming into the Room, they had a Conversation together, after the Door was locked, by way of warm and violent Expostulation on the Part of my Lord; and that he tendered a Paper to be signed by *Johnson*, acknowledging his Villainy. *Elizabeth Saxon* overheard Part of what was said. That Paper must have been the Result of Thought and Consideration, probably prepared before *Johnson* came. Your Lordships observed, with some Emotion, the Account given of the Impatience with which Confessions of Villainy were expected, and almost extorted afterwards, from the dying Man.

My Lords, when the Wound was given, the Noble Lord at the Bar told Mr. *Kirkland*, that he was cool at the Time he did it: That he took Aim; but not having killed *Johnson*, he intended to shoot again: That, however, Nature got the better of Resolution, when he observed the Pain under which *Johnson* languished. It is proved, that in the Evening, whilst *Kirkland* and Lord *Ferrers* sat together in the Still-Room, his Lordship declared, that he did not intend to shoot *Johnson* dead, but only to make him smart in the Hip and Side. This was taken Notice of by the Noble Prisoner, as a Variation in *Kirkland's* Account of the Intention with which *Johnson* was shot, inconsistent with what the Witness had said before. But the Variation probably arose from my Lord's own Manner of discoursing during that Evening. The Observation, therefore, cannot affect the Credit of the Witness; and the Intention declared, of killing or wounding, will not vary the Construction of Law upon the Fact committed. Your Lordships heard too, what Lord *Ferrers* said in the Hearing of *Sarah Johnson*; that he had tried the Pistol through a Deal Board, and knew it to be good. He said the same Thing to *Kirkland*, expressing some Surprize (as the Witness understood it), that the Ball did not go through *Johnson*.

All these Circumstances shew the Deliberation with which the Noble Prisoner proceeded.

My Lords, let me now ask, when the Motives had been weighed, and the Fact deliberately committed, Did he know the Consequences?

His first Thought was, instantly to send for the Assistance of a Surgeon, and to enquire, whether *Johnson* would live or die. The Daughter came early in the Afternoon. He said to her, that he was afraid of being prosecuted; adding, that if she would not prosecute him, he would maintain her, and her Family. Does not this Circumstance prove, that he readily understood the Consequences? that he knew himself bound to answer to the Law for his Offence? When *Kirkland* came, his Lordship tempted him with fair Promises, to prevent the Neighbours from seizing him. He told *Kirkland*, that a large Bill was owing to him; and my Lord said, that he would pay Part of it then, and the rest in a reasonable Time. In talking over the Circumstances (which he recollected clearly and calmly), he added, that he could justify himself, though, upon his Surrender to your Lordships, he was doubtful whether his Justification would be approved. From what Consciousness in his own Mind did that Doubt arise? He expressed his Fears, during the whole Evening, that he should be seized. He was quieted, in this respect, only by the Conversation of *Kirkland*, and the Manner of his Behaviour. Upon *Kirkland*'s coming to *Stanton*, my Lord enquired much into the Probability of *Johnson*'s dying. In the first Visit which my Lord and the Surgeon made to *Johnson* that Evening, his Lordship gave material Instructions; asked sensible and pertinent Questions, particularly as to the Place of the Wound, and the Effect of the Ball lying in the Abdomen. The Witness thought that Mr. *Johnson* would die, from the very Moment of his first Visit; but he told your Lordships, that he judged it right to deceive Lord *Ferrers*. The noble Prisoner was pleased to say, that the Caution of the Witness might be commended, but not his Honesty. My Lords, the Caution proceeded from Honesty: He was unwilling that his Lordship should escape. This was due to Civil Government, to Justice, and Humanity. To prevent Lord *Ferrers* from taking Alarm, and attempting to escape, *Kirkland* flattered him with Hopes of *Johnson*'s Recovery, during the whole Evening; and his Lordship was told, that if the People should endeavour to seize him, the Witness would persuade them, that there was no Occasion for it. About Eleven o'Clock at Night, Mr. *Kirkland* went up again to *Johnson*: He still continued to amuse Lord *Ferrers* with Hopes of *Johnson*'s Recovery; and, at taking Leave, when *Kirkland* gave him Assurances on that Subject, my Lord said, *then* he might go to Bed in Safety; and retired to his own Chamber. What do all these Circumstances speak, but a correct Knowledge of the Fact, and Apprehension of all its Consequences, either as they concerned *Johnson*, or himself? When he was seized, did he shew Marks of Insanity? He resisted, for some Time; but appeared, in every Respect, in the Judgment of the Witnesses, to be of sound Mind. Afterwards, when he was led into *Kinsey*'s House, his Behaviour was decent; and he made Answer to a worthy Clergyman in the Commission of the Peace, who visited and admonished him, that he knew his Duty as well as any Justice of the Peace.

This is the Substance of the Evidence, which has been offered for the King; and it not only proves the Fact, but proves it to be Murder.

My Lords, What is the Evidence produced by the Noble Lord to weaken the Force of it? In the First Place, there is none which applies to the Time of committing the Fact. His Sobriety is admitted, and Drunkenness would not excuse; and even supposing it had appeared to your Lordships, that the Noble Prisoner was sometimes, by Fits and Starts, under a Degree of Lunacy or temporary Insanity; yet, if he was of sound Mind at that Hour, he is a Person within all the Rules and Distinctions which Lord *Hale* explains. But, my Lords, in the next Place, I must observe, that no general Evidence has been offered, which proves his Lunacy or Insanity at any Time; for his own Witnesses fail in their Endeavours to shew it. This appears from their Manner of expressing themselves in their original Examination; but still more in the Answers, which they gave to the Questions asked upon the Cross-Examination.

The Two first Witnesses called were, Mr. *Bennefold*, and Mr. *Goostrey*. They describe the Insanity of the Noble Lord at the Bar to consist of Flights. They say, that he would swear; would talk to himself; that he would use strange Gestures; that he had Friends, and suspected them; that he was of a positive Temper, and difficult to be dissuaded from any Opinion or Resolution which he had once formed. But Mr. *Bennefold*, upon the Cross-Examination, admitted, that he never knew of any Act of Wildness done by his Lordship, nor of any Physician sent for, to take Care of him in that respect. He said, upon the whole, that he thought Lord *Ferrers* had better Parts and Understanding than ordinary Men. Mr. *Goostrey* told your Lordships, upon the Cross-Examination, that he had done Business several Years for Lord *Ferrers*; that he had advised and prepared Deeds for his Lordship to execute; that he had assisted in suffering a Recovery to bar the Entail of the Estate; and admitted his Sense and Capacity in general, but inferred Insanity from Positiveness of Temper and Opinion. However, in Answer to a Question proposed by one of your Lordships, he said, that he thought Lord *Ferrers* capable of distinguishing between moral and immoral Actions.

Several other Witnesses have been called To-day. I will first mention Mr. *Clarges*. He describes similar Circumstances with Mr. *Bennefold* and Mr. *Goostrey*, from which he collects the Insanity of the Noble Prisoner. He said, that he had observed great Oddities in my Lord, during his Minority, but no Defect of Understanding. He could not specify particular Instances; and added, that his Lordship was jealous and suspicious: But the Witness never saw him in such a Situation, as not to be capable of distinguishing between Good and Evil, and not to know, that Murder was a great Crime.

My Lords, This Account of the State of the Noble Prisoner's Mind is consistent, not only with a considerable Degree of Understanding, but with the highest Degree of it. If the Law were to receive such Excuses, it would put a Sword into the Hand of every savage and licentious Man, to disturb private Life, and public Order.

My Lords, There was another Witness of a different and a much lower Sort than those whom I have named; I mean *Elizabeth Williams*. She was the only Person who said, that the Noble Earl was always mad. When she came to explain the Instances from which she drew that Conclusion, the principal one insisted upon was ridiculous; the Anger which he shewed against a Servant, who had neglected to take Care of a favourite Mare, intrusted to his Management. This was a Vivacity so natural, that, if it be deemed a Symptom of Madness, few are free from it; and I doubt the Inference will go far in Cases of common Life.

The Two next Witnesses, whom I will mention, are the Brothers of the Noble Earl. My Lords, I own I felt for them. It gave me Pain to see them, in a Cause which touches a Brother's Life, brought to the Bar as Witnesses, to mitigate the Consequences of One Misfortune, by endeavouring to prove another of the most tender and affecting Nature; and if they had spoke stronger to Matters of Conjecture, Opinion, and Belief, for my Part, I could easily have excused them.

My Lords, They both spoke with Caution, and as Men of Honour; but One of them was the only Witness of Weight, who expressed a Belief, that, at particular Times, the Noble Lord might not be able to distinguish between moral Good and Evil. I did not observe, that he spoke of any Instance within his own Recollection. The Circumstances, from which these Gentlemen inferred Insanity, were for the most Part of the same Kind with those which came from the Mouths of the other Witnesses. They did not carry the Marks of it in the least Degree beyond that Evidence. And Mr. *Walter Shirley* admitted, That the Noble Lord at the Bar had long Intervals of Reason. I endeavour to repeat the Expression, and I think it was so. Mr. *Robert Shirley* told your Lordships, That he had not seen the Noble Prisoner for Four Years past; that the last Time of seeing Lord *Ferrers* was, at *Burton upon Trent*. He mentioned the carrying of Pistols, and Arms, and a large Case-Knife, at that Time. I understood him to say, that the Noble Lord generally did so; the Witness had seen it only once; but from that Circumstance he argued Insanity. Your Lordships will judge, whether this Practice might not be owing to Jealousy and Violence of Temper, as well as to Lunacy and Madness. The Witness added, That he had written formerly to his Brother Captain *Washington Shirley*, about taking out a Commission of Lunacy against Lord *Ferrers*; but I could not find, that any Measures were taken in Consequence of that Opinion given by the Witness, nor did he himself ever take any Steps towards it, nor any Branch of his Family.

The last Witness called, on Behalf of the Noble Prisoner, was Doctor *Monroe*. He was brought here to describe, what Symptoms he considers as Marks of Lunacy or Insanity. He said, that there were many; and on being asked particularly, as to the several Symptoms suggested in this Cause, Doctor *Monroe* was led to speak principally of Three Marks of Lunacy. The First was uncommon Fury, not caused by Liquor, but raised by it. Surely this Circumstance will not infer Insanity. The Next was, Jealousy and Suspicion, with causeless Quarrelling. Do not many, who are not Lunaticks, suspect or quarrel without Cause, and become dangerous to their Neighbours? The Third was, carrying Arms; which (he said) though less usual, might be a Mark of Lunacy. And it is equally true, that such Behaviour may prove, in many Cases, a bad Heart and a vicious Mind, as well as Lunacy. My Lords, the general Observation, which occurs upon Doctor *Monroe*'s Evidence is this; that he did not describe any of these Things, as absolute Marks of Lunacy, so as to denote every Man a Lunatick, who was subject to them. Indeed he could not have said it, consistently with Common Sense and Experience.

This was the Import of the Evidence for the Noble Prisoner. No Witnesses were offered, on the Part of the King, in Reply to that Evidence. And, my Lords, the Reason why they were not offered was,

becauſe the Counſel who attend your Lordſhips for the King, chuſe to ſubmit it to your Opinions, whether the Evidence produced for the Priſoner does not tend to ſtrengthen, rather than weaken, that Proof of Capacity, which ariſes out of all the Circumſtances urged, in Support of the Charge? From thoſe Circumſtances, I have already ſhewn, that the Noble Priſoner was conſcious of what he did, at the Time of the Offence committed; that he weighed the Motives; that he acted with Deliberation; that he knew the Conſequences.

I will only take Notice of one Thing more. Your Lordſhips have attended with great Patience, and the moſt impartial Regard to Juſtice, to all the Evidence, and every Obſervation, which has been laid before you. You have ſeen the Noble Priſoner, for Two Days at your Bar (though labouring under the Weight of this Charge), Croſs-examining the Witneſſes for the King, and Examining his own, in a Manner ſo pertinent, as cannot be imputed merely to the Hints and Advice of thoſe Agents and Counſel, with which you have indulged him. I am perſuaded, from the Appearance and Conduct of the Noble Priſoner, that if the Fact itſelf would have admitted Doubts, and probable Arguments, to repel the Force of any One material Circumſtance, your Lordſhips would have heard him preſs thoſe Arguments, with Senſe and Sagacity.

But, my Lords, The Truth is, That the Fact tried this Day ſtands without Alleviation. There is not a Colour for the Defence, unleſs it ariſes from the Enormity of the Crime, aggravated by the Manner of committing it; an old, faithful Servant of himſelf and his Family, murdered in cold Blood, whilſt he was performing, by expreſs Orders, an Act of dutiful Attendance upon his Maſter; murdered in the moſt deliberate and wilful Manner, deſtructive of all Confidence in human Society. My Lords, in ſome Senſe, every Crime proceeds from Inſanity. All Cruelty, all Brutality, all Revenge, all Injuſtice, is Inſanity. There were Philoſophers, in ancient Times, who held this Opinion, as a ſtrict Maxim of their Sect; and, my Lords, the Opinion is right in Philoſophy, but dangerous in Judicature. It may have a uſeful and a noble Influence, to regulate the Conduct of Men; to controul their impotent Paſſions; to teach them, that Virtue is the Perfection of Reaſon, as Reaſon itſelf is the Perfection of human Nature; but not to extenuate Crimes, nor to excuſe thoſe Puniſhments, which the Law adjudges to be their Due.

My Lords, The Neceſſity of his Majeſty's Juſtice; the Neceſſity of public Example, called for this Proſecution; and the Effect of the whole Evidence is ſubmitted to the Weight and Wiſdom of your Judgment.

Then the Lord High Steward returned back to his Chair.

Lord High Steward. Lieutenant of the *Tower*, Take my Lord *Ferrers* from the Bar.

Which was done accordingly.

Lord Privy Seal. My Lords, I move your Lordſhips to adjourn to the Chamber of Parliament.

Lords. Ay, Ay.

L. H. S. This Houſe is adjourned to the Chamber of Parliament.

The Lords, and others, returned to the Chamber of Parliament, in the ſame Order they came down: And, after ſome Time, the Houſe was adjourned again into *Weſtminſter-Hall*; and the Peers being there ſeated, and the Lord High Steward in his Chair, and the Houſe reſumed, the Serjeant at Arms made Proclamation for Silence, as uſual.

L. H. S. Your Lordſhips have heard the Evidence, and every Thing that has been alledged on both Sides; and the Solemnity of your Proceedings requires, that your Lordſhips Opinions on the Queſtion, Of Guilty or Not Guilty, ſhould be delivered ſeverally, in the Abſence of the Priſoner, beginning with the junior Baron; and that the Priſoner ſhould afterwards be acquainted with the Reſult of thoſe Opinions by me. Is it your Lordſhips Pleaſure to proceed now to give your Opinions on the Queſtion, Of Guilty, or Not Guilty?—*Lords.* Ay, Ay.

Then the Lord High Steward ſtood up uncovered; and, beginning with the youngeſt Peer, ſaid,

George Lord *Lyttelton*. What ſays your Lordſhip? Is *Lawrence* Earl *Ferrers* Guilty of the Felony and Murder whereof he ſtands indicted, or Not Guilty?

Whereupon *George* Lord *Lyttelton* ſtanding up in his Place, uncovered, and laying his Right Hand upon his Breaſt, anſwered,

Guilty, upon my Honour.

In like Manner, the ſeveral Lords after-mentioned, being all that were preſent, anſwered as followeth;

Wills Lord *Harwich*. Guilty, upon my Honour.
William Lord *Mansfield*. Guilty, upon my Honour.
Horatio Lord *Walpole*. Guilty, upon my Honour.
Thomas Lord *Hyde*. Guilty, upon my Honour.
Vere Lord *Vere*. Guilty, upon my Honour.
William Lord *Ponſonby*. Guilty, upon my Honour.
Thomas Lord *Archer*. Guilty, upon my Honour.
Anthony Lord *Feverſham*. Guilty, upon my Honour.
Henry Lord *Ravenſworth*. Guilty, upon my Honour.
George Lord *Anſon*. Guilty, upon my Honour.
Matthew Lord *Forteſcue*. Guilty, upon my Honour.
Thomas Lord *Bruce*. Guilty, upon my Honour.
Samuel Lord *Sandys*. Guilty, upon my Honour.
Richard Lord *Edgcumbe*. Guilty, upon my Honour.
John Lord *Chedworth*. Guilty, upon my Honour.
Thomas Lord *Montford*. Guilty, upon my Honour.
William Lord *Talbot*. Guilty, upon my Honour.
John Lord *Monſon*. Guilty, upon my Honour.
William Lord *King*. Guilty, upon my Honour.
Matthew Lord *Ducie*. Guilty, upon my Honour.
Charles Lord *Cadogan*. Guilty, upon my Honour.
Richard Lord *Onſlow*. Guilty, upon my Honour.
Allen Lord *Bathurſt*. Guilty, upon my Honour.
Samuel Lord *Maſham*. Guilty, upon my Honour.
Francis Lord *Middleton*. Guilty, upon my Honour.
John Lord *Boyle*. Guilty, upon my Honour.
Nathanael Lord *Delawere*. Guilty, upon my Honour.
John Lord *Berkeley* of *Stratton*. Guilty, upon my Honour.
John Lord *Ward*. Guilty, upon my Honour.
William Lord *Byron*. Guilty, upon my Honour.
John Lord *Clifton*. Guilty, upon my Honour.
John Lord *St. John* of *Bletſoe*. Guilty, upon my Honour.
Hugh Lord *Willoughby* of *Parham*. Guilty, upon my Honour.
Edward Lord *Wentworth*. Guilty, upon my Honour.
John Lord *Willoughby* of *Broke*. Guilty, upon my Honour.
John Lord *Delawarr*. Guilty, upon my Honour.
James Lord *Audley*. Guilty, upon my Honour.
George Lord *Abergavenny*. Guilty, upon my Honour.
Jacob Viſcount *Folkeſtone*. Guilty, upon my Honour.
Hugh Viſcount *Falmouth*. Guilty, upon my Honour.
Frederick Viſcount *Bolingbroke* and *St. John*. Guilty, upon my Honour.
Thomas Viſcount *Weymouth*. Guilty, upon my Honour.
Richard Viſcount *Say and Sele*. Guilty, upon my Honour.
Stephen Earl of *Ilcheſter*. Guilty, upon my Honour.
Thomas Earl of *Fauconberg*. Guilty, upon my Honour.
Philip Earl of *Hardwicke*. Guilty, upon my Honour.
Charles Earl *Cornwallis*. Guilty, upon my Honour.
Francis Earl of *Guilford*. Guilty, upon my Honour.
Francis Seymour Earl of *Hertford*. Guilty, upon my Honour.
Simon Earl *Harcourt*. Guilty, upon my Honour.
Charles Earl of *Egremont*. Guilty, upon my Honour.
Hugh Earl of *Northumberland*. Guilty, upon my Honour.
Henry Arthur Earl of *Powis*. Guilty, upon my Honour.
John Earl of *Buckinghamſhire*. Guilty, upon my Honour.
Granville Leveſon Earl *Gower*. Guilty, upon my Honour.
Francis Earl *Brooke*. Guilty, upon my Honour.
John Earl of *Portſmouth*. Guilty, upon my Honour.
William Earl of *Harrington*. Guilty, upon my Honour.
Thomas Earl of *Effingham*. Guilty, upon my Honour.
John Earl *Aſhburnham*. Guilty, upon my Honour.
James Earl *Waldegrave*. Guilty, upon my Honour.
George Earl of *Pomfret*. Guilty, upon my Honour.
George Earl of *Macclesfield*. Guilty, upon my Honour.
Philip Earl *Stanhope*. Guilty, upon my Honour.
William Earl *Cowper*. Guilty, upon my Honour.
Henry Earl of *Suſſex*. Guilty, upon my Honour.
George Earl of *Halifax*. Guilty, upon my Honour.
Heneage Earl of *Aylesford*. Guilty, upon my Honour.
Charles Earl of *Tankerville*. Guilty, upon my Honour.
William Earl of *Dartmouth*. Guilty, upon my Honour.
William Earl of *Strafford*. Guilty, upon my Honour.
Edward Earl of *Oxford* and Earl *Mortimer*. Guilty, upon my Honour.
John Earl of *Hyndford*. Guilty, upon my Honour.
Hugh Earl of *Marchmont*. Guilty, upon my Honour.
George Earl of *Aberdeen*. Guilty, upon my Honour.
John Earl *Breadalbane*. Guilty, upon my Honour.
John Earl of *Loudoun*. Guilty, upon my Honour.
James Earl of *Moray*. Guilty, upon my Honour.
James Earl of *Morton*. Guilty, upon my Honour.
George Earl of *Cholmondeley*. Guilty, upon my Honour.
George William Earl of *Coventry*. Guilty, upon my Honour.
George Anne Earl of *Albemarle*. Guilty, upon my Honour.
William Henry Earl of *Rochford*. Guilty, upon my Honour.
Richard Earl of *Scarborough*. Guilty, upon my Honour.
Other Lewis Earl of *Plymouth*. Guilty, upon my Honour.
Robert Earl of *Holderneſſe*. Guilty, upon my Honour.
George Henry Earl of *Litchfield*. Guilty, upon my Honour.
Anthony Aſhley Earl of *Shafteſbury*. Guilty, upon my Honour.
George Earl of *Cardigan*. Guilty, upon my Honour.
Anne Holles Earl of *Eſſex*. Guilty, upon my Honour.
John Earl of *Sandwich*. Guilty, upon my Honour.
Sackville Earl of *Thanet*. Guilty, upon my Honour.
Daniel Earl of *Winchelſea* and *Nottingham*. Guilty, upon my Honour.
Charles Earl of *Peterborough* and *Monmouth*. Guilty, upon my Honour.
John Earl of *Weſtmorland*. Guilty, upon my Honour.
Charles Earl of *Northampton*. Guilty, upon my Honour.
Henry Earl of *Lincoln*. Guilty, upon my Honour.
Henry Earl of *Pembroke* and *Montgomery*. Guilty, upon my Honour.
Charles Marquis of *Rockingham*. Guilty, upon my Honour.
Francis Duke of *Bridgewater*. Guilty, upon my Honour.
Henry Duke of *Chandois*. Guilty, upon my Honour.
Robert Duke of *Manchester*. Guilty, upon my Honour.
Thomas Holles Duke of *Newcaſtle*. Guilty, upon my Honour.
Evelyn Duke of *Kingſton*. Guilty, upon my Honour.
Peregrine Duke of *Ancaſter* and *Keſteven*, Lord Great Chamberlain of *England*. Guilty, upon my Honour.
Archibald Duke of *Argyll*. Guilty, upon my Honour.
George Duke of *Marlborough*. Guilty, upon my Honour.
Thomas Duke of *Leeds*. Guilty, upon my Honour.
Charles Duke of *Bolton*. Guilty, upon my Honour.
Auguſtus Henry Duke of *Grafton*. Guilty, upon my Honour.
Charles Duke of *Richmond*. Guilty, upon my Honour.
William Duke of *Cleveland* and *Southampton*. Guilty, upon my Honour.
William Duke of *Devonſhire*, Lord Chamberlain of his Majeſty's Houſehold. Guilty, upon my Honour.
John Duke of *Rutland*, Lord Steward of his Majeſty's Houſehold. Guilty, upon my Honour.
Richard Earl *Temple*, Lord Privy Seal. Guilty, upon my Honour.

Then the Lord High Steward, ſtanding uncovered at the Chair, laying his Hand upon his Breaſt, ſaid;

L. H. S. My Lords, I am of Opinion, that *Laurence* Earl *Ferrers* is Guilty of the Felony and Murder whereof he ſtands indicted, upon my Honour.

L. H. S. Your Lordſhips have unanimouſly found, that *Lawrence* Earl *Ferrers* is Guilty of the Felony and Murder whereof he ſtands indicted: Is it your Lordſhips Pleaſure that he ſhould be called in, and acquainted therewith?—*Lords.* Ay, Ay.

Proclamation was then made for the Lieutenant of the *Tower* to bring the Priſoner to the Bar, which was done in the ſame Order as before; and afterwards Proclamation was made for Silence, as uſual.

L. H. S. *Lawrence* Earl *Ferrers*, The Lords have conſidered of the Charge of Felony and Murder which has been brought againſt you; they have likewiſe conſidered the Evidence, and every Thing which your Lordſhip has alledged in your Defence; and, upon the whole Matter, their Lordſhips have unanimouſly found, that you are Guilty of the Felony and Murder whereof you ſtand indicted.

L. H. S. Lieutenant of the *Tower*, take the Priſoner from the Bar.

Lord Privy Seal. My Lords, I move your Lordſhips to adjourn to the Chamber of Parliament.

L. H. S. Is it your Lordſhips Pleaſure to adjourn to the Chamber of Parliament?—*Lords.* Ay, Ay.

L. H. S. This Houſe is adjourned to the Chamber of Parliament.

Then the Lords returned, in the Order before mentioned, to the Chamber of Parliament; and, the Houſe being there reſumed, Reſolved to proceed further, in order to the giving Judgment againſt the ſaid Earl *Ferrers*, To-morrow; and that the ſaid Earl be brought to the Bar of the Houſe in *Weſtminſter-Hall*, for that Purpoſe, To-morrow, at Eleven of the Clock in the Forenoon.

Friday, April 18th, 1760. The Third Day.

THE Lords, and others, came from the Chamber of Parliament into *Weſtminſter-Hall*, in the ſame Order as on *Wedneſday* laſt; and the Peers were there ſeated, and the Lord High Steward in his Chair.

L. H. S. My Lords, The Houſe is reſumed. Is it your Lordſhips Pleaſure that the Judges may be covered?

Lords. Ay, Ay.

Then the Serjeant at Arms made Proclamation for Silence, as uſual; and afterwards the following Proclamation.

Serjeant at Arms. Oyez, Oyez, Oyez! Lieutenant of the *Tower*, bring forth your Priſoner, *Lawrence* Earl *Ferrers*, to the Bar, purſuant to the Order of the Houſe of Lords.

The Deputy Governor of the *Tower* brought the Priſoner to the Bar in the like Form as before; and then he kneeled down.

L. H. S. Your Lordſhip may riſe.

The Serjeant at Arms made Proclamation for Silence as uſual.

L. H. S. *Lawrence* Earl *Ferrers*, when you was laſt at this Bar, I acquainted your Lordſhip, That, upon your Trial, my Lords your Peers had unanimouſly found you Guilty of the Felony and Murder whereof you ſtand indicted: What has your Lordſhip to ſay, Why Judgment of Death ſhould not paſs upon you according to Law?

Earl *Ferrers.* I deſire that the Clerk may repeat what I ſay—Which he did.

My Lords,

I MUST acknowledge myſelf infinitely obliged for the fair and candid Trial your Lordſhips have indulged me with.

I am extremely ſorry that I have troubled your Lordſhips with a Defence that I was always much averſe to, and has given me the greateſt Uneaſineſs; but was prevailed on by my Family to attempt it, as it was what they themſelves were perſuaded of the Truth of; and had propoſed to prove me under the unhappy Circumſtances that have been ineffectually repreſented to your Lordſhips.

This Defence has put me off from what I propoſed, and what perhaps might have taken off the Malignity of the Accuſation; but, as there has been no Proof made to your Lordſhips, can only be deemed at this Time my own Aſſertion: But that I muſt leave to your Lordſhips.

My Lords, I have been informed of this Intention of the Family before; and your Lordſhips, I hope, will be ſo good to conſider, the Agony of Mind a Man muſt be under, when his Liberty and Property are both attacked: My Lords, under theſe unhappy Circumſtances, though the Plea I have attempted was not ſufficient to acquit me to your Lordſhips, according to the Laws of this Country; yet I hope your Lordſhips will think, that Malice, repreſented by the Counſel for the Crown, could not ſubſiſt; as I was ſo unhappy as to have no Perſon preſent at the Time of the fatal Accident, it was impoſſible for me to ſhew your Lordſhips, that I was not at that Inſtant poſſeſſed of my Reaſon.

As the Circumſtances of my Caſe are freſh in your Lordſhips Memories, I hope your Lordſhips will, in Compaſſion to my Infirmities, be kind enough to recommend me to his Majeſty's Clemency.

My Lords, As I am uncertain whether my unhappy Caſe is within the late Act of Parliament, if your Lordſhips ſhould be of Opinion that it is, I humbly hope the Power of reſpiting the Execution will be extended in my Favour, that I may have an Opportunity of preparing myſelf for the great Event, and that my Friends may be permitted to have Acceſs to me.

If any Thing I have offered ſhould be thought improper, I hope your Lordſhips will impute it to the great Diſtreſs I am under at this Juncture.

L. H. S. Has your Lordſhip any Thing elſe to offer?

Earl *Ferrers.* No.

L. H. S. Make Proclamation for Silence whilſt Judgment is giving.

Serjeant at Arms. Oyez, Oyez, Oyez! Our Sovereign Lord the King doth ſtrictly charge and command all Manner of Perſons to keep Silence, whilſt Judgment is giving, upon Pain of Impriſonment.

Lord High Steward.

Lawrence Earl *Ferrers*,

HIS Majeſty, from his Royal and Equal Regard to Juſtice, and his ſteady Attention to our Conſtitution, (which hath endeared him in a wonderful Manner to the univerſal Duty and Affection of his Subjects) hath commanded this Inquiry to be made, upon the Blood of a very ordinary Subject, againſt your Lordſhip, a Peer of this Realm: Your Lordſhip hath been arraigned; hath pleaded, and put yourſelf on your Peers; and they (whoſe Judicature is founded and ſubſiſts in Wiſdom, Honour, and Juſtice) have found your Lordſhip unanimouſly Guilty of the Felony and Murder charged in the Indictment.

It is uſual, my Lord, for Courts of Juſtice, before they pronounce the dreadful Sentence ordained by the Law, to open to the Priſoner the Nature of the Crime of which he is convicted; not in order to aggravate or afflict, but to awaken the Mind to a due Attention to, and Conſideration of, the unhappy Situation into which he hath brought himſelf.

My Lord, the Crime of which your Lordſhip is found Guilty, Murder, is incapable of Aggravation; and it is impoſſible, but that, during your Lordſhip's long Confinement, you muſt have reflected upon it, repreſented to your Mind in its deepeſt Shades, and with all its Train of diſmal and deteſtable Conſequences.

As your Lordſhip hath received no Benefit, ſo you can derive no Conſolation from that Refuge you ſeemed almoſt aſhamed to take, under a pretended Inſanity; ſince it hath appeared to us all, from your Croſs-examination of the King's Witneſſes, that you recollected the minuteſt Circumſtances of Facts and Converſations, to which you and the Witneſſes only could be privy, with the Exactneſs of a Memory more than ordinarily found; it is therefore as unneceſſary as it would be painful to me, to dwell longer on a Subject ſo black and dreadful.

It is with much more Satisfaction, that I can remind your Lordſhip, that though, from the preſent Tribunal, before which you now ſtand, you can receive nothing but ſtrict and equal Juſtice; yet you are ſoon to appear before an Almighty Judge, whoſe unfathomable Wiſdom is able, by Means incomprehenſible to our narrow Capacities, to reconcile Juſtice with Mercy; but your Lordſhip's Education muſt have informed you, and you are now to remember, ſuch Beneficence is only to be obtained by deep Contrition, ſound, unfeigned, and ſubſtantial Repentance.

Confined ſtrictly, as your Lordſhip muſt be, for the very ſhort Remainder of your Life; according to the Proviſion of the late Act; yet, from the Wiſdom of the Legiſlature, which, to prevent as much as poſſible this heinous and horrid Offence of Murder, hath added Infamy to Death; you will be ſtill, if you pleaſe, intitled to converſe and communicate with the ableſt Divines of the Proteſtant Church, to whoſe pious Care and Conſolation, in fervent Prayer and Devotion, I moſt cordially recommend your Lordſhip.

Nothing remains for me, but to pronounce the dreadful Sentence of the Law; and the Judgment of the Law is, and this High Court doth award,

" That You, *Lawrence* Earl *Ferrers*, return to the Priſon of the " *Tower*, from whence you came; from thence you muſt be led " to the Place of Execution, on *Monday* next, being the 21ſt Day " of this Inſtant *April*; and when you come there, you muſt be " hanged by the Neck till you are dead, and your Body muſt be " diſſected and anatomized."

" And God Almighty be merciful to your Soul!"

L. H. S. Lieutenant of the *Tower*, Take the Priſoner from the Bar.

Which being done, Proclamation was made for Silence, as uſual.

L. H. S. My Lords, This Trial being at an End, nothing remains to be done here, but to determine the Commiſſion.—*Lords.* Ay, Ay.

L. H. S. Let Proclamation be made for diſſolving the Commiſſion of High Steward.

Serjeant at Arms. Oyez, Oyez, Oyez! Our Sovereign Lord the King does ſtrictly charge and command all Manner of Perſons here preſent, and that have here attended, to depart hence in the Peace of God, and of our ſaid Sovereign Lord the King; for his Grace my Lord High Steward of *Great Britain* intends now to diſſolve his Commiſſion.

Then the White Staff being delivered to the Lord High Steward, by the Gentleman Uſher of the Black Rod, upon his Knee, his Grace ſtood up uncovered; and, holding the Staff in both his Hands, broke it in two, and declared the Commiſſion to be diſſolved; and then leaving the Chair, came down to the Woolpack, and ſaid, Is it your Lordſhips Pleaſure to adjourn to the Chamber of Parliament?—*Lords.* Ay, Ay.

L. H. S. This Houſe is adjourned to the Chamber of Parliament.

Then the Lords and others returned in the ſame Order they came down.

And the Priſoner was carried back to the *Tower* of *London*.

LVII. The Trial of WILLIAM Lord BYRON, Baron BYRON of *Rochdale*, for the Murder of WILLIAM CHAWORTH, Esq. before the Right Honourable the HOUSE OF PEERS, in *Westminster Hall*, in full *Parliament*, on *Tuesday* the 16th, and *Wednesday* the 17th of *April*, 1765.

Tuesday, *April* the 16th, 1765.

In the Court erected in WESTMINSTER-HALL, for the TRIAL of *WILLIAM* Lord *BYRON*, for the Murder of *William Chaworth*, Esquire.

ABOUT Eleven of the Clock the Lords came from their own House into the Court erected in *Westminster-Hall*, for the Trial of *William* Lord *Byron*, in the Manner following:

The Lord High Steward's Gentlemen Attendants, Two and Two.

The Clerks Assistant to the House of Lords, and the Clerk of the Parliament.

Clerk of the Crown in Chancery, bearing the King's Commission to the Lord High Steward, and the Clerk of the Crown in the King's Bench.

The Masters in Chancery, Two and Two.

The Judges, Two and Two.

The Peers eldest Sons, Two and Two.

Peers Minors, Two and Two.

Chester and *Somerset* Heralds.

Four Serjeants at Arms with their Maces, Two and Two.

The Yeoman Usher of the House.

The Barons, Two and Two, beginning with the youngest Baron.

The Bishops, Two and Two.

The Viscounts and other Peers, Two and Two.

The Lord Privy Seal and Lord President.

The Archbishop of *York* and the Archbishop of *Canterbury*.

Four Serjeants at Arms with their Maces, Two and Two.

The Serjeant at Arms attending the Great Seal, and Purse-Bearer.

Then *Garter* King at Arms, and the Gentleman Usher of the Black Rod carrying the White Staff before the Lord High Steward.

Robert Earl of *Northington*, Chancellor of *Great-Britain*, Lord High Steward, alone, his Train borne.

His Royal Highness the Duke of *Gloucester*, his Train borne.

His Royal Highness the Duke of *York*, his Train borne.

The Lords being placed in their proper Seats, and the Lord High Steward upon the Woolpack, the House was resumed.

The Clerk of the Crown in Chancery, having his Majesty's Commission to the Lord High Steward in his Hand, and the Clerk of the Crown in the King's Bench, standing before the Clerk's Table with their Faces towards the State, made Three Reverences; the First at the Table, the Second in the Midway, and the Third near the Woolpack; then kneeled down; and the Clerk of the Crown in Chancery, on his Knee, presented the Commission to the Lord High Steward, who delivered the same to the Clerk of the Crown in the King's Bench to read: Then rising, they made Three Reverences, and returned to the Table. And then Proclamation was made for Silence, in this Manner:

Serjeant at Arms. Oyez, Oyez, Oyez! Our Sovereign Lord the King strictly charges and commands all Manner of Persons to keep Silence, upon Pain of Imprisonment.

Then the Lord High-Steward stood up, and spoke to the Peers.

Lord High Steward. His Majesty's Commission is about to be read: Your Lordships are desired to attend to it in the usual Manner; and all others are likewise to stand up uncovered, while the Commission is reading.

All the Peers uncovered themselves; and they, and all others, stood up uncovered, while the Commission was read.

GEORGE R.

GEORGE the Third, by the Grace of God, of *Great Britain*, *France*, and *Ireland*, King, Defender of the Faith, and so forth, To Our Right Trusty and Right Well-beloved Cousin and Councillor *Robert* Earl of *Northington*, Our Chancellor of *Great Britain*, Greeting; Know ye, That whereas *William Byron*, Baron *Byron* of *Rochdale*, late of the Parish of *St. James*, within the Liberty of *Westminster*, in our County of *Middlesex*, in Our Court at *Westminster*, in the said County of *Middlesex*, before Our Justices assigned to hold Pleas before Us, stands indicted upon the Oath of Twelve Jurors, good and lawful Men of the said County of *Middlesex*, then and there sworn and charged to enquire for Us for the Body of the said County, of Felony and Murder, by him the said *William Byron*, Baron *Byron* of *Rochdale*, done and committed; We, considering that Justice is an excellent Virtue, and pleasing to the Most High; and being willing that the said *William Byron*, Baron *Byron* of *Rochdale*, of and for the Felony and Murder whereof he is indicted as aforesaid before Us, in Our present Parliament, according to the Law and Custom of Our Kingdom of *Great Britain*, may be heard, examined, sentenced, and adjudged; and that all other Things which are necessary on this Occasion may be duly exercised and executed; and for that the Office of High-Steward of *Great Britain* (whose Presence upon this Occasion is required) is now vacant (as We are informed); We, very much confiding in your Fidelity, Prudence, provident Circumspection, and Industry, have, for this Cause, ordained and constituted you Steward of *Great Britain*, to bear, execute, and exercise, for this Time, the said Office, with all Things due and belonging to the same Office in this Behalf: And therefore We command you, that you diligently set about the Premises, and, for this Time, do exercise and execute, with Effect, all those Things which belong to the Office of Steward of *Great Britain*, and which are required in this Behalf. In Witness whereof, We have caused these our Letters to be made Patent. Witness Ourself at *Westminster*, the Fifteenth Day of *April*, in the Fifth Year of Our Reign.

By the KING Himself, signed with his own Hand.

Yorke and *Yorke*.

Serjeant at Arms. God save the King.

Then *Garter*, and the Gentleman Usher of the Black Rod, after Three Reverences, kneeling, jointly presented the White Staff to his Grace the Lord High Steward: And then his Grace, attended by *Garter*, Black Rod, and the Purse-Bearer (making his proper Reverences towards the Throne) removed from the Woolpack to an armed Chair, which was placed on the uppermost Step but one of the Throne, as it was prepared for that Purpose; and then seated himself in the Chair, and delivered the Staff to the Gentleman Usher of the Black Rod on his Right Hand, the Purse-Bearer holding the Purse on his Left.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. Oyez, Oyez, Oyez! Our Sovereign Lord the King strictly charges and commands all Manner of Persons to keep Silence, upon Pain of Imprisonment.

Then the Clerk of the Crown, by Direction of the Lord High Steward, read the *Certiorari*, and the Return thereof, together with the Caption of the Indictment, and the Indictment certified thereupon, against *William* Lord *Byron*; *in hæc verba*:

GEORGE the Third, by the Grace of God, of *Great-Britain*, *France*, and *Ireland*, King, Defender of the Faith, and so forth, To Our Right Trusty and Well-beloved *William* Lord *Mansfield*, Our Chief Justice appointed to hold Pleas before Us, Greeting; We being willing, for certain Reasons, that all and singular Indictments of whatsoever Felonies and Murders whereof *William Byron*, Baron *Byron* of *Rochdale*, late of the Parish of *St. James*, within the Liberty of *Westminster*, in Our County of *Middlesex*, is indicted before you (as is said) be determined before Us, and not elsewhere; do command you, that you do send under your Seal before Us, in Our Parliament, immediately after the Receipt of this Our Writ, all and singular the Indictments aforesaid, with all Things touching the same, by whatsoever Name the said *William Byron*, Baron *Byron* of *Rochdale*, is called in the same; together with this Writ, that We may cause further to be done thereon, what of Right, and according to the Law and Custom of *England* We shall see fit to be done. Witness Ourself at *Westminster*, the Twenty-eighth Day of *February*, in the Fifth Year of Our Reign.

Yorke and *Yorke*.

Label. To the Right Honourable *William* Lord *Mansfield*, Chief Justice appointed to hold Pleas before the King himself, a Writ of *Certiorari*, to certify into the Upper House of Parliament the Indictment found against *William Byron*, Baron *Byron* of *Rochdale*, for Murder, returnable immediately before the King in Parliament.

Yorke and *Yorke*.

Indorsed. BY Order of the Lords Spiritual and Temporal, in Parliament assembled, by virtue of the within Writ to me directed, I send to our Sovereign Lord the King, in this present Parliament under my Seal, the Indictment within mentioned, with all Things touching the same, in certain Schedules hereunto annexed, as I am within commanded.

Mansfield.

Middlesex. BE it remembered, That on *Tuesday* next after the Octave of the Purification of the Blessed *Virgin Mary*, in the Fifth Year of the Reign of our Sovereign Lord *George* the Third, by the Grace of God, of *Great-Britain*, *France*, and *Ireland*, King, Defender of the Faith, in the Court of our said Lord the King, before the King himself at *Westminster*, in the County of *Middlesex*, upon the Oath of *Philip Dyott* of *Dyott-street*, Esquire, *John Chase* of *Great Russel-street*, Esquire, *Henry Raper* of *John-street*, Esquire, *Robert Hucks* of *Great Russel-street*, Esquire, *Oliver Cogbill* of the same, Esquire, *Anthony Chapman* of *Great Ormond-street*, Esquire, *Charles Sheppard* of *Muswell Hill*, Esquire, *Thomas Singleton* of *Finchley*, Esquire, *George Mertins* of *Hatton Garden*, Esquire, *Gideon Arbouin* of the same, Esquire, *John French* of the same, Esquire, *William Clarke* of *Clapton*, Esquire, *Abraham Ogier* of *Clapton*, Esquire, *Edward Nourse* of *Hammersmith*, Esquire, *John Anderson* of *Henrietta-street*, Esquire, *George Mercer* of *Bolsover-street*, Esquire, *Isaac Lefevre* of *Stepney Green*, Esquire, *Henry Mason* of *Great Russell-street*, Esquire, *George Wright* of *Baldwin's Gardens*, Esquire, *Liscombe Price* of *Islington*, Esquire, *Charles Digby* of *Mile End*, Esquire, *Richard Tidswell* of *Edmonton*, Esquire, and *John Duvall* of *Portugal-street*, Gentleman, good and lawful Men of the County of *Middlesex*, then and there sworn and charged to enquire for our said Lord the King, for the Body of the said County of *Middlesex*.

It is presented that the Bill of Indictment hereto annexed is a true Bill.

BURROW.

Middlesex.

Middlesex. THE Jurors for our Lord the King, upon their Oath, present, That the Right Honourable *William Byron*, Baron *Byron* of *Rochdale*, late of the Parish of *Saint James*, within the Liberty of *Westminster*, in the County of *Middlesex*, not having the Fear of God before his Eyes, but being moved and seduced by the Instigation of the Devil, on the Twenty-sixth Day of *January*, in the Fifth Year of the Reign of our Sovereign Lord *George* the Third, by the Grace of God, of *Great Britain*, *France*, and *Ireland*, King, Defender of the Faith, and so forth, with Force and Arms, at the Parish aforesaid, in the County aforesaid, in and upon one *William Chaworth*, Esq. in the Peace of God, and our said Lord the King, then and there being, feloniously, wilfully, and of his Malice aforethought, did make an Assault, and that the said *William* Lord *Byron*, with a certain Sword drawn, made of Iron and Steel, of the Value of Five Shillings, which he the said *William* Lord *Byron*, in his right Hand then and there had and held, him the said *William Chaworth*, in and upon the left Side of the Belly of the said *William Chaworth*, near the Navel of the said *William Chaworth*, then and there feloniously, wilfully, and of his Malice aforethought, did strike, thrust, stab, and penetrate, giving to the said *William Chaworth*, with the Sword drawn as aforesaid, in and upon the said left Side of the Belly of the said *William Chaworth*, near the Navel of the said *William Chaworth*, one mortal Wound, of the Depth of six Inches, and of the Breadth of half an Inch; of which said mortal Wound the said *William Chaworth*, at the said Parish of *Saint James*, within the Liberty of *Westminster*, in the said County of *Middlesex*, and also at the Parish of *Saint George*, *Hanover-square*, within the Liberty of *Westminster* aforesaid, in the same County, from the said Twenty-sixth Day of *January*, in the Year aforesaid, until the Twenty-seventh Day of the same Month, in the same Year, did languish, and languishing did live; on which said Twenty-seventh Day of *January*, in the Year aforesaid, the said *William Chaworth*, at the said Parish of *Saint George*, *Hanover-square*, in the Liberty of *Westminster* aforesaid, in the said County of *Middlesex*, of the said mortal Wound did die: And so the Jurors aforesaid, upon their Oath aforesaid, do say, That the said *William* Lord *Byron*, him the said *William Chaworth*, in Manner and Form aforesaid, feloniously, wilfully, and of his Malice aforethought, did kill and murder, against the Peace of our said Lord the King, his Crown and Dignity.

Witnesses,

John Hewett, Esq.	*Anthony Addington*, Esq.
Frederick Mountagu, Esq.	*John Edwards*,
John Sherwin, Esq.	*James Finmore*,
George Donston, Esq.	*Thomas Wally Partington*, Esq.
Francis Molineux, Esq.	*William Levinz*, Esq.
The Hon. *Thomas Willoughby*, Esq.	*Robert Adair*, Esq.
Cæsar Hawkins, Esq.	

Sworn in Court.

A true Bill.

Lord High Steward. Is it your Lordships Pleasure, that the Judges have Leave to be covered?

Lords. Ay, ay.

Clerk of the Crown. Serjeant at Arms, make Proclamation for the Lieutenant of the *Tower* to bring his Prisoner to the Bar.

Serj. at Arms. Oyez! Oyez! Oyez! Lieutenant of the *Tower of London*, bring forth *William* Lord *Byron*, your Prisoner, to the Bar, pursuant to the Order of the House of Lords.

Then *William* Lord *Byron* was brought to the Bar by the Deputy-Governor of the *Tower*, having the Ax carried before him by the Gentleman-Goaler, who stood with it on the left Hand of the Prisoner, with the Edge turned from him. The Prisoner when he approached the Bar made three Reverences, and then fell upon his Knees at the Bar.

L. H. S. Your Lordship may rise.

Then the Prisoner rose up, and bowed to his Grace the Lord High Steward, and to the House of Peers; which Compliment was returned him by his Grace, and the Lords.

Then Proclamation having been again made for Silence, the Lord High Steward spake to the Prisoner, as follows:

Lord High Steward.

William Lord *Byron*,

YOUR Lordship is unhappily brought to this Bar to answer a heavy and dreadful Accusation, for you are charged with the Murder of a Fellow-Subject.

The Solemnity and awful Appearance of this Judicature must naturally embarrass and discompose your Lordship's Spirits, whatever internal Resource you may have in Conscience to support you in your Defence.

It may be therefore not improper for me to remind your Lordship, that you are to be tried by the fixed and settled Laws of a free Country, framed only to protect the Innocent, to distinguish the Degrees of Offence, and vindictive only against Malice and premeditated Mischief.

Homicide, or the Killing of a Fellow-Creature, is by the Wisdom of the Law distinguished into Classes; if it by Accident ariseth from Necessity, or is without Malice, it is not Murder; and of these Distinctions, warranted by Evidence, every Person, though accused by a Grand Jury, standing indifferent, is at full Liberty to avail himself.

As an additional Consolation, your Lordship will reflect that you have the Happiness to be tried by the supreme Judicature of this Nation; that you can receive nothing from your Peers but Justice, distributed with Candor; delivered too under the strongest Obligation upon noble Minds, Honour. These Considerations will, I hope, compose your Lordship's Mind, fortify your Spirits, and leave you free for your Defence.

Before I conclude, I am, by Command of the House, to inform your Lordship, and all others that shall have Occasion to speak to the Court during the Trial, that they are to address themselves to the Lords in general, and not to any Lord in particular.

Lord High Steward. William Lord *Byron*, your Lordship will do well to give Attention, while you are arraigned on your Indictment.

Then Proclamation was made for Silence.

After which, *William* Lord *Byron* was arraigned, in the Form of the said Indictment against him, by the Clerk of the Crown in the King's Bench.

Clerk of the Crown. How say you, *William* Lord *Byron*, are you guilty of the Felony and Murder whereof you stand indicted, or not guilty?

William Lord *Byron.* Not Guilty, my Lords.

Clerk of the Crown. Culprit, how will your Lordship be tried?

William Lord *Byron.* By God and my Peers.

Cl. of the Crown. God send your Lordship a good Deliverance.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. Oyez! Oyez! Oyez! All Manner of Persons that will give Evidence, on Behalf of our Sovereign Lord the King, against *William* Lord *Byron*, the Prisoner at the Bar, let them come forth, and they shall be heard; for now he stands at the Bar upon his Deliverance.

L. H. S. My Lords, the Distance of this Place from the Bar is so great, that I must desire your Lordships Leave to go down to the Table for the Convenience of hearing.

Lords. Ay, ay.

Then his Grace removed to the Table.

Mr. CORNWALL.

May it please your Lordships,

WILLIAM Lord *BYRON* stands indicted by the Grand Jury of the County of *Middlesex*, for Murder; and the Indictment sets forth, That *William* Lord *Byron*, on the Twenty-sixth Day of *January*, in the Fifth Year of his present Majesty's Reign, with Force and Arms, at the Parish of *Saint James*, in the County of *Middlesex*, feloniously, wilfully, and of his Malice aforethought, did make an Assault in and upon one *William Chaworth*, Esq. and with a Sword drawn, then in his right Hand, in and upon the left Side of the Belly of the said *William Chaworth*, did strike and stab, giving to the said *William Chaworth* a mortal Wound, of the Depth of six Inches, and of the Breadth of half an Inch; of which Wound the said *William Chaworth*, at the Parish of *St. James* aforesaid, and also at the Parish of *St. George*, *Hanover-square*, languished from the Twenty-sixth Day of *January* aforesaid, till the Twenty-seventh Day of the same Month, in the Year aforesaid, and then and there of the said mortal Wound died; and the Jurors aforesaid, upon their Oath, say, That the said *William* Lord *Byron*, the said *William Chaworth*, in Manner aforesaid, feloniously, wilfully, and of his Malice aforethought, did kill and murder.

To this Indictment the noble Prisoner at the Bar has pleaded Not Guilty, and hath put himself upon your Lordships his Peers for Trial.

It is our Duty to produce to your Lordships the Evidence we have to offer in Support of this Charge; your Lordships will determine upon that Evidence, and give such Judgment as your Lordships shall think the Justice of the Case requires.

Mr. Attorney-General, Sir FLETCHER NORTON, *Knight.*

May it please your Lordships,

I AM likewise of Counsel for this Prosecution; and by the Indictment which has been opened, your Lordships have heard that the noble Prisoner at the Bar is charged with one of the highest Offences that human Nature is capable of committing, nothing less than shedding the Blood of a Fellow-Creature.

My Lords, I need not enlarge upon this Subject, the Crime itself is incapable of Aggravation; it is my Province to lay before your Lordships the State of the Evidence which will be produced in Support of the Charge; and as it is not my Duty, so neither is it my Inclination to exaggerate any Thing upon this Occasion; but publick Justice requires, that the whole Proof should be brought fully and fairly before your Lordships.

I hope it will neither be thought impertinent or improper for me to make some general Observations upon the Law, which may respect the Offence now under Consideration; the Utility and Application of which your Lordships will see in the Course of the Evidence.

My Lords, as it will be proved beyond a Doubt, in the Course of these Proceedings, that the Deceased fell by the Hands of the noble Prisoner at the Bar, I shall therefore take that Fact for granted; and if so, every Presumption in Law arises against him; and it will be incumbent upon the Prisoner to exculpate himself in the best Manner he is able; for tho' every Homicide is not Murder, yet every Homicide, *prima facie*, is so, and it is required of the Prisoner to make out, that the Fact of Killing in this Case was not committed under Circumstances which will make it Murder: And I admit the Law will allow the Prisoner to shew the Homicide justifiable, excuseable, or done under such Circumstances of Extenuation, as to induce your Lordships to think it was not done with Malice aforethought, and then it will be Manslaughter, and not Murder.

It is clear in Point of Law, if there be a Quarrel, and the Parties afterwards have Time to cool, and after that they fight, and one falls, he who survives has been guilty of Murder; or if the Manner in which the Fact was done bespeaks a Depravity of Mind, and a Wickedness of Intention, that will make it Murder.

My Lords, as this Case must depend upon a very nice and strict Enquiry into all the Circumstances that accompanied the Fact, in order to mark the Offence with one or other of these Denominations (for an Offence Manslaughter is in the Eye of the Law), so I am persuaded your Lordships will attend carefully to the Evidence which may be produced; and I am convinced we shall hear such a Judgment from your Lordships, as, under all the Circumstances of the Case, Justice shall require: And this must afford Matter of the greatest Consolation to the noble Prisoner at the Bar (if he is innocent), because your Lordships Understanding cannot be deceived, nor your Judgment biassed: But, on the other Hand, if his Lordship is guilty of the Offence laid to his Charge, he must know that no Art, no Subterfuge, no Management will avail him; Innocence, and Innocence alone can be his Support and Defence.

Having said this, give me Leave to observe to your Lordships the Happiness of this Constitution under so gracious a Prince as his present Majesty, who aims at no other Rule of Government than that which the Law prescribes, and has no other Wish than that in all Cases, and over all Persons indiscriminately, the Law should be impartially administered; and

when the Laws are thus administered, and allowed their due Force, such is the Excellency of the *English* Constitution, that the meanest Subject is not beneath their Protection, nor the highest beyond their Reach; thus to be governed is the full Perfection of Civil Liberty.

On the 26th of *January* last, the noble Prisoner at the Bar, the Deceased, and many more Gentlemen of Rank and Fortune of the County of *Nottingham* met, as they usually did once a Week, to dine together at the *Star-and-Garter* Tavern, in *Pall-Mall:* In the Course of the Dinner there was nothing but Good-humour. About Seven at Night the Conversation turned upon the Subject of Game: Upon this Occasion Mr. *Chaworth* had something of a Dispute with the Gentleman who sat next him, about the best Method of preserving the Game. The Prisoner at the Bar interfered upon that Subject, and said, in his Opinion, the Way to have Game was to take no Care of it. Mr. *Chaworth* happened to be of a different Opinion, and thought the best Way was to be strict with Poachers, and thereby preserve the Game: This drew on some Altercation. Mr. *Chaworth* added, that he believed there was not a Hare in that Part of the Country, but what was preserved by himself or Sir *Charles Sedley*; upon which Lord *Byron* offered a Wager of an Hundred Pounds, that he had more Game in a Manor or Manors of his, than Mr. *Chaworth* had upon any that belonged to him. Your Lordships will find a little Difference in the Account given by the Witnesses, touching the Terms of the Wager; but you will have them from the Witnesses themselves, who are all Gentlemen of Character, and as they have most of them been already examined before the Coroner, and again before the Grand Jury, they did not choose to be examined by those concerned in the Prosecution; but said, when they were called and examined before your Lordships, they should speak the Truth, as doubtless they will; and I only mention this Circumstance as an Excuse for myself, if I should not happen to open the Evidence exactly as it may come out from the Witnesses.

My Lords, Mr *Chaworth* having said he was willing to accept the Wager, said it would be proper to make a Memorandum of it, and called for Pen, Ink, and Paper. After that, it happened that Sir *Charles Sedley*'s Manors were mentioned; upon which the noble Prisoner at the Bar said, with some Degree of Heat, Sir *Charles Sedley*'s Manors! where are his Manors?: To which Mr. *Chaworth* replied, Why, *Hucknel* and *Nuttall:* His Lordship then said, I know no Manors of Sir *Charles Sedley*'s; to which Mr. *Chaworth* replied, Sir *Charles Sedley* has a Manor, the Manor of *Nuttall* is his, and one of his Ancestors bought it out of my Family; and if your Lordship wants any further Information about his Manors, Sir *Charles Sedley* lives in *Dean-Street*, and your Lordship knows where to find me in *Berkley-Row*.

My Lords, whether this was a real Dispute between Lord *Byron* and Mr. *Chaworth*, about Sir *Charles Sedley*'s Manors, or whether it was used only as a Means of affronting and quarrelling with each other, it is impossible for me to say; however, after this Quarrel, the Parties staid in Company together for a considerable Time, I believe near an Hour, during which Time, both the noble Prisoner at the Bar and Mr. *Chaworth* entered into Conversation with the Company that sat next to them upon indifferent Subjects, and particularly Lord *Byron* was observed to be in good Humour.

The Company thought there was an End of the Quarrel, and that no more would be heard of it. About Eight, an Hour after the first Quarrel, Mr. *Chaworth* went first out of the Room, and it happened a Gentleman went after him to the Door, and he asked the Gentleman, whether he had observed the Dispute between him and Lord *Byron?* He said, he had in Part; upon which Mr. *Chaworth* asked him, if he thought he had gone far enough? To which Mr. *Donston* (for that was the Gentleman's Name) said, he thought he had gone too far; it was a silly Business, and neither of them should think of it again.

Mr. *Chaworth* going down Stairs, Mr. *Donston* returned into the Room, and, as he opened the Door, he met Lord *Byron* coming out. I must now state to your Lordships the Evidence as it arose from the Declarations of the Deceased, as well as the Facts, which will be proved; for, both being legal Evidence, they just stand under the same Predicament, and the Evidence being thus put, will come in proper Order in Point of Time. The Prisoner at the Bar saw the Deceased upon the Stairs, and said to him, Sir, I want to speak with you. They then went down one Pair of Stairs, and one or other of them called out, Waiter; which of them it was I am not instructed to say. Upon the Waiter's coming, the noble Prisoner at the Bar asked him, whether either of these two Rooms (pointing to them) were empty? The Waiter opened one of the Doors, and went in, with a poor little Tallow Candle, which was all the Light, except a dull Fire, that was in the Room: The Waiter set the Candle upon the Table, and Lord *Byron* and Mr. *Chaworth* went into the Room. When they were there, the Prisoner asked Mr. *Chaworth*, whether he was to have Recourse to Sir *Charles Sedley* to account for the Business of the Game, or to him? The Deceased said, To me, my Lord; and if you have any Thing to say, it would be best to shut the Door, lest we should be overheard. Mr. *Chaworth* went to shut the Door, and turning from the Door he saw the noble Prisoner just behind him, with his Sword half-drawn, or nigh drawn, and at that Instant Lord *Byron* called out—Draw! The Business was soon done. Mr. *Chaworth* finding his Lordship in such a Situation, had nothing left for it but to draw as quickly as he could: By his own Account he has told, he gave the noble Prisoner the first Thrust, and intangled his Sword in his Waistcoat, and thought he had wounded him; after that, Lord *Byron* shortened his Sword, and stabbed Mr. *Chaworth*.

There was another Circumstance, the Bell rung; but by whom it was rung I know not. The Waiter came up, and seeing the Situation of the Two Gentlemen, was not a little frightened. He ran out again, and sent up the Master of the Tavern, who will tell your Lordships how he found them. I think they were grasped in each other's Arms, and Mr. *Chaworth* had his Sword in his Left-hand, and the noble Prisoner at the Bar had his in his Right-hand. The Deceased delivered his readily, but Lord *Byron* quitted his with Reluctance. One of them, I believe Lord *Byron*, ordered him to send for Relief: Upon this Mr. *Hawkins* the Surgeon was soon sent for, and as soon came; but before this, an Alarm was given in the Room above Stairs. The Company came down; they saw the terrible Situation of the unfortunate Gentleman. He told them, and your Lordships will hear, the Manner in which it happened, pretty nearly as I have stated it, at least I hope substantially so. When Mr. *Hawkins* came, it did not require a Person of his Skill and Penetration to find out that the Wound was mortal, for the Sword had gone in at one Side and out at the other. Mr. *Hawkins* ordered, no Doubt, what was proper, and had him conveyed Home. Mr. *Chaworth* had sent Messengers for the worthy Gentleman, who is the Prosecutor upon this Occasion. When he came, seeing so near a Friend and Relation in the Condition the Deceased then appeared, he immediately inquired what had brought him into that terrible Situation. His Evidence will be material; for Mr. *Chaworth* told Mr. *Levinz* the whole Transaction: And when the Deceased related to him the Circumstance, that Lord *Byron* had drawn, or nigh drawn, his Sword, when the Deceased was shutting the Door, Mr. *Levinz* asked him, Was that fair, *Billy?* The Deceased, who was one of the most benevolent, as well as one of the bravest of Men, gave no Answer to that Question. Mr. *Levinz* followed him with some other Questions, and the Answers (which he will give you an Account of) will amount in Substance to this, That Mr. *Chaworth* did not think, when Lord *Byron* carried him into the Room, that he had any Design of fighting him; but afterwards he thought he had got him to an Advantage, and that was the Reason of his fighting him.

My Lords, besides this, the Deceased having made his Will, the Person who attended him upon that Occasion, thought it proper that some Questions should be asked him, even though the Deceased was then in great Agonies (for he died soon afterwards); and the same Person wished, that the Answers might be reduced into Writing, which was accordingly done; and the Paper will be produced to your Lordships, and will speak for itself; and it will need no Comment.

It states, that Mr. *Chaworth* said, the noble Prisoner's Sword was half-drawn when he turned from the Door; that, knowing his Man, he immediately whipped out his own, and had the first Lunge at his Lordship, when Lord *Byron* shortened his Sword, and run him through; and then said, with an Oath, I have as much Courage as any Man in *England*. This is the Nature of the Case in general; and I believe I have stated the Evidence substantially, if not correctly true.

I cannot sit down without mentioning another Circumstance, which further evinces his Majesty's Love of Justice, and his inflexible Resolution to do Right, according to Law, without Favour or Affection, however high and respectable the noble Personage may be, who is concerned in this important Cause. Your Lordships all remember, upon another very solemn and melancholy Occasion, as the Event proved, the then noble Prisoner had killed a Person of very inferior Rank, who left neither a Fortune nor Relations equal to the Expence of a Prosecution of this Sort. His Majesty, from his Love of Justice, sustained the whole Charge, and committed the Care of that Prosecution to his own Servants. But in the present Instance, the Deceased having a large Fortune, and the Inheritor of it being both able and willing to carry on this Prosecution, his Majesty, from the same Love of Justice, and that there might not be the Appearance of Partiality to the noble Prisoner at the Bar, has left the Prosecution, and the intire Management of it, in the Hands of the private Prosecutor, who, actuated with no Motive of Revenge, only hopes, that there will be a fair, but a strict and full Enquiry for the Blood of his deceased Relation; being thoroughly satisfied that your Lordships will hear with Patience, deliberate with Caution, and determine with Wisdom, Justice, and Truth.

Mr. Sollicitor General, *William de Grey*, Esq. } MY Lords, we will now proceed to call our Witnesses.

Call *John Hewett*, Esquire.

Who came to the Bar, and one of the Clerks held the Book to him, upon which he laid his Hand.

Clerk of the Crown. Hearken to your Oath.

The Evidence that you shall give on Behalf of our Sovereign Lord the King's Majesty, against *William* Lord *Byron*, the Prisoner at the Bar, shall be the Truth, the whole Truth, and nothing but the Truth.

So help you GOD.

Then he kissed the Book.

Mr. Sol. Gen. My Lords, I would ask Mr. *Hewett* if he was present at the *Star and Garter* in *Pall-mall* on the Twenty-sixth of *January* last?

Mr. *Hewett.* I was: I dined there, my Lords, the Twenty-sixth of *January*.

L. H. S. I cannot at this Distance hear One Word of what is said by the Witness.

Then one of the Clerks was sent down to the Bar to repeat the Questions put to the Witnesses, and their Answers.

Mr. Sol. Gen. I desire that Mr. *Hewett* will tell your Lordships if he was present at the *Star and Garter* Tavern on the Twenty-sixth of *January* last?

Mr. *Hewett.* I was: I dined at the *Star and Garter* on the Twenty-sixth of *January* last.

Mr. Sol. Gen. Was it any particular Meeting?

Mr. *Hewett.* It was: It was a County Club.

Mr. Sol. Gen. Of what County?

Mr. *Hewett.* The Gentlemen of *Nottinghamshire*.

Mr. Sol. Gen. I desire you will name the Gentlemen then present.

Mr. *Hewett.* Lord *Byron*, *Francis Molineux*, Esquire, *John Sherwin*, Esquire, the Honourable *Thomas Willoughby*, *Frederick Montagu*, Esquire, *William Chaworth*, Esquire, *George Donston*, Esquire, *Charles Mellish* junior, Esquire, Sir *Robert Burdett*, and myself.

Mr. Sol. Gen. At what Time did the Company dine?

Mr. Hewett. The Dinner was upon the Table precisely at a Quarter after Four o'Clock.

Mr. Sol. Gen. Do you recollect any Conversation relative to the Game?

Mr. *Hewett.* I do; it was some Time after Dinner before any such Conversation arose.

Mr. Sol. Gen. You will please to recollect the Time.

Mr. *Hewett.* At or about the Time the Drawer brought in the first Reckoning.

Mr. Sol. Gen. About what o'Clock might that be?

Mr. *Hewett.* It was about, or after Seven o'Clock. The Rule of the Club was to have the Bill and a Bottle brought at Seven o'Clock.

Mr. Sol. Gen. Do you recollect whether it was about Seven, or long after Seven o'Clock?

Mr. *Hewett.* I believe it could not be long after Seven o'Clock.

Mr. Sol. Gen. Had the Company at that Time drank much?

Mr. *Hewett.* I think the Company were all very ſober when we parted.

Mr. Sol. Gen. Do you mean that all the Company were very ſober when they parted at Seven o'Clock?

Mr. *Hewett.* I think ſo, my Lords.

Mr. Sol. Gen. I wiſh Mr. *Hewett* would recollect the Converſation that paſſed about the Game.

Mr. *Hewett.* What I heard relating to it was, a Diſpute in whoſe Manor, or in what Manor, there was the moſt Game.

Mr. Sol. Gen. Do you recollect by whom the Converſation was begun?

Mr. *Hewett.* The Converſation about the Game began from myſelf.

Mr. Sol. Gen. In what Manner?

Mr. *Hewett.* By ſtarting a Propoſition for preſerving the Game, beſides the preſent Syſtem of the Game Laws, which has very often, where I have been, produced agreeable Converſation.

Mr. Sol. Gen. Who were the Perſons in particular who entered into that Converſation?—Mr. *Hewett.* I believe all the Company, more or leſs.

Mr. Sol. Gen. Do you recollect what Mr. *Chaworth* ſaid on that Occaſion?

Mr. *Hewett.* I recollect hearing a Bett propoſed of one Hundred Pounds.

Mr. Sol. Gen. Was that the firſt Time Mr. *Chaworth* had ſaid any Thing upon the Subject?

Mr. *Hewett.* I cannot take upon me to ſay that: I can deſcribe the Order in which we ſat, and the Perſons I was in Converſation with at the Time the Bett was propoſed. Mr. *Mountagu* ſat next me on my Right-hand, I ſat at the Head of the Table, Mr. *Willoughby* ſat next Mr. *Mountagu*, Mr. *Sherwin* next him, Mr. *Molineux* next to him, Lord *Byron* was the laſt Perſon on the ſame Side the Table, and fartheſt from me on my Right-hand, and on my Left-hand Mr. *Chaworth* ſat next me, Mr. *Donſton* next, Mr. *Melliſh* next, Sir *Robert Burdett* next on that Side.—I was engaged in ſome Subject with Mr. *Sherwin*, and the Gentlemen on my Right-hand, at the Time when the Converſation paſſed between Lord *Byron* and Mr. *Chaworth*.

Lord High Steward. Recollect yourſelf again.

Mr. *Hewett.* I was converſing with Mr. *Sherwin*, and the Gentlemen on my Right-hand, when I heard the Converſation about the Bett between Lord *Byron* and Mr. *Chaworth*.

Mr. Sol. Gen. Pleaſe to repeat exactly the Converſation between Lord *Byron* and Mr. *Chaworth*, in the Order in which it paſſed.

Mr. *Hewett.* I cannot recollect any Thing farther of the Converſation than I have done.

Mr. Sol. Gen. Be ſo good as to repeat again what that Converſation was.

Mr. *Hewett.* It was a Diſpute in whoſe Manor or Manors there was the moſt Game.

Mr. Sol. Gen. Whoſe Manors were underſtood?

Mr. *Hewett.* I heard none mentioned at all; I imagined, as Lord *Byron* and Mr. *Chaworth* were Neighbours in the Country, it was their Manors they were ſpeaking of.

Lord *Mansfield.* Mr. *Hewett* won't ſpeak as to Imagination; they can only aſk him as to Facts.

Mr. Sol. Gen. After this Bett was propoſed, what paſſed?

Mr. *Hewett.* I did not perceive any other Converſation between Mr. *Chaworth* and Lord *Byron*, but what I have mentioned, during the whole Day.

Mr. Sol. Gen. At what Time did the Converſation cloſe upon that Subject?——Mr. *Hewett.* Very ſoon, my Lords.

Mr. Sol. Gen. What Converſation followed upon that?

Mr. *Hewett.* A great Variety, I think.

Mr. Sol Gen. Did Mr. *Chaworth* join in that Converſation?

Mr. *Hewett.* He did, my Lords.

Mr. Sol. Gen. Did Lord *Byron* join in any Converſation afterwards?

Mr. *Hewett.* Lord *Byron* being the fartheſt from me of any of the Company, I did not hear any Converſation of his afterwards; but I obſerved he was converſing with Mr. *Molineux* afterwards.

Mr. Sol. Gen. Did you obſerve whether Lord *Byron* ſeemed to be in or out of Humour after the Converſation about the Game?

Mr. *Hewett.* He ſeemed to be converſing with Mr. *Molineux* in good Humour.

Mr. Sol. Gen. How long did this Converſation laſt before Mr. *Chaworth* went out of the Room?—Mr. *Hewett.* It muſt be after Eight o'Clock before Mr. *Chaworth* went out of the Room.

Mr. Sol. Gen. Did Mr. *Chaworth*, when he left the Room, take any body with him?

Mr. *Hewett.* Mr. *Donſton* was out of the Room at the ſame Time; but whether he went with him, or followed him, I do not know.

Mr. Sol. Gen. How long did Mr. *Donſton* ſtay out of the Room?

Mr. *Hewett.* A very ſhort Time, I think.

Mr. Sol. Gen. Did Lord *Byron* leave the Room?

Mr. *Hewett.* Lord *Byron* left the Room at the very Inſtant Mr. *Donſton* came in.

Mr. Sol. Gen. Mr. *Hewett* ſays, that Mr. *Donſton* ſtayed out of the Room but a very ſhort Time; I ſhould be glad to know what he reckons a ſhort Time?

Mr. *Hewett.* I am not able to judge of the Time, but from the Hour of paying the Reckoning, and the Time I went into the Room where Mr. *Chaworth* was wounded.

Mr. Sol. Gen. What was the firſt Account you had of any Thing that paſſed after they quitted the Room?

Mr. *Hewett.* Almoſt at the Inſtant of Mr. *Donſton*'s ſitting down, a Drawer came into the Room, and told us, that Lord *Byron* and Mr. *Chaworth* were fighting.

Mr. Sol. Gen. What was the Drawer's Name?

Mr. *Hewett.* I don't know.

Mr. Sol. Gen. Did the Company go down?

Mr. *Hewett.* They went down as faſt as they could.

Mr. Sol. Gen. Did you go into the Room where Mr. *Chaworth* and Lord *Byron* were?—Mr. *Hewett.* I did.

Mr. Sol. Gen. Where was the Room?

Mr. *Hewett.* It was a Back Room, up one Pair of Stairs.

Mr. Sol. Gen. What did you obſerve in that Room?

Mr. *Hewett.* I was lame at that Time; when I got into the Room, Mr. *Chaworth* was ſitting in an armed Chair, with his Left Leg on another Chair, and leaning his Head againſt Mr. *Donſton*.

Mr. Sol. Gen. Did you obſerve the Condition in which Mr. *Chaworth* was?—Mr. *Hewett.* I did. He was wounded in the Belly, and had his Hand upon it, and there was a good deal of Blood under the Chair.

Mr. Sol. Gen. Did Mr. *Chaworth* ſay any Thing to you?

Mr. *Hewett.* He did.

Mr. Sol. Gen. What was that?

Mr. *Hewett.* He ſaid he was a dying Man, and gave me an Account of the Tranſaction, and of what had paſſed between my Lord *Byron* and him: He ſaid, Lord *Byron* told him he wanted to ſpeak to him; upon which they went into that Room together; that he told Lord *Byron* it was better to ſhut the Door that they might not be heard; that while he was doing it, Lord *Byron* bid him draw; that he ſaw his Lordſhip's Sword half-drawn, upon which he whipped out his own as quick as poſſibly he could to give him the Point, and he aſked how Lord *Byron* was, whether he was mortally wounded, as he thought he was about his Breaſt; when his Lordſhip ſhortened his Sword, and ſtabbed him in the Belly.

Mr. Sol. Gen. Was you in the Room when Mr. *Hawkins* the Surgeon was ſent for?—Mr. *Hewett.* I was not in the Room when Mr. *Hawkins* was ſent for; Mr. *Hawkins* was in the Room when I was there.

Mr. Sol. Gen. Was Lord *Byron* in the Room at that Time?

Mr. *Hewett.* Lord *Byron* came into the Room, and went up to Mr. *Chaworth*, and aſked him how he was?

Mr. Sol. Gen. What Anſwer was given by Mr. *Chaworth*?

Mr. *Hewett.* I don't recollect any.

Mr. Sol. Gen. Was you afterwards at Mr. *Chaworth*'s Houſe that Night?

Mr. *Hewett.* I was.

Mr. Sol. Gen. At what Time was it you went, and what paſſed there?

Mr. *Hewett.* I do not remember exactly. I was one of the ſubſcribing Witneſſes to Mr. *Chaworth*'s Will. It might be about or after Three o'Clock in the Morning.

Mr. Sol. Gen. How was your Time employed, when you left the *Star and Garter*, till you went to Mr. *Chaworth*'s Houſe?

Mr. *Hewett.* Mr. *Chaworth* at different Times expreſſed himſelf as a dying Man: He aſked me twice after Lord *Byron* and his Wound. When I went from the *Star and Garter*, I went with Mr. *Willoughby*, in my own Coach, to fetch Mr. *Levinz*, for whoſe Coming Mr. *Chaworth* was extremely impatient.

Mr. Sol. Gen. What Relation was Mr. *Levinz* to Mr. *Chaworth*?

Mr. *Hewett.* His Uncle.

Mr. Sol. Gen. Where did Mr. *Levinz* live?

Mr. *Hewett.* At *Kenſington Gore*.

Duke of *Newcaſtle.* Did not Mr. *Chaworth* tell you he had mortally wounded Lord *Byron*; for I think you ſaid, when you came into the Room Mr. *Chaworth* aſked how Lord *Byron* did, for he thought he was wounded about his Breaſt?

Mr. *Hewett.* Mr. *Chaworth* aſked me how Lord *Byron* was, whether mortally wounded or not, for he thought he was about his Breaſt, when Lord *Byron* ſtabbed him into the Belly.

Earl of *Morton.* Did Mr. *Chaworth* mention that he had given Lord *Byron* a Wound? Or did you imagine it was his own Wound he was ſpeaking of?

Mr. *Hewett.* He enquired after a Wound he ſuppoſed he had given Lord *Byron*.

Lord *Mansfield.* My Lords, I believe it would be much better if your Lordſhips would forbear aſking any Queſtions of the Witneſs till the Counſel for the Crown ſhall have done with the Witneſs; then Lord *Byron* will aſk ſuch Queſtions as he may think proper, and afterwards your Lordſhips will have an Opportunity of aſking any Queſtions you pleaſe; otherwiſe I am afraid it will very much interrupt the Regularity of your Proceedings.

Mr. Sol. Gen. I was endeavouring to fix the Time when Mr. *Hewett* came to Mr. *Chaworth*'s Houſe, by aſking him, How he was employed after he left the *Star and Garter?* Mr. *Hewett* ſaid, in ſeeking Mr. *Levinz*, who lived at *Kenſington Gore*.

Mr. *Hewett.* I ſent my Coach for Mr. *Levinz* ſome time before, and it returned without finding him; upon that I ſent to the Duke of *Leeds*'s Houſe, to know if they knew any Thing of him there; they returned for Anſwer, that he dined there, and was gone Home.

Mr. Sol. Gen. I would aſk you, if there was any Converſation between Mr. *Chaworth* and you after the making his Will, in the Preſence of Mr. *Willoughby?*—Mr. *Hewett.* There was.

Mr. Sol. Gen. Did Mr. *Chaworth* make any Declarations of what had paſſed at that Time?—Mr. *Hewett.* He did.

Mr. Sol. Gen. Were thoſe Declarations reduced into Writing?

Mr. *Hewett.* They were.

Mr. Sol. Gen. How long was it after they were made before they were reduced into Writing?

Mr. *Hewett.* We went down from the Bed-chamber into the Parlour.

Mr. Sol. Gen. There Mr. *Partington* delivered the Will into Mr. *Levinz*'s Hands?

Mr. *Hewett.* No, I gave the Will into Mr. *Levinz*'s Hands in the Parlour; then Minutes were made, and ſome Alterations made in them, till we were all agreed it was exactly what Mr. *Chaworth* had ſaid.

Mr. Sol. Gen. Were the Minutes tranſcribed again after thoſe Alterations were made?—Mr. *Hewett.* I believe they were.

Mr. Sol. Gen. Should you know the Paper Writing again, if you ſaw it?

Mr. *Hewett.* I ſhould not; but I remember that the Contents appeared to me exactly the ſame with the Account I have given your Lordſhips, except

cept the Omission of the particular Term of Mr. *Chaworth*'s whipping out his own Sword, and Lord *Byron*'s shortening his.

Mr. Sol. Gen. Who wrote the Paper?

Mr. *Hewett.* Mr. *Partington*, an Attorney.

Mr. Sol. Gen. What became of it after it was written?

Mr. *Hewett.* I do not know.

Mr. Sol. Gen. Did you see Mr. *Chaworth* after that Paper was wrote?

Mr. *Hewett.* I did not.

Mr. Sol. Gen. Did Mr. *Chaworth* continue in his perfect Understanding till the last Time you saw him?

Mr. *Hewett.* He did. I understood many of the Questions put to him to be with a View of knowing that.

Mr. Sol. Gen. My Lords, I shall ask this Witness no farther Questions.

Lord High Steward. Lord *Byron*, would you ask this Witness any Questions?

Lord *Byron.* Might not a great deal pass in Company that you did not hear?—Mr. *Hewett.* Certainly there might.

Lord *Byron.* Was not you Toast-master?—Mr. *Hewett.* I was.

Lord *Byron.* Might not your Attention to that Office be the Reason that you did not hear several Things that passed?

Mr. *Hewett.* It might; but my Ears are not the best at any Time.

Lord *Byron.* My Lords, I have done with this Witness.

Lord *Mansfield.* I would ask one single Question of this Witness, if he can answer it precisely.

Mr. *Chaworth*, as I took it, told him, that Lord *Byron* asked to speak to him; and when they went into the Room, Mr. *Chaworth* said, they had better shut the Door. Now I would ask, whether it was, Shut the Door, or Bolt the Door?

Mr. *Hewett.* I believe the Word was, Shut the Door.

Earl of *Denbigh.* I desire to know whether the Paper Writing was shewn to Mr. *Chaworth* after it was copied?

Mr. *Hewett.* Mr. *Chaworth* was in his Bed-chamber above Stairs, the Paper was drawn up in the Parlour below Stairs; and I went away very soon after.

Earl *Poulet.* Were the Alterations in the Paper you mentioned material ones, or not?

Mr. *Hewett.* I thought it my Duty to the Publick to make an exact Minute of the Circumstances of the Day, which Minute I have now in my Hand, and it corresponds exactly with that Paper, except in the Circumstance I mentioned to your Lordships.

Earl of *Buckinghamshire.* I desire Mr. *Hewett* may be asked, if he expected Mr. *Chaworth* would have come back again?

Mr. *Hewett.* I did imagine he would have come back.

Earl of *Buckinghamshire.* I desire to know, whether, when Mr. *Chaworth* went out of the Room, he took his Hat with him or not?

Mr. *Hewett.* I don't know; I did imagine he would come back immediately.

Lord High Steward. I do not remember any precise Answer to the Question, who it was that offered the Bett?

Mr. *Hewett.* Lord *Byron* proposed the Bett.

L. H. S. Are you sure it was Lord *Byron?*

Mr. *Hewett.* I think I am sure it was; and Mr. *Chaworth* took it up, as I thought, in a Joke, and called for a Pen and Ink.

L. H. S. Do you recollect how the Conversation about the Game finished?

Mr. *Hewett.* I cannot.

Earl of *Dartmouth.* Do you remember the particular Discourse on the Game between Lord *Byron* and Mr. *Chaworth?*

Mr. *Hewett.* There were various Discourses upon the Subject by different People in Company; I was talking about the best Method for preserving Game, and the Discourse turned upon the Proposition, that it might be a sensible Way of preserving Game to make it the Property of the Owner of the Soil.

Earl of *Dart.* Was there any general Debate on the Subject of the Game?

Mr. *Hewett.* It might be as to the probable Ways of preserving the Game.

Earl of *Dart.* I think you said Lord *Byron* left the Room at the Instant Mr. *Donston* returned?

Mr. *Hewett.* I did.

Earl of *Dart.* I desire to know whether Lord *Byron* sat so as to hear what passed between Mr. *Chaworth* and Mr. *Donston* on the Stairs?

Mr. *Hewett.* It was a mighty odd-shaped Room that we were in; the Door opened very inconveniently; Mr. *Donston* was scarcely set down, when the Waiter came into the Room and told us Lord *Byron* and Mr. *Chaworth* were fighting.

Duke of *Richmond.* Where did Mr. *Chaworth* sit?

Mr. *Hewett.* Mr. *Chaworth* sat next to me on my Left-hand.

Duke of *Rich.* Could any Thing remarkable pass at the Table without your hearing it?

Mr. *Hewett.* My Ears are but indifferent at best; and at that Instant of Time I was talking to a Gentleman that sat on my Right-hand.

Duke of *Rich.* When my Lord *Byron* asked Mr. *Chaworth*, Where is Sir *Charles Sedley*'s Manor? did you understand it was in a friendly Manner, or what other Kind of Style?

Mr. *Hewett.* I have given that Part of my Evidence precisely in Mr. *Chaworth*'s Words, and your Lordships will interpret them as you think proper.

Duke of *Rich.* If I understood you right, when you went into the Room, Mr. *Chaworth* was then with One Leg upon a Chair, and he enquired how Lord *Byron* did?

Mr. *Hewett.* He did, my Lords, twice, and once at another Time.

Lord *Le Despencer.* I should be glad to know, whether there was any considerable Distance of Time between Lord *Byron* and Mr. *Chaworth*'s going out of the Room?

Mr. *Hewett.* I cannot resolve that Question precisely.

Lord *Ravensworth.* You said the Bill was called for about Seven o'Clock?

Mr. *Hewett.* It is the Order of the Club to the Master of the House to bring a Bill at Seven o'Clock.

Lord Ravensworth. You said you had no fixed Guide to judge as to Point of Time, but by the Bill's being brought at Seven o'Clock; I desire to know by what Circumstances you guided yourself as to the Time in general?

Mr. *Hewett.* In Things of this Kind, one cannot be precise in every Thing; but I made a Minute, and I will tell you the Time as near as I can. My Watch was rather too fast. When I came into the Room to Mr. *Chaworth*, the Minute-Hand of my Watch was between Eight and Nine, and the Hour Hand approaching Nine: This was at the First Time I saw Mr. *Chaworth* in that Condition; the Time of my being a Witness to Mr. *Chaworth*'s Will was a little after Three in the Morning.

L. H. S. So you said before.

L. H. S. Who do you call next, *Mr. Sollicitor General?*

Mr. Sollicitor General. We desire to call *Frederick Mountagu*, Esquire.

Frederick Mountagu, Esquire. *(Who was sworn in like Manner.)*

Mr. Serjeant *Glynn.* I desire to ask Mr. *Mountagu*, if he was not present at the *Star and Garter* on the Twenty-sixth of *January* last?

Mr. *Mountagu.* I was.

Mr. Serjeant *Glynn.* I desire to know what Company was there?

Mr. *Moun.* There were Lord *Byron*, Mr. *Chaworth*, Mr. *Willoughby*, Mr. *Hewett*, Mr. *Molineux*, Mr. *Donston*, Mr. *Sherwin*, Mr. *Mellish*, and Sir *Robert Burdett.*

Mr. Serjeant *Glynn.* Upon what Occasion were they met?

Mr. *Moun.* At a County Club.

Mr. Serjeant *Glynn.* At what Time might the Company dine?

Mr. *Moun.* A little after Four.

Mr. Serjeant *Glynn.* Do you remember any Dispute in the Company?

Mr. *Moun.* There arose a Dispute some time after Dinner.

Mr. Serjeant *Glynn.* At what Hour?

Mr. *Moun.* As near as I can recollect, at Seven o'Clock.

Mr. Serjeant *Glynn.* Do you remember the Subject of the Dispute?

Mr. *Moun.* The Dispute was upon Game.

Mr. Serjeant *Glynn.* Who were the Persons that disputed?

Mr. *Moun.* The Persons that principally disputed were Lord *Byron* and Mr. *Chaworth.*

Mr. Serjeant *Glynn.* Can you recollect the Conversation upon that Subject?

Mr. *Moun.* The Dispute was, whether it was better for the Preservation of Game to be remiss, or to be severe.

Mr. Serjeant *Glynn.* Do you recollect particularly what Mr. *Chaworth* and Lord *Byron* said?

Mr. *Moun.* Mr. *Chaworth* was of Opinion that Severity was best, and Lord *Byron* that it was better to be remiss.

Mr. Serjeant *Glynn.* I should be glad if Mr. *Mountagu* would repeat the whole Conversation that followed upon this.

Mr. *Moun.* The Dispute was upon the respective Manors of Lord *Byron* and Mr. *Chaworth*, and upon Sir *Charles Sedley*'s Manor; the Conversation ended upon that Point, with Mr. *Chaworth*'s saying, and to the best of my Recollection repeating, If you have any Thing more to say, you will find Sir *Charles Sedley* in *Dean-street*, and me in *Berkley-Row.*

Mr. Serjeant *Glynn.* Repeat what Conversation passed before Mr. *Chaworth* said those Words?

Mr. *Moun.* In general, the Conversation was upon Game.

Mr. Serjeant *Glynn.* Do you recollect any Particulars of the Conversation?

Mr. *Moun.* No more than what I have repeated.

Mr. Serjeant *Glynn.* Was this the Whole? Recollect.

Mr. *Moun.* I can, upon my own Recollection, speak to nothing more.

Mr. Serjeant *Glynn.* Mr. *Mountagu* will recollect, if he can, whether there was any Dispute at all about the Ownership of any Manor or Manors?

Mr. *Moun.* There was some Mention made of a particular Manor, of *Hucknell* Manor.

Mr. Serjeant *Glynn.* By whom?

Mr. *Moun.* By Mr. *Chaworth*, I think.

Mr. Serjeant *Glynn.* Do you remember what was said about that Manor?

Mr. *Moun.* I think Lord *Byron* mentioned that Manor being his.

Mr. Serjeant *Glynn.* Do you remember any Answer Mr. *Chaworth* made to that?——Mr. *Moun.* No.

Mr. Serjeant *Glynn.* My Question to Mr. *Mountagu* was, whether he recollects any Conversation between Lord *Byron* and Mr. *Chaworth* about Manors?

Mr. *Moun.* Yes, there was a great Deal of Conversation upon that Point.

Mr. Serjeant *Glynn.* Whether Sir *Charles Sedley* was mentioned or not?

Mr. *Moun.* His Name was mentioned.

Mr. Serjeant *Glynn.* How was Sir *Charles Sedley*'s Name introduced?

Mr. *Moun.* I forget how it was first introduced.

Mr. Serjeant *Glynn.* Recollect what was said about Sir *Charles Sedley*, when his Name was mentioned.

Mr. *Moun.* It was mentioned that he was severe upon his Manors.

Mr. Serjeant *Glynn.* By whom was that said?

Mr. *Moun.* Either by Lord *Byron* or Mr. *Chaworth*, I forget which.

Mr. Serjeant *Glynn.* How long did the Conversation about Game continue?

Mr. *Moun.* About Twenty Minutes, I should guess; but I cannot speak positively.

Mr. Serjeant *Glynn.* Did the Company then break up?—Mr. *Moun.* No.

Mr. Serjeant *Glynn.* How long might they continue afterwards together?

Mr. *Moun.* An Hour.

Mr. Serjeant *Glynn.* Were the Company, after this Conversation, in good Humour or not?

Mr. *Moun.* They appeared to be in good Humour.

Mr. Serjeant *Glynn.* Did Mr. *Chaworth* join in the Conversation?

Mr. *Moun.* He did.

Mr. Serjeant *Glynn.* Did Lord *Byron* join in Conversation?

Mr.

Mr. *Mountagu.* He did, each with thoſe that ſat near.

Mr. Serjeant *Glynn.* Did Lord *Byron* appear to be in good Humour?

Mr. *Moun.* I ſaw nothing to the contrary.

Mr. Serjeant *Glynn.* At what Time did Mr. *Chaworth* leave the Company?

Mr. *Moun.* About Eight.

Mr. Serjeant *Glynn.* Whether he left the Company alone, or did any Perſon go out with him?

Mr. *Moun.* I think Mr. *Donſton* followed him.

Mr. Serjeant *Glynn.* Did Mr. *Donſton* return to the Company or not?

Mr. *Moun.* He did.

Mr. Serjeant *Glynn.* How ſoon after his going out with Mr. *Chaworth?*

Mr. *Moun.* A few Minutes; I cannot ſpeak exactly to the Number.

Mr. Serjeant *Glynn.* Did Lord *Byron* go out of the Room at that Time?

Mr. *Moun.* He did afterwards.

Mr. Serjeant *Glynn.* Did Lord *Byron* go out of the Room before or after the Return of Mr. *Donſton?*

Mr. *Moun.* About that Time.

Mr. Serjeant *Glynn.* At what Time of the Night might that be?

Mr. *Moun.* A very little after Eight.

Mr. Serjeant *Glynn.* Had the Company drank moderately, or otherwiſe?

Mr. *Moun.* Moderately.

Mr. Serjeant *Glynn.* When did you firſt hear of Mr. *Chaworth* after this?

Mr. *Moun.* I went down Stairs about that Time myſelf, and as I was going out of the Door of the Tavern, the Maſter of the Tavern called me back, and told me that Miſchief had happened; and that Mr. *Hawkins* was ſent for; I ran up Stairs with one of the Drawers.

Mr. Serjeant *Glynn.* Who was that Drawer?

Mr. *Moun.* I do not recollect him in particular; I ordered him to fetch the Company from above Stairs, and went into the Room immediately myſelf, where I found Mr. *Chaworth* in a Chair bleeding, and Lord *Byron* ſtanding by him.

Mr. Serjeant *Glynn.* Was there any Perſon in the Room when you came except Lord *Byron* and Mr. *Chaworth?*

Mr. *Moun.* No, I think not; the Company above Stairs came in ſoon after.

Mr. Serjeant *Glynn.* Give an Account of what paſſed between Mr. *Chaworth* and the Company, when they came in?

Mr. *Moun.* Mr. *Chaworth* firſt told me that he could not live Five Minutes; that he forgave Lord *Byron*, and hoped the World would forgive him too; that he had rather be in his own Situation than Lord *Byron's*; he ſaid the Affair paſſed in the Dark: Upon my deſiring an Explanation, he pointed to a very ſmall Tallow Candle, which ſtood upon the Table in the Room we were then in. Mr. *Chaworth* told me, that when Lord *Byron* and he came into the Room where they then were, Lord *Byron* aſked Mr. *Chaworth*, if he meant the Converſation upon Game to Sir *Charles Sedley* or to him? Mr. *Chaworth* ſaid, If you have any Thing to ſay, we had better ſhut the Door. After he had ſhut the Door, he turned, and ſaw Lord *Byron* drawing his Sword. He drew his, and made the Firſt Paſs, and in his Paſs he entangled his Sword in the Left Side of Lord *Byron's* Waiſtcoat; upon which Lord *Byron* ſhortened his Sword, and run him through the Body.

Mr. Serjeant *Glynn.* Was this the Whole of what Mr. *Chaworth* ſaid?

Mr. *Moun.* I recollect nothing material beſides.

Mr. Serjeant *Glynn.* Did Mr. *Chaworth*, from the Manner of relating this Affair, appear to be ſenſible or not?

Mr. *Moun.* Perfectly ſo.

Lord High Steward. Lord *Byron*, would your Lordſhip aſk this Witneſs any Queſtions?

Lord Byron *declined aſking him any Queſtions.*

L. H. S. How ſoon might you leave the Room after Mr. *Donſton* returned?---Mr. *Moun.* About a Minute.

L. H. S. You paſſed the Room upon the Firſt Floor as you went down?

Mr. *Moun.* I did, my Lords.

L. H. S. You heard no fighting?---Mr. *Moun.* None in the World.

L. H. S. When you went down, did you ſtop?

Mr. *Moun.* A few Minutes in calling a Chair.

L. H. S. Were you got into the Chair?

Mr. *Moun.* I was not got into the Chair; I was not out of the Door.

Lord *Berkeley.* Was any Provocation given by Lord *Byron*, that might induce Mr. *Chaworth* to ſay to my Lord, If you have any Thing more to ſay to me or Sir *Charles Sedley*, you will find Sir *Charles Sedley* in *Dean-ſtreet*, and I live in *Berkley Row?*

Mr. *Moun.* I do not recollect any particular Provocation.

Lord *Berkeley.* Do you recollect any Thing more than the general Account you have given?---Mr. *Moun.* Nothing further, my Lords.

Duke of *Richmond.* Did you ſit next Lord *Byron?*

Mr. *Moun.* No, my Lords, I did not ſit next Lord *Byron.*

Duke of *Richmond.* From the Diſcourſe that you heard, and what paſſed, did you expect a Duel?---Mr. *Moun.* No, my Lords, I did not.

Earl *Temple.* Did Mr. *Chaworth* ſay any Thing expreſſing his Imagination of his having wounded Lord *Byron* about the Breaſt?

Mr. *Moun.* I do not recollect any Thing that Mr. *Chaworth* ſaid as to that.

Earl *Temple.* From Mr. *Chaworth's* Expreſſions, did any Thing induce you to think he had wounded Lord *Byron?*---Mr. *Moun.* No.

Earl *Talbot.* After Lord *Byron* and Mr. *Chaworth* went out of the Room, and were in the Room where they fought, Mr. *Chaworth* ſaid, he ſaw Lord *Byron's* Sword half-drawn when he turned from faſtening the Door; and the Gentleman who ſpoke before, ſaid Lord *Byron* called to Mr. *Chaworth*, and bid him draw; do you recollect whether Mr. *Chaworth* ſaid Lord *Byron* bid him draw?

Mr. *Moun.* In the Converſation that paſſed, I do not recollect that Circumſtance of Lord *Byron's* bidding him draw.

Earl *Poulet.* Was you nearer ſeated to the Door than Lord *Byron* was?

Mr. *Moun.* No, I was not; I was at the upper End of the Table.

Earl *Poulet.* Was the Door at the upper or lower End of the Room?

Mr. *Moun.* It was a very odd-ſhaped Room.

Earl *Poulet.* Did Lord *Byron* ſit near the Door?

Mr. *Moun.* No, he did not.

Earl *Poulet.* Do you think it was poſſible to hear what Words paſſed between Mr. *Donſton* and Mr. *Chaworth* upon the Stairs?

Mr. *Moun.* I ſhould think it impoſſible; there was a great Skreen before the Door.

Earl of *Morton.* Did not Mr. *Chaworth* ſay, the beſt Method of preſerving Game was by Severity, and Lord *Byron* by Remiſſneſs?

Mr. *Moun.* Yes, my Lords, it was ſo.

Mr. *Stowe.* My Lords, I would call *George Donſton*, Eſquire.

George Donſton, *Eſquire.* *(Who was ſworn in like Manner.)*

Mr. *Stowe.* Was you, on the 26th of *January*, at Dinner with Lord *Byron* and other Gentlemen at the *Star and Garter?*---Mr. *Donſton.* I was.

Mr. *Stowe.* Name the Gentlemen that compoſed the Company.

Mr. *Don.* Lord *Byron*, Mr. *Hewett*, Mr. *Willoughby*, Mr. *Chaworth*, Mr. *Sherwin*, Mr. *Mountagu*, Sir *Robert Burdett*, Mr. *Charles Meliſh*, and myſelf.

Mr. *Stowe.* Was there any Diſcourſe between Lord *Byron* and Mr. *Chaworth?*---Mr. *Don.* There was.

Mr. *Stowe.* What was the Subject of that Diſcourſe?

Mr. *Don.* It was about their reſpective Manors in the Country, and the Quantity of Game upon them.

Mr. *Stowe.* Do you recollect the Manner of the Converſation that paſſed between Lord *Byron* and Mr. *Chaworth?*

Mr. *Don.* In general it was upon the beſt Method of preſerving Game.

Mr. *Stowe.* What did Lord *Byron* give as his Opinion upon that Diſcourſe?---Mr. *Don.* Lord *Byron* thought it was beſt not to be too ſtrict.

Mr. *Stowe.* What was Mr. *Chaworth's* Opinion?

Mr. *Don.* Mr. *Chaworth* was for being ſtrict, and for putting the Game-Laws in Execution.

Mr. *Stowe.* Did any Thing paſs relating to any other Gentlemen, or the Eſtates of any other Gentlemen?

Mr. *Don.* Yes, Sir *Charles Sedley's* Manor was mentioned.

Mr. *Stowe.* By whom was it mentioned?--Mr. *Don.* By Mr. *Chaworth.*

Mr. *Stowe.* What did Mr. *Chaworth* ſay upon the mentioning Sir *Charles Sedley's* Manor?

Mr. *Don.* He was ſpeaking of the Quantity of Game upon Sir *Charles Sedley's* Manor.

Mr. *Stowe.* Was there any Bett mentioned relative to this Diſcourſe concerning the Game?---Mr. *Don.* Yes, there was a Bett propoſed.

Mr. *Stowe.* By whom propoſed?

Mr. *Don.* I am not very ſure by whom it was propoſed.

Mr. *Stowe.* Was it propoſed either by Lord *Byron* or Mr. *Chaworth?*

Mr. *Don.* Yes, by one of them.

Mr. *Stowe.* Was any Bett made or not?

Mr. *Don.* There was no Bett made.

Mr. *Stowe.* At what Time did this Converſation paſs?

Mr. *Don.* I believe about Seven o'Clock.

Mr. *Stowe.* Did Lord *Byron* or Mr. *Chaworth* continue in that Company any Time after this Diſcourſe was over?

Mr. *Don.* Yes, for ſome Time after.

Mr. *Stowe.* Whether after the Bett propoſed, there was any other Converſation that paſſed between Lord *Byron* and Mr. *Chaworth?*

Mr. *Don.* Yes; I remember, upon Sir *Charles Sedley's* Manor being mentioned, Lord *Byron* aſked which was Sir *Charles Sedley's* Manor.

Mr. *Stowe.* Of whom did Lord *Byron* aſk that?

Mr. *Don.* Of Mr. *Chaworth.*

Mr. *Stowe.* Did Mr. *Chaworth* make any Anſwer?

Mr. *Don.* He anſwered, *Nuttall.*

Mr. *Stowe.* Did Mr. *Chaworth* mention any Thing more upon that Subject to Lord *Byron*; and what?

Mr. *Don.* He did, after Lord *Byron* had repeated the ſame Queſtion.

Mr. *Stowe.* What was further mentioned by Mr. *Chaworth?*

Mr. *Don.* Mr. *Chaworth* ſaid, upon his Lordſhip's aſking him over again which was Sir *Charles Sedley's* Manor; Surely, my Lord, you will allow *Nuttall* to be Sir *Charles Sedley's.*

Mr. *Stowe.* Was any Thing more ſaid reſpecting Sir *Charles Sedley*, or his Manors, or where he lived?

Mr. *Don.* Yes, Mr. *Chaworth* went on to ſay, Sir *Charles Sedley* lives in ſuch a Place, and can beſt inform you relating to his Manors; your Lordſhip knows where to find me in *Berkley-Row.*

Mr. *Stowe.* Did this conclude the Converſation on this Subject, or was any Thing more ſaid at that Time?

Mr. *Don.* The Converſation ended with the Words I have laſt ſaid.

Mr. *Stowe.* Did you ſtay in the Room till the Time Lord *Byron* and Mr. *Chaworth* went out?

Mr. *Don.* I ſtaid till Mr. *Chaworth* went out.

Mr. *Stowe.* What Diſtance of Time might that be from the End of the Converſation to Mr. *Chaworth's* going out of the Room?

Mr. *Don.* I think it might be about an Hour.

Mr. *Stowe.* Did Lord *Byron* and Mr. *Chaworth*, during that Hour, enter into Converſation with one another, or with the reſt of the Company?

Mr. *Don.* I am not ſure whether they did converſe with each other; they did with the reſt of the Company.

Mr. *Stowe.* At what Diſtance from one another did they ſit?

Mr. *Don.* At a pretty conſiderable Diſtance.

Mr. *Stowe.* Do you recollect any ſubſequent Converſation that Lord *Byron* entered into, except what you have mentioned?

Mr. *Don.* I do not; I was at a Diſtance from Lord *Byron.*

Mr. *Stowe.* At what Time was it that Mr. *Chaworth* went out of the Room?

Mr. *Don.* About Eight o'Clock; I am not quite ſure as to the Time.

Mr. *Stowe.* Do you know the Purpoſe of his going out of the Room?

Mr. *Don.* He was going down Stairs; I believe into the Yard.

M. *Stowe.* Did he take his Hat with him when he went out of the Room?---Mr. *Don.* I think he did not.

Mr. *Stowe.* Did any body go along with Mr. *Chaworth*, or immediately follow him?---Mr. *Don.* I went out with him.

Mr. *Stowe.* How far did Mr. *Chaworth* and you go?

Mr. *Donston.* A little Way without the Room.

Mr. *Stowe.* Was there any Converſation between Mr. *Chaworth* and you, when you were out of the Room?---Mr. *Donston.* There was.

Mr. *Stowe.* Was there any other Perſon beſides Mr. *Chaworth* and you?

Mr. *Donston.* There was none.

Mr. *Stowe.* Repeat what that Converſation was that paſſed between Mr. *Chaworth* and you.

Mr. *Donston.* Mr. *Chaworth* aſked me, If I attended to the Diſcourſe between him and Lord *Byron?* I told him I did in Part: He then aſked me, If he had been ſhort in what he laſt ſaid upon that Subject? I told him, No; I thought he ſaid rather more than what was neceſſary upon ſo trifling an Occaſion, and that I did not believe that either Lord *Byron* or the reſt of the Company would think any more about it.

Mr. *Stowe.* Was there any other Converſation between Mr. *Chaworth* and you at that Time?

Mr. *Donston.* Yes; he aſked me how long I ſtayed in Town, and hoped we ſhould meet often.

Mr. *Stowe.* Was there any other Converſation between Mr. *Chaworth* and you relative to the Subject of the Diſcourſe that had paſſed between my Lord *Byron* and Mr. *Chaworth?*---Mr. *Donston.* No.

Mr. *Stowe.* What became of Mr. *Chaworth* after this?

Mr. *Donston.* He turned to go down Stairs.

Mr. *Stowe.* Where did you go to?---Mr. *Donston.* Into the Room again.

Mr. *Stowe.* When you went into the Room, did you ſee Lord *Byron*, and where?

Mr. *Donston.* I ſtood with my Back to the Door, and upon turning round to go into the Room I ſaw Lord *Byron.*

Mr. *Stowe.* What was he doing at that Time?

Mr. *Donston.* He was coming out as I was going in.

Mr. *Stowe.* What Length of Time might it be from your going out to Mr. *Chaworth*, to the Time of your coming in again?

Mr. *Donston.* I cannot exactly tell, but I believe a very ſhort Time.

Mr. *Stowe.* Can you form any Judgment how long it might be?

Mr. *Donston.* I think it could not be Five Minutes.

Mr. *Stowe.* When you met Lord *Byron* going out of the Door, was any Thing ſaid?---Mr. *Donston.* No.

Mr. *Stowe.* Do you remember any Thing more that paſſed in the Houſe that gave you any Alarm in Regard to Lord *Byron* and Mr. *Chaworth?*

Mr. *Donston.* Yes, when I was in the Room, and ſaw that Lord *Byron* was not there, I began to reflect that they poſſibly might meet and reſume their Diſcourſe; by that Time the Bell was rung by ſome of the Company, and the Waiter came into the Room. I met the Waiter, and aſked him if he ſaw Mr. *Chaworth?* and he ſaid he believed he was below Stairs; I deſired he would go and ſee for him immediately, and tell him I muſt ſpeak to him. I was then preparing to go down myſelf, and the Waiter immediately came up with an Account of Mr. *Chaworth*'s being run through the Body.

Mr. *Stowe.* What did you and the reſt of the Company upon that?

Mr. *Donston.* We all haſtened down to the Room where Mr. *Chaworth* was.

Mr. *Stowe.* Did you ſee Mr. *Chaworth* in the Room, and who was there, and in what Situation? Deſcribe the Particulars.

Mr. *Donston.* I ſaw him in a great Chair in the Corner of the Room. Mr. *Fynmore*, the Maſter of the Tavern, was in the Room.

Mr. *Stowe.* How did Mr. *Chaworth* appear?

Mr. *Donston.* He ſat in the Chair, leaning his Head back. I went to him, and aſked him how he did? He ſaid he was run through the Body, and had not Five Minutes to live. Upon my aſking how it happened? he ſaid, he and Lord *Byron* went into the Room and fought. I then told him, I hoped his Wound was not ſo bad as he apprehended; he ſaid he was ſure he was run through the Body, for that my Lord was very near him, and had ſhortened his Sword.

Mr. *Stowe.* Did you enquire any Thing of Mr. *Chaworth*, how they came to go into that Room and fight?

Mr. *Donston.* No, I did not particularly.

Mr. *Stowe.* Did Mr. *Chaworth* relate any Thing to you about his going into the Room?

Mr. *Donston.* He did; and ſaid, when he turned round from ſhutting the Door, he ſaw Lord *Byron* with his Sword half-drawn, and calling upon him to defend himſelf.

Mr. *Stowe.* What did Mr. *Chaworth* do when Lord *Byron* ſo called upon him?

Mr. *Donston.* He drew, and they immediately engaged.

Mr. *Stowe.* Who ſaid ſo?

Mr. *Donston.* Mr. *Chaworth* himſelf ſaid ſo.

Mr. *Stowe.* Was any Thing more ſaid by Mr. *Chaworth* to you at that Time concerning this Matter?

Mr. *Donston.* No, I do not recollect any Thing elſe material.

L. H. S. Recollect yourſelf, whether any Thing elſe material happened; or did Mr. *Chaworth* ſay upon what Occaſion they fought?

Mr. *Donston.* No, he did not to me; for I then got up, and he talked to other People who flocked about him.

Mr. *Stowe.* Did you hear Mr. *Chaworth* make any Enquiry concerning Lord *Byron?*

Mr. *Donston.* I heard him ſay he thought he had wounded Lord *Byron.*

Mr. *Stowe.* Did Mr. *Chaworth* ſay to you any Thing of the Manner in which he apprehended he had wounded Lord *Byron?*

Mr. *Donston.* No, he did not to me.

Mr. *Stowe.* At the Time you left the Room at the *Star and Garter*, were all the Company ſober or not?

Mr. *Donston.* I think, perfectly ſo.

Mr. *Stowe.* My Lords, this is all I ſhall examine Mr. *Donſton* to.

L. H. S. Lord *Byron*, would your Lordſhip aſk this Witneſs any Queſtions?

Lord *Byron.* What Reaſon had you to imagine, that if I and Mr. *Chaworth* ſhould meet we ſhould reſume the Diſcourſe?

Mr. *Donston.* It was very likely that they ſhould come together, as I met my Lord ſo ſoon after I had parted with Mr. *Chaworth.*

Lord *Byron.* Was it not on Account of the Words which you heard repeated in the Room, and what paſſed after Mr. *Chaworth* and you went out of the Room together?

Mr. *Donston.* It was partly from the Words I heard in the Room, and partly from Mr. *Chaworth*'s having queſtioned me about them.

Lord *Montfort.* Why did you follow Mr. *Chaworth* out of the Room?

Mr. *Donston.* Mr. *Chaworth* took hold of my Arm, and aſked me to ſpeak with him.

Lord *Montfort.* How came you not to follow Lord *Byron* down Stairs?

Mr. *Donston.* I was returning into the Room, and was not ſure it was Lord *Byron* till I came into the Room and ſaw that he was not there.

Earl of *Buckinghamſhire.* Do you imagine Lord *Byron* could overhear any Part of the Converſation you had with Mr. *Chaworth* upon the Stairs?

Mr. *Donston.* I do not imagine Lord *Byron* could overhear it at that Diſtance.

Lord *Berkeley.* Do you know of any Words ſpoken by Lord *Byron* that could induce Mr. *Chaworth* to ſay, that if he wanted any Thing with Sir *Charles Sedley*, he lived in ſuch a Place, and that he, Mr. *Chaworth*, lived in *Berkley-Row?*

Mr. *Donston.* It aroſe from Lord *Byron*'s aſking the Queſtion a Second Time about Sir *Charles Sedley*'s Manor.

Lord *Berkeley.* When Mr. *Chaworth* ſaid to you, Do you think I have been ſhort in what I ſaid to Lord *Byron?* do not you apprehend, that That referred to the Words that Mr. *Chaworth* had ſaid in the Room?

Mr. *Donston.* I believe it did.

Lord *Berkeley.* Did Mr. *Chaworth* leave his Sword in the Room as well as his Hat?

Mr. *Donston.* I do not believe he did; I think he never took his Sword off.

Lord *Mansfield.* Whether Lord *Byron* took his Hat with him when he went out?---Mr. *Donston.* I do not know at all.

Earl *Talbot.* When you reproved Mr. *Chaworth* for having gone too far in what he had ſaid to Lord *Byron*, by ſaying, I think he ſaid rather more than was neceſſary on ſo trifling an Occaſion, did not you think the Words he had ſaid were of Force enough to a Man of ſtrict Honour, and nice Senſibility, to require an Explanation?

Mr. *Donston.* I did at firſt; but as they were ſpoke without much Heat or Paſſion, and no apparent Notice taken either by Lord *Byron*, or the reſt of the Company, I thought they might admit of a different Conſtruction.

Lord *Cathcart.* Did any Thing paſs between you further than what you have acquainted the Lords with?---Mr. *Donston.* Nothing more.

Lord Viſcount *Weymouth.* Did Mr. *Chaworth* ſay any Thing that led you to imagine that Lord *Byron* would take Notice of it?

Mr. *Donston.* Nothing more than his aſking me that Queſtion.

Earl *Poulet.* Do you apprehend that at the Time thoſe Words were ſpoke about Sir *Charles Sedley*'s Manors, they were ſaid in a Manner reflecting upon Sir *Charles Sedley*, or Mr. *Chaworth?*

Mr. *Donston.* No, I do not: It ſeemed to me to be rather queſtioning the Bounds of their Manors, as I underſtood it.

Mr. *Cornwall.* My Lords, we deſire Mr. *Molyneux* may be ſworn.

Francis Molyneux, *Eſquire.* (*Who was ſworn in like Manner.*)

Mr. *Cornwall.* Mr. *Molyneux* will inform your Lordſhips if he dined at the *Star and Garter* on the Twenty-ſixth of *January* laſt.

Lord *Mansfield.* I ſhould think it unneceſſary to aſk this Queſtion of every Witneſs.

Mr. *Corn.* Was you in Company with Lord *Byron* and Mr. *Chaworth* on the 26th of *January* laſt?---Mr. *Molyneux.* I was.

Mr. *Corn.* Do you recollect any Diſcourſe upon the Subject of Game?

Mr. *Moly.* I do.

Mr. *Corn.* Was Lord *Byron* and Mr. *Chaworth* engaged in that Diſcourſe?---Mr. *Moly.* They were.

Mr. *Corn.* At what Time of the Day might that Diſcourſe begin?

Mr. *Moly.* About Seven of the Clock, I think.

Mr. *Corn.* Was there any Difference of Opinion between Lord *Byron* and Mr. *Chaworth* upon that Subject?---Mr. *Moly.* There was.

Mr. *Corn.* Pleaſe to tell their Lordſhips how that was expreſſed.

Mr. *Moly.* Mr. *Chaworth* ſaid, he had always been ſtrict in preſerving his Game, and that That was the beſt Method of preſerving them: Lord *Byron* ſaid, he had never been ſtrict, and that he had more Game about *Newſtead* than any body elſe.

Mr. *Corn.* Was any Bet propoſed by any of the Company?

Mr. *Moly.* There was.

Mr. *Corn.* By whom?---Mr. *Moly.* By Lord *Byron.*

Mr. *Corn.* What were the Terms of the Bet?

Mr. *Moly.* He offered to lay One Hundred Pounds that he had more Game about *Newſtead* than Sir *Charles Sedley* or Mr. *Chaworth.*

Mr. *Corn.* Did Mr. *Chaworth* take the Bet?

Mr. *Moly.* Mr. *Chaworth* ſaid, if he would call for Pen, Ink, and Paper, he would lay him the Wager.

Mr. *Corn.* Was nothing more ſaid upon that Subject?

Mr. *Moly.* Lord *Byron* ſaid, he ſhould be glad to know where Sir *Charles Sedley*'s Manor was.

Mr. *Corn.* What Anſwer was made to that Queſtion?

Mr. *Moly.* Mr. *Chaworth* ſaid, *Nuttall*; but if your Lordſhip ſhould have any Thing to ſay to Sir *Charles Sedley*, he lives at one Mr. *Cooper*'s in *Dean-Street.*

Mr. *Corn.* Was any Thing further ſaid by any Perſon, or was that the Whole?

Mr. *Moly.* Lord *Byron* aſked again where Sir *Charles Sedley*'s Manor laid.

Mr. *Corn.* And what Anſwer was given to Lord *Byron?*

Mr. *Moly.* Mr. *Chaworth* ſaid, he had already informed Lord *Byron* where Sir *Charles Sedley* lived; and his Lordſhip knew where he lived, if he had any Thing to ſay to him.

Mr. *Corn.* Was there any more Converſation?

Mr. *Moly.* No more upon that Subject.

Mr. *Corn.* How long did Lord *Byron* continue in Company after this Converſation ceaſed?

Mr. *Molyneux.* I believe he continued in Company about an Hour.

Mr. *Cornwall.* Did he join in any Part of that Time in any future Conversation?---Mr. *Moly.* He converſed with me

Mr. *Corn.* Was you near him?---Mr. *Moly.* I ſat next to him.

Mr. *Corn.* On what Subject did Lord *Byron* converſe with you?

Mr. *Moly.* About the Duke of *York*'s Houſe

Mr. *Corn.* Upon any other Subject?---Mr. *Moly.* Upon no other.

Mr. *Corn.* Did he appear to be in good Humour?

Mr. *Moly.* I thought he did; I did not ſee any Thing to the contrary.

Mr. *Corn.* Do you recollect at what Time Mr. *Chaworth* quitted the Room?---Mr. *Moly.* I think it was about Eight of the Clock.

Mr. *Corn.* Did any body go out with Mr. *Chaworth*, and who?

Mr. *Moly.* Mr. *Donſton*, I think, went out with him. I do not know whether he went out with him, or followed him.

Mr. *Corn.* Do you recollect Lord *Byron*'s quitting the Room?

Mr. *Moly.* I do.

Mr. *Corn.* At what Time?

Mr. *Moly.* About Seven or Eight Minutes after Mr. *Chaworth.*

Mr. *Corn.* Where did you next ſee Mr. *Chaworth?*

Mr. *Moly.* In a Room up One Pair of Stairs.

Mr. *Corn.* How ſoon after Lord *Byron* quitted the Room?

Mr. *Moly.* I cannot juſtly ſay; but I think it might be about Five or Six Minutes.

Mr. *Corn.* In what Condition did you find Mr. *Chaworth?*

Mr. *Moly.* He was ſitting in a great Chair, and Lord *Byron* ſtanding by him.

Mr. *Corn.* Did you hear Mr. *Chaworth* declare any Thing, and what?

Mr. *Moly.* Mr. *Chaworth* ſaid, he had very few Hours to live; that Lord *Byron* had ſhortened his Sword and ſtabbed him into the Belly; that he ſhould be glad to ſay ſomething to a particular Friend before he died; I left the Room ſoon afterwards.

Mr. *Corn.* Did you hear Mr. *Chaworth* declare any Thing, and what, after that?

Mr. *Moly.* I heard him ſay again, that he had but a very few Hours to live.

Mr. *Corn.* Did you hear Mr. *Chaworth* declare any Thing elſe at that Time?---Mr. *Moly.* I did not.

Mr. *Corn.* My Lords, we have done with this Witneſs.

Lord High Steward. Lord *Byron*, will your Lordſhip aſk any Queſtions of this Witneſs?

Lord *Byron.* Was not the Converſation between you and me very ſhort?

Mr. *Moly.* It was not of long Duration.

Lord *Byron.* My Lords, I ſhall aſk this Witneſs no more Queſtions.

Earl of *Morton.* I underſtood that Lord *Byron* ſaid, he had more Game upon his Manor than any body, and that he would lay One hundred Pounds of that; was that what you ſaid?

Mr. *Moly.* It was.

Mr. Att. Gen. I underſtand Mr. *Hawkins* and Mr. *Adair*, the two Surgeons that are attending here, in all Probability may be wanted, and therefore, if your Lordſhips pleaſe, we will call them.

L. H. S. Yes, certainly the Surgeons may be called, as they may be wanted elſewhere.

Lords. Ay, ay.

Cæſar Hawkins, *Eſq.* (*Who was ſworn in like Manner.*)

Mr. Attorney General. Mr. *Hawkins*, was you ſent for to Mr. *Chaworth*, on the 26th of *January* laſt?—Mr. *Hawkins.* I was.

Mr. Att. Gen. Did you go to him?

Mr. *Hawk.* I did immediately upon receiving the Meſſage.

Mr. Att. Gen. What Time of the Night might that be?

Mr. *Hawk.* A little after Eight, as near as I can recollect.

Mr. Att. Gen. In what Condition did you find Mr. *Chaworth?*

Mr. *Hawk.* I found him ſitting by the Fire-Side, in the Back-Room, up one Pair of Stairs, with the lower Part of his Waiſtcoat open, his Shirt bloody, and his Hand holding his Belly.

Mr. Att. Gen. Had you any Converſation with him there, how that Misfortune had befallen him?

Mr. *Hawk.* He ſaid to me, that he believed he had received a mortal Wound; that he felt within himſelf a peculiar Kind of Faintneſs and Sinking; and that he had a Senſation of ſtretching and ſwelling of his Belly, that made him believe he bled internally.

Mr. Att. Gen. Did he ſay any Thing more how this unfortunate Affair happened?

Mr. *Hawk.* After I had made my proper Enquiries and Examination, he preſſed me earneſtly to tell him what his real Situation was, and, as he expreſſed it, not to flatter him, but to inform him truly, if I thought him in any immediate Danger, for if he was, that he had private Affairs which he wiſhed extremely to ſettle. I told him, I was afraid his Wound was dangerous. He then deſired that Mr. *Levinz* might be immediately ſent for to him, and deſiring the other Gentlemen, who were in the Room, to ſtep out for a few Minutes, he gave me ſome Directions relative to his private Affairs, which he deſired I would mention to Mr. *Levinz*, in caſe he died before Mr. *Levinz* could be brought to him. This Converſation being ended, I think before the other Gentlemen returned into the Room, I aſked him in what Poſition his Body was when he received the Wound? To which Queſtion, as I apprehend, to make his Anſwer more explicit, he gave me the following Detail: That Lord *Byron* and he came into that Room together, Lord *Byron* leading the Way, and walking on towards the further End of the Room, ſaid ſomething very rough to him; upon which he ſaid, Then, my Lord, it is right I ſhould faſten the Door (I am not ſure whether he ſaid faſten the Door, or bolt the Door); that he turned to the Door, and did faſten it; that as he turned round again towards Lord *Byron*, he ſaw his Lordſhip with his Sword either drawn, or nearly drawn, upon which he immediately drew his own, and at the ſame Time that he preſented the Point of his Sword to his Lordſhip, that he made a Thruſt at him, which he thought had hit him, and dangerouſly wounded or killed him; that immediately afterwards he perceived his Lordſhip ſhortening his Arm to make a Thruſt at him, which he thought to have parried with his left Hand, with which he endeavoured to catch the Point of the Sword; and he looked at his Hand once or twice, thinking that he had either ſcratched or wounded his Hand in the Attempt; that he perceived the Sword enter his Body, and imagined it had gone in deep, for that he had felt a Pain quite through to his Back; that immediately after he laid hold of the Gripe of Lord *Byron*'s Sword, and ſtruggling with him for it, and being the ſtronger Man, he diſarmed his Lordſhip, ſaying to him, he hoped he was not dangerouſly wounded; that Lord *Byron* replied ſomething to the ſame Purpoſe to him; and, I think, added, that Lord *Byron* ſaid, That he hoped now he would allow or acknowledge (it was either allow or acknowledge, I am not ſure which of the two Words) that he (his Lordſhip) was as brave a Man as any other in the Kingdom; and ſome conſiderable Time paſſed afterwards at the Tavern, before Mr. *Chaworth* was carried to his own Houſe, partly on Account of Mr. *Chaworth*'s being of Opinion, that he ſtill felt himſelf bleeding inwardly; and as he wiſhed extremely to ſee Mr. *Levinz*, he deſired to avoid moving, for fear the Bleeding ſhould be increaſed by it, and ſo accelerate his Death. A Part of the Time was likewiſe taken up in our endeavouring to get proper Conveniencies for his Removal. During this Time he recollected ſome other little Circumſtances relative to his private Affairs, on which Account he deſired the Gentlemen, who were then in the Room, to retire again. When he had mentioned what he had to ſay upon that Subject, he repeated to me again with great Earneſtneſs, what I had heard him declare before, two or three Times in different Expreſſions, equally ſtrong, that pained and diſtreſſed as he then was, and in immediate Danger of Death, he had rather be in his preſent Situation, than live under the Misfortune of having killed another Perſon. This ſtrong Expreſſion of Humanity led me to aſk him, if there had been any ſerious Cauſe of Offence between them, meaning between Lord *Byron* and himſelf, that ſhould have occaſioned the Quarrel? He pauſed for a Moment or two, as one recollecting himſelf, and then anſwered, No, nothing that might not have been explained and made up; I think his Expreſſion was, eaſily made up. After a little Time more he grew ſtronger, and he was removed to his own Houſe, without any great Uneaſineſs or Difficulty. I had deſired the Aſſiſtance of another Surgeon; and then Mr. *Adair*, and ſoon after Dr. *Addington*, his Phyſician, met me. We all joined in our beſt Endeavours to give him ſome Relief, but without any Hopes of doing him Good, and the next Morning about nine o'Clock he expired. On the *Monday* Evening, by the Coroner's Directions, we examined the dead Body: The Sword had entered about an Inch on the left Side of the Navel, and paſſing obliquely upwards, had made its Exit about five or ſix Inches higher, on the left Side of the Back: In its Paſſage, the Sword went through one of the ſmall Inteſtines, and had made a very large Opening at the back Part of the Bottom of the Stomach; ſo that all the Contents of the Stomach, a Part from the Inteſtine, and a Quantity of Blood, were mixed together in the Cavity of the Belly. The Sword had likewiſe paſſed through the lower Part of the Diaphragm, and there was a ſmall Quantity of Blood in the Cavity of the left Breaſt. Upon the whole, there was not the leaſt Doubt but that the Wound we examined was the immediate Cauſe of Mr. *Chaworth*'s Death.

Mr. Att. Gen. My Lords, we have done with this Witneſs.

L. H. S. My Lord *Byron*, would your Lordſhip chuſe to aſk this Witneſs any Queſtions?---Lord *Byron.* No, my Lords.

Mr. Sollicitor General. The next Witneſs, if your Lordſhips pleaſe, is Mr. *Adair*, the other Surgeon.

Robert Adair, *Eſq.* (*Who was ſworn in like Manner.*)

Mr. Sollicitor General. Do you remember being ſent for to Mr. *Chaworth* on the 26th of *January* laſt?---Mr. *Adair.* I was.

Mr. Sol. Gen. At what Time were you ſent for?

Mr. *Adair.* About Nine o'Clock.

Mr. Sol. Gen. In what Condition did you find Mr. *Chaworth?*

Mr. *Adair.* I found him with a Wound upon the left Side of his Belly, near the Navel, which paſſed upwards, and went through between five and ſix Inches higher than at its Entrance.

Mr. Sol. Gen. Did Mr. *Chaworth* ſay any Thing upon the Subject of the Wound?—Mr. *Adair.* Nothing to me.

Mr. Sol. Gen. Nor in your Hearing?—Mr. *Adair.* Nor in my Hearing.

Mr. Sol. Gen. Was you preſent when the Body was opened?

Mr. *Adair.* I was preſent.

Mr. Sol. Gen. Do you think this Wound occaſioned his Death?

Mr. *Adair.* Moſt certainly.

L. H. S. My Lord *Byron*, does your Lordſhip chuſe to aſk this Witneſs any Queſtions?—Lord *Byron.* No, my Lords.

Mr. Serjeant *Glynn.* If your Lordſhips pleaſe, we will now call *John Sherwin*, Eſq.

John Sherwin, *Eſq.* (*Who was ſworn in like Manner.*)

Mr. Serjeant *Glynn.* Were you at the *Star-and-Garter*, at the *Nottinghamſhire* Club, on the 26th of *January* laſt?—Mr. *Sherwin.* I was.

Mr. Serj. *Glynn.* Do you remember whether Lord *Byron* and Mr. *Chaworth* were there?—Mr. *Sher.* They were.

Mr. Serj. *Glynn.* Do you remember any Converſation about Game?

Mr. *Sher.* There had been ſome Converſation by the Company in general about Game.

Mr. Serj. *Glynn.* Do you remember what Part Lord *Byron*, and what Part Mr. *Chaworth*, took in that Converſation?

Mr. *Sher.* Lord *Byron* ſpoke upon that Subject.

Mr. Serj. *Glynn.* What did Lord *Byron* ſay?

Mr. *Sher.* He thought that being too ſevere hurt the Game, and that they were preſerved more by the other Method.

Mr. Serj. *Glynn.* Did Mr. *Chaworth* expreſs himſelf of a different Opinion?

Mr. *Sher.* Mr. *Chaworth* did.

Mr. Serj. *Glynn.* What did Mr. *Chaworth* ſay?

Mr. *Sher.* He ſaid, nothing could be ſo clear as that the Poachers were idle Fellows, and did a great deal of Miſchief in the Country.

Mr. Serj. *Glynn.* Did Mr. *Chaworth* ſay any Thing about Game in his own Manors?

Mr. *Sherwin*. After this Converſation, Lord *Byron* offered a Bet of One hundred Pounds, that he had more Game upon an Acre on his Manor than Mr. *Chaworth* had.

Mr. Serjeant *Glynn*. Did Mr. *Chaworth* accept the Bet?

Mr. *Sher*. Mr. *Chaworth* ſaid he would.

Mr. Serj. *Glynn*. What did he ſay upon that?

Mr. *Sher*. He offered to take the Bet, and I believe deſired that Pen, Ink, and Paper might be ſent for.

Mr. Serj. *Glynn*. Was there any Bet laid?

Mr. *Sher*. I ſaid, it was a Bet that could never be determined.

Mr. Serj. *Glynn*. Was any Thing ſaid about Sir *Charles Sedley*'s Manor?

Mr. *Sher*. After this there aroſe a Diſpute about their Manors.

Mr. Serj. *Glynn*. Repeat what paſſed upon that Occaſion.

Mr. *Sher*. *Nuttall* Manor was mentioned, and another or two that I do not remember.

Mr. Serj. *Glynn*. By whom was *Nuttall* mentioned?

Mr. *Sher*. I remember its being mentioned by Mr. *Chaworth*; he ſaid, your Lordſhip has nothing to do there, it is Sir *Charles Sedley*'s Manor, it was bought out of my Family.

Mr. Serj. *Glynn*. Was there any Thing more ſaid upon this Subject?

Mr. *Sher*. There was more Converſation, which I do not remember.

Mr. Serj. *Glynn*. How long did the Converſation continue upon this Subject?

Mr. *Sher*. It might continue a Quarter of an Hour, or twenty Minutes.

Mr. Serj. *Glynn*. Did the Company then enter upon any other Subject of Converſation?

Mr. *Sher*. During the Diſpute between Lord *Byron* and Mr. *Chaworth*, I remember Mr. *Chaworth*'s ſaying, As to Sir *Charles Sedley*, my Lord, he will give you an Anſwer; as to myſelf, your Lordſhip knows where I live.

Mr. Serj. *Glynn*. Did Lord *Byron* take any Part in the future Converſation of the Company?

Mr. *Sher*. Not that I remember; in general, I believe, he talked with Mr. *Molyneux*, who ſat next him.

Mr. Serj. *Glynn*. Did he appear to be in good Humour or not?

Mr. *Sher*. I did not obſerve that at all, either one Way or the other; there was no further Converſation between Lord *Byron* and Mr. *Chaworth*.

Mr. Serj. *Glynn*. When did Mr. *Chaworth* leave the Room?

Mr. *Sher*. It might be twenty Minutes after Mr. *Chaworth* had ſaid, You know where I live, my Lord.

Mr. Serj. *Glynn*. Did Mr. *Chaworth* go out alone, or did any Perſon go with him?

Mr. *Sher*. He aſked Mr. *Donſton*, who ſat next him, to go out with him, he wanted to ſpeak to him.

Mr. Serj. *Glynn*. Did Mr. *Donſton* return again to the Company, and how ſoon?—Mr. *Sher*. He came into the Room again very ſoon, almoſt in two Minutes.

Mr. Serj. *Glynn*. Did you obſerve when Lord *Byron* left the Room?

Mr. *Sher*. I remember his getting up out of his Chair.

Mr. Serj. *Glynn*. Before or after the Return of Mr. *Donſton*?

Mr. *Sher*. I think it was before.

Mr. Serj. *Glynn*. Where did you ſee Mr. *Chaworth* again that Evening?

Mr. *Sher*. Soon after Mr. *Donſton* came into the Room again, a Drawer, or Somebody came in, and ſaid, there had been a Quarrel; the Company above Stairs went down Stairs into that Room where Mr. *Chaworth* was; I went with them.

Mr. Serj. *Glynn*. In what Condition did you find Mr. *Chaworth*?

Mr. *Sher*. He was ſitting in a Chair, holding his Belly with his right Hand, his Waiſtcoat was open, and his Shirt bloody.

Mr. Serj. *Glynn*. Had you any Converſation with Mr. *Chaworth*?

Mr. *Sher*. I do not remember I had.

Mr. Serj. *Glynn*. Did you hear any Converſation between Mr. *Chaworth* and any other of the Company?

Mr. *Sher*. Somebody aſked him how he did? He ſaid, he had not five Minutes, or five Hours, to live, I forget which. Mr. *Hawkins* came in, who had been ſent for; and in a little Time, the Company left Mr. *Hawkins* and Mr. *Chaworth* together, and went up Stairs, where they had dined.

Mr. Serj. *Glynn*. Did you hear any Declarations from Mr. *Chaworth*, reſpecting the Accident that had happened to him?—Mr. *Sher*. I did not.

L. H. S. Would Lord *Byron* aſk the Witneſs any Queſtions?

Lord *Byron*. How was Mr. *Chaworth* employed during the twenty Minutes that he was in the Room, after the Converſation that paſſed?

Mr. *Sher*. I do not remember in particular, but I imagine he was talking to the Gentlemen on his right Hand, or on his left.

Lord *Byron*. Was he not employed in ſettling the Reckoning?

Mr. *Sher*. I believe he was.

Lord *Byron*. Did you obſerve any Thing particular in his Manner at the Time?

Mr. *Sher*. I cannot ſay I did.

Lord High Steward. The Witneſs may withdraw.

Mr. *Stowe*. If your Lordſhips pleaſe, the next Witneſs we will call is *Thomas Willoughby*, Eſq.

The Honourable Thomas Willoughby. *(Who was ſworn in like Manner).*

Mr. *Stowe*. Was you at the *Star and Garter* on the Twenty-ſixth of *January* laſt?

Mr. *Willoughby*. I was.

Mr. *Stowe*. Was you there between Four o'Clock and Seven in the Afternoon?

Mr. *Wil*. I dined there a little after Four, and was there at Seven in the Afternoon.

Mr. *Stowe*. Do you remember any Diſpute between Lord *Byron* and Mr. *Chaworth* concerning the Preſervation of Game?

Mr. *Wil*. They were of different Opinions about their preſerving of Game.

Mr. *Stowe*. What paſſed between Lord *Byron* and Mr. *Chaworth* upon that Subject?

Mr. *Wil*. Mr. *Chaworth*'s Argument was, that there was no ſuch Thing as having Game, unleſs Gentlemen were ſevere with the Poachers.

Mr. *Stowe*. Did Lord *Byron* differ with Mr. *Chaworth* upon that Head?

Mr. *Wil*. He did.

Mr. *Stowe*. Did any Words of Anger paſs between them?

Mr. *Wil*. I did not perceive any.

Mr. *Stowe*. Do you remember any Inquiry made concerning the Manors of Sir *Charles Sedley*?

Mr. *Wil*. *Nuttall*, a Manor of Sir *Charles Sedley*'s, was mentioned.

Mr. *Stowe*. By whom?

Mr. *Wil*. I do not know whether it was mentioned by Lord *Byron* firſt, or Mr. *Chaworth*; but Mr. *Chaworth* ſaid, *Nuttall* belonged to Sir *Charles Sedley*; he knew it, for it was bought of his Family.

Mr. *Stowe*. Did any Thing more paſs, and what, about that?

Mr. *Wil*. No, not that I recollect.

Mr. *Stowe*. Do you remember any Bet on either Side?

Mr. *Wil*. Lord *Byron* offered to bet Mr. *Chaworth* One hundred Pounds that he had more Game upon his Manor, or Manors, than Mr. *Chaworth* had.

Mr. *Stowe*. What followed upon that Offer?

Mr. *Wil*. Mr. *Sherwin* ſaid, it would be very difficult to decide that Bet.

Mr. *Stowe*. Do you know if any Bet was made?—Mr. *Wil*. I do not.

Mr. *Stowe*. Were there any Words paſſed afterwards between Lord *Byron* and Mr. *Chaworth*, reſpecting Sir *Charles Sedley*, his Manor, or his Eſtate?

Mr. *Wil*. Not that I heard.

Mr. *Stowe*. Do you remember Mr. *Chaworth* afterwards going out of the Room?

Mr *Wil*. I do.

Mr. *Stowe*. At what Diſtance of Time might that be from the finiſhing the Converſation?

Mr. *Wil*. Perhaps Three Quarters of an Hour, or thereabouts, I cannot ſay exactly.

Mr. *Stowe*. Did Lord *Byron*, during that Three Quarters of an Hour, diſcourſe with Mr. *Chaworth*, or any other Gentleman of the Company?

Mr. *Wil*. I did not hear him.

Mr. *Stowe*. Do you recollect, when Mr. *Chaworth* went out of the Room, if any body went with him or followed him?

Mr. *Wil*. Mr. *Donſton* went out at the ſame Time.

Mr *Stowe*. Did Mr. *Chaworth*, when he went out of the Room, take his Hat with him or not?

Mr. *Wil*. I did not take Notice of that.

Mr. *Stowe*. How long was Mr. *Chaworth* out of the Room, and did he return again?

Mr. *Wil*. He never returned again.

Mr. *Stowe*. Did Mr. *Donſton* return again?——Mr. *Wil*. He did.

Mr. *Stowe*. In what Space of Time?---Mr. *Wil*. In a very ſhort Time.

Mr. *Stowe*. Can you form any Judgment of the Time?

Mr. *Wil*. I cannot ſpeak exactly, perhaps Five Minutes.

Mr. *Stowe*. Where was Lord *Byron* when Mr. *Donſton* came into the Room?

Mr. *Wil*. He was got up, and gone towards the Door, or out of the Door, I do not know which.

Mr. *Stowe*. Did Lord *Byron* take his Hat?---Mr. *Wil*. I do not know.

Mr. *Stowe*. How long might Lord *Byron* be gone out of the Room before you heard any Thing more relative to Lord *Byron* or Mr. *Chaworth*?

Mr. *Wil*. A very few Minutes.

Mr. *Stowe*. Who mentioned any thing to you concerning Lord *Byron* or Mr. *Chaworth*?

Mr. *Wil*. The Waiter came up and told us what had happened.

Mr. *Stowe*. Did you go to the Place, and ſee Lord *Byron* and Mr. *Chaworth*, or either of them there?

Mr. *Wil*. I did.

Mr. *Stowe*. Did you ſee Mr. *Chaworth*?---Mr. *Wil*. I did.

Mr. *Stowe*. In what Condition and Situation was Mr. *Chaworth*?

Mr. *Wil*. He was ſitting in a Chair, with his Hand on his Belly, and his Shirt was bloody.

Mr. *Stowe*. Did Mr. *Chaworth* ſay any Thing how he came by that Wound?

Mr. *Wil*. He did not; only he ſaid he was a dying Man, and that Lord *Byron* had run him through.

Mr. *Stowe*. Did he ſay any Thing more that you recollect?

Mr. *Wil*. He ſaid ſeveral Times over that he was a dying Man, and had but a few Minutes to live.

Mr. *Stowe*. My Lords, we have done with this Witneſs.

Lord High Steward. Lord *Byron*, would you aſk this Witneſs any Queſtions?

Lord *Byron*. Was not you converſing with Mr. *Hewett*, during the latter Part of the Converſation between Mr. *Chaworth* and me, ſo as you might not hear it?

Mr. *Wil*. The laſt Word I heard, was, that *Nuttall* belonged to Sir *Charles Sedley*, that it was bought of his Family, and he knew it.

Lord *Byron*. Was not you converſing with Mr. *Hewett* ſo as to prevent you from hearing any more?

Mr. *Wil*. That was the laſt I heard.

L. H. S. Has Lord *Byron* any Thing more to aſk this Witneſs?

Lord *Byron*. No, my Lord.

L. H. S. The Witneſs may withdraw.

Mr. *Cornwall*. If your Lordſhips pleaſe, the next Witneſs we ſhall call is *John Edwards*.

John Edwards. *(Who was ſworn in like Manner.)*

Mr. *Cornwall*. Was not you a Waiter at the *Star and Garter*, on the Twenty-ſixth of *January* laſt?

John Edwards. I was.

Mr. *Corn*. Did you attend the Gentlemen of the *Nottinghamſhire* Club, who met there that Day, between Eight and Nine in the Evening?

J. Edw. I did.

Mr.

Mr. *Cornwall.* What was the Purpoſe of your Attendance between Eight and Nine?

J. Edwards. To anſwer the Bell, and to carry any Thing into the Room.

Mr. *Corn.* What Commands had the Company laid upon you at that Time?

J. Edw. To bring up a Bottle of Claret.

Mr. *Corn.* Did you go down?

J. Edw. I did, to the Bar, but not into the Cellar.

Mr. *Corn.* What did you do then?

J. Edw. I called to my Maſter to get ſome Wine, who, when I called him firſt, I thought he was in the Kitchen, and I called him twice or thrice, and then I found him in the Larder. I told him the Gentlemen wanted a ſingle Bottle of Claret at the *Nottinghamſhire* Club.

Mr. *Corn.* Whilſt you were ſtanding at the Bar waiting for the Bottle of Claret, did you hear the Bell ring?---*J. Edw.* I did not.

Mr. *Corn.* Did you hear any body call?

J. Edw. I heard Somebody call Waiter, up Stairs.

Mr. *Corn.* Did you know the Voice?—*J. Edw.* I did not.

Mr. *Corn.* Did you obey?

J. Edw. I did not the firſt Time, I thought to have taken the Wine up Stairs with me.

Mr. *Corn.* Was it repeated?

J. Edw. It was once or twice.

Mr. *Corn.* Did you go up?——*J. Edw.* I did.

Mr. *Corn.* Who did you meet?

J. Edw. When I came up the firſt Pair of Stairs, I ſaw Lord *Byron* and Mr. *Chaworth* coming down, or rather waiting upon the Stairs for Somebody to come up. Lord *Byron* aſked me, if either of theſe Rooms were empty (there being Two Rooms in his View)? I anſwered in the Affirmative, and ſaid, This; being the Door which was on the Right-hand.

Mr. *Corn.* What then did you do?

J. Edw. I had a Candle in my Right-Hand; I opened a green Bays Door, with a Braſs Lock, with my Left-Hand, and ſhewed Lord *Byron* and Mr. *Chaworth* into the Room; I ſet the Candle upon the Table in the Room; I quitted the Room, and pulled the inner Door after me; the outer Door ſhuts with a Pully. I went down Stairs immediately for the Bottle of Wine, which I had deſired my Maſter to get; I met him by the Bar or the Cellar Door (which are together) with the Wine in his Hand. I took it from him, and went up Stairs to the *Nottinghamſhire* Club, up Two-Pair-of-Stairs. I drew the Cork, and heard the Bell ring into the Room into which I had ſhewed Lord *Byron* and Mr. *Chaworth*, twice, whilſt I was decanting the Wine. When I had decanted the Wine, I came down Stairs, and found I was too late to anſwer the Bell, as is common for a Waiter that ſhews the Room. I heard Somebody had been in. When I came to the Ground Floor, the firſt Perſon I ſpoke to (to the beſt of my Knowledge) was my Maſter. He clapp'd his Hands together, and ſaid, Mr. *Chaworth* is wounded, or Lord *Byron* has wounded Mr. *Chaworth*; the Expreſſion I cannot exactly tell.

Mr. *Corn.* Did you go into the Room?

J. Edw. Not till after I had been in the *Nottinghamſhire* Club-Room, and had informed the Gentlemen that Mr. *Chaworth* was wounded.

Mr. *Corn.* Did you ſtay long?——*J. Edw.* I did not ſtay long.

Mr. *Corn.* Did you hear Mr. *Chaworth* ſay any Thing?

J. Edw. He ſeemed extremely deſirous of ſeeing Two or Three Friends, particularly Mr. *Levinz.*

Mr. *Corn.* What was the Size of the Room you ſhewed Lord *Byron* and Mr. *Chaworth* into?

J. Edw. In ſome Parts of the Room, I have meaſured it, it is Sixteen Feet long and Sixteen Feet broad in ſome Parts; the Chimney is taken out of the Corner of the Room.

Mr. *Corn.* What kind of a Candle did you leave in the Room?

J. Edw. A common Tallow Candle, about Eight in the Pound.

Mr. *Corn.* Was there any other Candle in the Room?

J. Edw. There was no other Candle, in the Room, nor no other Light, to my Knowledge.

Mr. *Corn.* Was there a Fire in the Room?

J. Edw. There was a Fire in the Room, but it was rather down.

Mr. *Corn.* We have done with this Witneſs.

Lord High Steward. Lord *Byron*, would your Lordſhip aſk this Witneſs any Queſtions?

Lord *Byron.* Was there any Table in the Room.

J. Edw. There was a Table in the Room.

Lord *Byron.* Did you ſet the Candle upon it?—*J. Edw.* I did.

Lord *Byron.* How large a Space might the Chairs and Furniture of the Room take up from the Length of it?

J. Edw. I cannot tell, indeed.

Lord *Byron.* In what Part of the Room did you leave Mr. *Chaworth* and me ſtanding?

J. Edw. Both walked towards the Fire-place.

Lord *Mansfield.* I would aſk this Witneſs, whether he is ſure that he ſhut the inner Door, on Mr. *Chaworth* and Lord *Byron*'s going into the Room?

J. Edw. I pulled it after me, but cannot tell certainly whether it ſhut or not.

Lord *Mansfield.* Was there any Bolt to the inner Door?

J. Edw. There is, it is a Braſs Lock, and there is a little Bolt at the Bottom.

Mr. Att. Gen. If your Lordſhips pleaſe, we will call Mr. *Fynmore.*

Mr. James Fynmore. (*Who was ſworn in like Manner.*)

Mr. Attorney General. My Lords, this is the Maſter of the Tavern. Do you remember going up Stairs on the Twenty-ſixth of *January* laſt, into the Room where Lord *Byron* and Mr. *Chaworth* were?

Mr. *Fynmore.* I do.

Mr. Att. Gen. What induced you to go thither?

Mr. *Fyn.* A Waiter came and told me that Two Gentlemen were come out of the *Nottinghamſhire* Club, into the Room Number Seven, and deſired to ſpeak to me.

Mr. Att. Gen. What is the Waiter's Name?

Mr. *Fyn. John Gothorp.*

Mr. Att. Gen. In what Situation did you find Lord *Byron* and Mr. *Chaworth?*

Mr. *Fyn.* I found them ſtanding cloſe together; Mr. *Chaworth* had his Sword in his Left-Hand, and Lord *Byron* had his in his Right-Hand. Mr. *Chaworth* ſaid, Here, *James*, take my Sword, for I am diſarmed, or I have diſarmed him, I do not know which. I turned to Lord *Byron*, and ſaid, Pray, my Lord, give me your Sword; on which Lord *Byron* gave me his Sword, and I took it and went down Stairs with it. As I was going out of the Room, either one or both called after me, and deſired me to get Help immediately; I went down the Stairs with the two Swords, and laid them upon the Table, in a Room at the Bottom of the Stairs, and then called Mr. *Hawkins.*

Mr. Att. Gen. Did you hear Mr. *Chaworth* ſay any Thing how this Accident had befallen him?----Mr. *Fyn.* No.

Mr. Att. Gen. My Lords, we have done with this Witneſs.

Lord High Steward. Lord *Byron*, will you aſk this Witneſs any Queſtions?

Lord *Byron.* Did not you carry up the Club-Book into the Room where we dined?

Mr. *Fyn.* I went up at Seven o'Clock, as is the Cuſtom, with the Book and a Bill.

Lord *Byron.* Did you wait the Settling of the Bill?---Mr. *Fyn.* I did.

Lord *Byron.* Did not Mr. *Chaworth* Settle it?

Mr. *Fyn.* Mr. *Chaworth* ſettled the Book that Day.

Lord *Byron.* What Time might it take up in Settling it?

Mr. *Fyn.* It was done in Five or Six Minutes.

Lord *Byron.* Did you make any Obſervation upon Mr. *Chaworth*'s Manner of Settling it, or obſerve any Thing particular?

Mr. *Fyn.* No, I think not any Thing particular.

Lord *Byron.* Did you obſerve him to be ruffled or confuſed?

Mr. *Fyn.* In one Particular only; the Book is marked with Lines ruled in Checks, each Gentleman's Name is upon a Line, and againſt each Name, if the Gentleman be preſent, there is a o; if abſent 5*s.* The only Remark I maade of any Flurry in Mr. *Chaworth*, was, h put 5*s.* againſt Lord *Byron*'s Name inſtead of a o; upon which I ſaid, Sir, my Lord is preſent; upon which he altered it, and made a o.

Lord *Byron.* What was the Size of the Room where we were?

Mr. *Fyn.* It was ſixteen Feet in the Clear both Ways, except that the Chimney was taken out of one of the Corners.

Lord *Byron.* What Space might the Chairs take up from the Dimenſions?

Mr. *Fyn.* The Chairs are pretty large, they might take two Feet each Chair into the Room.

Lord *Byron.* Is there any inner Faſtening, and what, to the Door?

Mr. *Fyn.* The Door has a Braſs Lock, and there is a little Catch underneath, as there uſually are to theſe Doors.

Lord *Byron.* Is it not a Bolt?---Mr. *Fyn.* It is a little ſliding Bolt.

Lord *Byron.* When you went into the Room, in what Part did you find me and Mr. *Chaworth* ſtanding?

Mr. *Fyn.* I ſaw Lord *Byron* and Mr. *Chaworth* ſtanding Shoulder to Shoulder, cloſe by the Fire.

A Lord. Was the Door bolted when you firſt came to the Room?

Mr. *Fyn.* No, it was not.

Lord Viſcount *Folkſtone.* Did Lord *Byron* deliver up his Sword readily?

Mr. *Fyn.* When Mr. *Chaworth* gave me his Sword, I turned to Lord *Byron* for his.

Lord Viſcount *Folkſtone.* Did he give you his Sword directly?

Mr. *Fyn.* I took hold of it, and his Lordſhip made no Objection.

Lord Viſcount *Folkſtone.* The Reaſon I mention this is, becauſe the Counſel, in Opening, ſaid, that Lord *Byron* delivered up his Sword with Reluctance. Was not Lord *Byron* at this Time employed in ſupporting Mr. *Chaworth?*

Mr. *Fyn.* Lord *Byron*'s Left-Hand was round Mr. *Chaworth*, as Mr. *Chaworth*'s Right-Hand was round Lord *Byron*'s Neck, and over his Shoulder.

Lord Viſcount *Folkſtone.* Did not Lord *Byron* deſire you to call Aſſiſtance?

Mr. *Fyn.* I had the Swords in my Hand, and my Back was towards them, when one of them ſaid, (I do not know which) Get ſome Help immediately.

Mr. Sollicitor Geneneral. If your Lordſhips pleaſe, we will call *John Gothorp*, another of the Waiters.

John Gothorp. (*Who was ſworn in like Manner.*)

Mr. Sollicitor General. You are a Waiter at the *Star and Garter?*

John Gothorp. Yes, my Lords.

Mr. Sol. Gen. Was you on the Twenty-ſixth of *January* laſt?

John Gothorp. I was.

Mr. Sol. Gen. Do you remember the Bell ringing in Number Seven?

John Gothorp. I do.

Mr. Sol. Gen. About what Time?

John Gothorp. About a Quarter paſt Eight.

Mr. Sol. Gen. Did you go up into the Room?---*John Gothorp.* I did.

Mr. Sol. Gen. Was the Door faſtened?---*John Gothorp.* It was not.

Mr. Sol. Gen. Where did you ſee Lord *Byron* and Mr. *Chaworth?*

John Gothorp. Standing with their Backs to the Fire.

Mr. Sol. Gn. How near the Door?

John Gothorp. About Ten Feet, as near as I can recollect.

Mr. Sol. Gen. In what Situation did you ſee Lord *Byron* and Mr. *Chaworth?*

John Gothorp. They were both ſtanding together; Lord *Byron* had his Left-Arm round Mr. *Chaworth*'s Waiſt, with his Sword in his Right-Hand, with the Point to the Ground; Mr. *Chaworth* was ſtanding, with his Right-Arm reſting upon Lord *Byron*'s Shoulder, with his Sword in his Left-Hand extended up.

Mr. Sol. Gen. Did they ſay any Thing?

John Gothorp. Lord *Byron* bid me take this Sword (meaning which I cannot ſay), and call up *Fynmore* immediately.

Mr. Sol. Gen. What did your do?

John Gotherp. I immediately left the Room, without taking any Sword, to call my Master up.

L. H. S. Lord *Byron*, will your Lordship ask this Witness any Questions?---Lord *Byron*. No, my Lords.

Lord *Mansfield*. Was the Door open when you came to it, or was it fastened with a Bolt?

John Gotherp. It was fastened, but not with the Bolt.

Mr. Serj. *Glynn*. If your Lordships please, the next Witness we will call is Mr. *William Man*.

Mr. William Man. (*Who was sworn in like Manner.*)

Mr. Serj. *Glynn*. Did you attend Mr. *Chaworth*, as an Apothecary, on the Twenty-sixth of *January* last?---Mr. *Man*. I did.

Mr. Serj. *Glynn*. Who did you find in the Room with Mr. *Chaworth*?

Mr. *Man*. His Servant.

Mr. Serj. *Glynn*. Was there any other Person besides his Servant?

Mr. *Man*. Not in the Room where he was.

Mr. Serj. *Glynn*. Did any other Person come in during the Time you were there?---Mr. *Man*. Mr. *Hawkins* and Mr. *Levinz* did.

Mr. Serj. *Glynn*. Was there any Conversation between Mr. *Chaworth* and Mr. *Levinz* concerning the Accident that had happened?

Mr. *Man*. There was.

Mr. Serj. *Glynn*. Relate that Conversation.

Mr. *Man*. Mr. *Chaworth* said some few Words arose at Dinner concerning who had the most Game upon their Estates: About two Hours after Mr. *Chaworth* had Occasion to go down Stairs: Upon his returning back he was met by Lord *Byron*, who said, *Chaworth*, I want to speak to you; a Waiter passing by at the same Time, Lord *Byron* said, Waiter, shew us a Room. They went into the Room, and first Mr. *Chaworth* said, My Lord, we will shut the Door, or else some Person will hear what we say. Mr. *Chaworth*, when he turned round from shutting the Door, saw Lord *Byron* with his Sword half-drawn, who said, *Chaworth*, draw! Mr. *Chaworth* drew immediately, and made the first Pass, and intangled his Sword in my Lord's Waistcoat; he then endeavoured to disarm Lord *Byron*, and my Lord gave him a Push or Blow, and then run him through.

Mr. Serj. *Glynn*. Was this the Whole of what Mr. *Chaworth* declared at that Time?---Mr. *Man*. No.

Mr. Serj. *Glynn*. Relate the Whole.

Mr. *Man*. Mr. *Chaworth* said, when he was first desired to walk into the Room by Lord *Byron*, he did not in the least imagine that he was going to be offered a Challenge.

Mr. Serj. *Glynn*. Was that the Whole?---Mr. *Man*. No.

Mr. Serj. *Glynn*. Go on.

Mr. *Man*. Some Time after Mr. *Chaworth* said, This will not in the least be to my Lord *Byron*'s Credit.

Mr. Serj. *Glynn*. Is that the Whole of what was said?

Mr. *Man*. Yes, my Lords.

Mr. Serj. *Glynn*. My Lords, we will ask no more of this Witness.

L. H. S. My Lord *Byron*, would your Lordship ask this Witness any Questions?

Lord *Byron*. Was any body present besides Mr. *Levinz*?

Mr. *Man*. Mr. *Chaworth*'s Servant.

Lord *Byron*. What is his Name?----Mr. *Man*. *Michael Cullum*.

Lord *Byron*. At what Time was this Declaration made?

Mr. *Man*. I cannot positively say, but I think it was between the Hours of Two and Four.

Lord *Byron*. Was it before he signed his Will?

Mr. *Man*. I think it was, but I am not certain.

Mr. *Cornwall*. If your Lordships please, we will *Michael Cullum*,

Michael Cullum *was called, but did not appear.*

Mr. Att. Gen. My Lords, I find that this Witness is not here. If your Lordships please, we will call Mr. *Levinz*.

L. H. S. How many more Witnesses do you intend to call?

Mr. Att. Gen. We will only call Mr. *Levinz*, and one more.

Lord *Mansfield*. From the Opening of the Prosecutor's Case, it seems to me, they are very near the End of their Evidence, and there is nothing else left but the Paper; it is now past Five o'Clock, and, I should think, it would be more for the Ease of the Prisoner and your Lordships, to adjourn to the Chamber of Parliament.

Then the Lord High Steward returned back to the Chair.

Lord President of the Council. My Lords, I move your Lordships to adjourn to the Chamber of Parliament.

Lords. Ay, Ay.

L. H. S. This House is adjourned to the Chamber of Parliament.

The Lords and others returned to the Chamber of Parliament in the same Order they came down, except the Lord High Steward, who walked after his Royal Highness the Duke of *York*; and, the House being there resumed; Resolved to proceed further in the Trial of *William* Lord *Byron*, in *Westminster-Hall*, To-morrow, at Ten of the Clock in the Morning; and ordered, That the said *William* Lord *Byron* should be remanded Prisoner to his Majesty's *Tower* of *London*, there to be kept in safe Custody; and that he be brought again to the Bar of this House in *Westminster-Hall*, To-morrow, at Ten of the Clock in the Morning.

Wednesday, April 17, 1765. The Second Day.

THE Lords and others came from the Chamber of Parliament in the same Order as on *Tuesday* last, except the Lord High Steward, who walked after His Royal Highness the Duke of *York*; and the Peers were there seated, and the Lord High Steward in his Chair.

Lord High Steward. My Lords, the House is resumed. Is it your Lordships Pleasure that the Judges may be covered?

Lords. Ay, Ay.

Then the Serjeant at Arms made Proclamation for Silence as usual; and afterwards the following Proclamation.

Serjeant at Arms. Oyez, Oyez, Oyez! Lieutenant of the *Tower*, bring forth your Prisoner, *William* Lord *Byron*, to the Bar, pursuant to the Order of the House of Lords.

The Deputy Governor of the *Tower* brought the Prisoner to the Bar, in the like Form as before; and then he kneeled down.

L. H. S. Your Lordship may rise.

The Lord High Steward, by Leave of the Lords, went down to the Table for the Convenience of hearing.

L. H. S. Mr. Attorney General, you will proceed in your Evidence.

Mr. Attorney General. My Lords, the first Witness we call is Mr. *Levinz*.

William Levinz, *Esquire.* (*Who was sworn in like Manner.*)

Mr. Attorney General. Mr. *Levinz* is Uncle to the deceased Mr. *Chaworth*. Did you see Mr. *Chaworth* on the Twenty-sixth of *January* last?

Mr. *Levinz*. I did, about Ten at Night, or thereabouts.

Mr. Att. Gen. Where did you first see him?

Mr. *Lev.* I first saw him at his own House.

Mr. Att. Gen. That was after the Misfortune?

Mr. *Lev.* It was after the Misfortune.

Mr. Att. Gen. Did he give you any Account how that Misfortune had happened?---Mr. *Lev.* He did.

Mr. Att. Gen. What was that Account?

Mr. *Lev.* As soon as I got into the House I went into his Bedchamber. He took me by the Hand, and told me Lord *Byron* had given him a mortal Wound; desired I would send for a Lawyer as soon as possible to make a new Will, saying he believed he should be dead before Morning; upon which I came out into the outward Room. There were Mr. Serjeant *Hawkins*, Mr. *Adair*, Mr. *Willoughby*, and Mr. *Hewett*. I told them that Mr. *Chaworth* had desired me to send for a Lawyer, but I was so totally deprived of Recollection, I could not remember where any one lived; upon which Mr. *Hawkins* told me, there was one Mr. *Partington*, who lived in that Neighbourhood, that was a Man of Character, and that, if I pleased, he would send for him. Mr. *Partington* came, I believe, in a Quarter of an Hour. As soon as he came, I introduced him to Mr. *Chaworth*, and I left him in the Room to take his Instructions. When the Gentlemen were gone down Stairs, and Mr. *Partington* had begun making the Will in the next Room, I went to Mr. *Chaworth*, and asked him how this unfortunate Affair had happened? He told me, that Lord *Byron* took him into a Room; upon which Mr. *Chaworth* said, If we are to talk I had better shut the Door, or else they may overhear what we say. Upon his shutting the Door, the first Thing he saw when he turned his Head about, was Lord *Byron*'s Sword half-drawn; upon which he drew his as quick as possible, and got the first Pass at him; and finding his Sword engaged in something, he thought it was my Lord's Body, and therefore wished to disarm him, and in endeavouring to close in for that Purpose, my Lord shortened his Sword, or Arm, I am not positive which, and gave him that mortal Wound. From that Time till the Time the Will was executed, which was about Three in the Morning, Mr. *Chaworth*'s Head was so full of his private Affairs, that I cannot say I heard him mention the unfortunate Affair till after the Will was executed, when I asked him, Has this been fair? But he made no Answer that I could hear, but said he saw my Lord's Sword half out, and, knowing his Man, he drew his Sword as quick as he could; that he had the first Pass at him, and then my Lord wounded him; and after that, he disarmed his Lordship, when my Lord swore he was as brave a Man as any in *England*. He said twice to me, Good God! that I should be such a Fool as to fight in the Dark; for indeed there was very little Light. He said he did not believe Lord *Byron* intended fighting when they went into the Room; but seeing him up by the Door, he believed he thought he had him at an Advantage; and the first Thing he saw, upon turning his Head, was his Lordship's Sword half-drawn. He said he died as a Man of Honour, but he thought Lord *Byron* had done himself no Good by it. I asked him several Times in the Night, how this Affair begun above Stairs? He always answered, It is a long Story, and it is troublesome to me to talk. They will tell you; Mr. *Donston* will tell you. That is all I know of this unfortunate Affair.

Mr. Att. Gen. I shall ask Mr. *Levinz* no more Questions.

Lord High Steward. Lord *Byron*, will your Lordship ask this Witness any Questions?

Lord *Byron*. My Lords, I shall ask no Questions of this Witness.

A Lord. Did you understand that Mr. *Chaworth* went to shut the Door, that they might not be overheard, or to bolt the Door?

Mr. *Lev.* He expresly said, that he went to shut the Door, that they might not over-hear what they said.

A Lord. Was it before or after the making the Will that Mr. *Chaworth* gave that Account to you?

Mr. *Lev.* The first Account was about Eleven at Night, I believe, when the Will was first begun: The last Time he spoke to me about this unfortunate Affair was, I believe, within the Hour after the Will was executed.

Earl of *Morton*. Before the Will was made, when he gave the Account to the Gentlemen in the Room, did he seem to have most Attention to the making of his Will?

Mr. *Lev.* To the making of the Will; he seemed to have it prodigiously at Heart.

Earl of *Morton*. Did he seem to you in bodily Pain?

Mr. *Lev.* He was more or less so the whole Night; for about an Hour after the Will was executed, he was amazingly composed; about Four he fell into vast Tortures. I sent for Mr. *Adair*, who came to him, and by applying warm Fomentations relieved him very much; but from that Time I cannot say he talked about the unfortunate Affair; he sent for me up to desire that something might be done as soon as ever he was dead.

Earl of *Morton*. The last Time he spoke to you, was he seemingly in Pain?

Mr. *Lev.* My Lords, he never was free from Pain.

Earl of *Denbigh*. Did Mr. *Chaworth* tell you what paſt upon the Stairs, previous to his going into the Room?

Mr. *Levinz*. He never ſaid any Thing to me about what paſſed upon the Stairs; I wiſhed to know it, but never could learn it.

Lord High Steward. The Witneſs may withdraw.

Mr. Sollicitor General. The next Witneſs, my Lords, is Mr. *Partington*.

Thomas Walley Partington, *Eſquire*. *(Who was ſworn in like Manner.)*

Mr. Sollicitor General. Did you attend Mr. *Chaworth* on the Twenty-ſixth of *January* laſt?

Mr. *Partington*. I did.

Mr. Sol. Gen. At what Time did you attend him?

Mr. *Par*. A little after Ten o'Clock.

Mr. Sol. Gen. Who did you find with Mr. *Chaworth?*

Mr. *Par*. When I firſt came into the Houſe, I was taken into a Parlour, where there were Mr. *Levinz*, Mr. *Hawkins*, Mr. *Adair*, Mr. *Hewett*, and Mr. *Willoughby*. I ſtaid there a very few Minutes. I firſt aſked what I was ſent for? I was told, to make Mr. *Chaworth*'s Will; and by the Converſation that paſſed between the Gentlemen there, I underſtood that Lord *Byron* and Mr. *Chaworth* had fought in a Room by themſelves, and, according to an Expreſſion of one of the Gentlemen, by a Farthing Candle. After the Will was executed, Mr. *Chaworth* begun to talk of his Situation as of a dying Man. He expreſſed a Satisfaction that he was in that Situation, rather than to have lived and to have had the Life of any Man to anſwer for. After ſuch Converſation, Mr. *Levinz*, in ſeeming great Diſtreſs, ſaid to him, Dear *Billy*, for God's Sake, how was this? was it fair? Mr. *Chaworth*'s Head was turned towards the Gentlemen on his Left Hand, Mr. *Levinz* ſtood on his Right. Upon that Queſtion being aſked, he turned his Head to Mr. *Levinz*, ſinking upon the Pillow. He ſaid ſomething which I could not diſtinguiſh, for I ſtood at the Bottom of the Bed, and immediately went round to where Mr. *Levinz* ſtood, and as I opened the Curtain, I heard him ſay ſomething of Lord *Byron*'s Sword being drawn; upon which, and from what I underſtood had paſſed, I was led to aſk him this Queſtion, Mr. *Chaworth*, was my Lord *Byron*'s Sword drawn when you came into the Room? He then anſwered what I afterwards wrote down.

Mr. Sol. Gen. How ſoon after did you write it down?

Mr. *Par*. Upon coming down into the Parlour, after I had ſealed up and delivered the Will to Mr. *Levinz*, as I had adviſed ſome Queſtion might be aſked when the Will was executed, ſo I thought it prudent, whilſt we were together, that we ſhould ſet down the Anſwer that Mr. *Chaworth* gave: The Gentlemen aſſented. I took a Pen and Ink and wrote, "When he came into the Room, Mr. *Chaworth* ſaid," and went on a little further: When I read what I had wrote, and I think Mr. *Hewett* in particular excepted to thoſe Words "When he came into the Room," I tore the Paper, and threw it into the Fire, and wrote the Words which I now have in my Hands.

Mr. Sol. Gen. How long after the finiſhing the Will were the Declarations contained in this Paper made?

Mr. *Par*. It muſt be but a very few Minutes.

Mr. Sol. Gen. We deſire the Paper may be read.

The Witneſs produced the Paper, and read it as follows:

"*Sunday* Morning, the Twenty-ſeventh of *January*, about Three of "the Clock, Mr. *Chaworth* ſaid, That my Lord's Sword was half-drawn, "and that he, knowing the Man, immediately, or as quick as he could, "whipt out his Sword, and had the firſt Thruſt; that then my Lord "wounded him, and he diſarmed my Lord, who then ſaid, By God, I "have as much Courage as any Man in *England*."

Lord High Steward. Lord *Byron*, will your Lordſhip aſk this Witneſs any Queſtions?

Lord *Byron*. Did not you underſtand this Declaration of the Facts to be an Anſwer to the Queſtion, whether it was fair or not?

Mr. *Par*. I underſtood the Declaration to be an Anſwer to Mr. *Levinz* and myſelf, and to the Inquiry in general, which was making by the Gentlemen.

Lord *Byron*. Did not you underſtand from thoſe Declarations that what had paſſed was fair?

Lord *Mansfield*. They will not aſk the Witneſs as to his Underſtanding, but to the Facts only. Your Lordſhips will draw the Concluſion.

L. H. S. You had this Paper to refreſh your own Memory?

Mr. *Par*. I had, my Lords.

Lord *Ravenſworth*. I deſire to know whether this Paper in Mr. *Partington*'s Hand was not read, and allowed to be what Mr. *Chaworth* ſaid before every one in the Room. I do not look upon it as a Paper to refreſh his Memory, but as a Paper taken from the Mouth of Mr. *Chaworth* as a Declaration from him; and therefore deſire to know, if it was read to the Gentlemen in the Room, and who thoſe Gentlemen were?

L. H. S. Your Lordſhips will obſerve, that the Witneſs has been examined upon Oath with reſpect to the Declaration he has in his Hand, which was reduced into Writing; you may therefore aſk this Witneſs, whether he took that Paper in order to refreſh his Memory, or for what other Purpoſe?

Mr. *Par*. I took it for our general Recollection of the Words that Mr. *Chaworth* ſaid.

L. H. S. Were thoſe Declarations made to you?

Mr. *Par*. To all of us. They are the very Words I heard.

L. H. S. Then you may refreſh your Memory from the Paper.

Lord *Ravenſworth*. Was this Paper read to the Gentlemen who were below Stairs; and who were in the Room when Mr. *Chaworth* made the Declaration?

Mr. *Par*. Mr. *Levinz*, Mr. *Hewett*, Mr. *Hawkins*, Mr. *Willoughby*, and Mr. *Adair*, I think no other Gentleman was preſent, except myſelf, in the Room; after I had wrote this, I read it over, and they agreed it was the Subſtance of what Mr. *Chaworth* ſaid.

Lord *Ravenſworth*. Were they the Perſons preſent in the Bed-chamber when the Declaration was made?

Mr. *Par*. They were the Perſons preſent in the Bed-chamber when the Words were ſpoke; they were the Perſons preſent in the Parlour when I read it over; and it was agreed by all, that they were the Words Mr. *Chaworth* ſaid.

Lords. Read the Paper over again.

(Which was done by the Witneſs.)

Earl of *Denbigh*. Did you ever hear Mr. *Chaworth* ſay any Thing of any Converſation which paſſed previous to Lord *Byron*'s drawing his Sword in the Room?

Mr. *Par*. I was with Mr. *Chaworth*, backwards and forwards, from Half an Hour paſt Ten till Three, and he ſaid nothing more to me than what I have repeated to your Lordſhips, concerning what had paſſed between him and my Lord *Byron*.

Duke of *Mancheſter*. Did you ever ſhew this Paper, of which you now ſpeak, to Mr. *Chaworth* before his Death?

Mr. *Par*. No, my Lords; I never ſaw Mr. *Chaworth* after I came down from him, after he had executed his Will.

Lord Viſcount *Townſhend*. Was it ever read by any of the Gentlemen to Mr. *Chaworth?*

Mr. *Par*. Not to my Knowledge; it has never been in my Cuſtody ſince.

Lord Viſcount *Townſhend*. Where was it?

Mr. *Par*. I delivered it to Mr. *Levinz* that Night; and I never ſaw it ſince, but once in Mr. *Joynes's*, Mr. *Levinz* Solicitor's, Hands.

Duke of *Mancheſter*. The Paper that you firſt began to write, I think, you ſaid was thrown into the Fire?

Mr. *Par*. It was, my Lords.

Duke of *Mancheſter*. Was it not compleated when thrown into the Fire?

Mr. *Par*. I had wrote as far of the Paper as where the Expreſſion *half-drawn* is mentioned.

Lord *Cathcart*. Did the Paper you burnt, and the other Paper you now have, differ?——Mr. *Par*. No.

Earl *Gower*. I deſire to know whether you threw the Paper into the Fire, becauſe it differed from the Account Mr. *Chaworth* gave, or becauſe it differed from your own Account?

Mr. *Par*. The Reaſon it was thrown into the Fire was, I thought it was better to write it over again, than to have it appear with an Alteration in it. I had ſtruck out ſome Words Mr. *Hewett* objected to, and for that Reaſon I wrote it over again fair.

Lord High Steward. The Witneſs may withdraw.

Earl of *Denbigh*. I deſire Mr. *Levinz* may be called in again.

Mr. Attorney General. I think it my Duty to inform your Lordſhips, that from a Miſapprehenſion on our Part, that the Witneſſes might differ in ſome little Matters, we were extremely tender of examining any of them to what was contained in the Writing, conceiving the legal Evidence to be the Paper-Writing itſelf; and if your Lordſhips think that the Paper cannot be admitted, I am in your Lordſhips Breaſts, if it is not proper for us to call the Witneſſes to ſpeak to theſe Declarations. We were extremely tender in examining to any Thing that ſhould lead to the Converſation contained in this Paper.

Lord *Mansfield*. By my Notes it appears, that Mr. *Hewett* ſpoke preciſely to the Declarations of Mr. *Chaworth*; for after he had been examined to the Writing, he ſaid, there was an Exception taken to ſome Words in it, and it was deſtroyed, and a new one was wrote.

Duke of *Richmond*. My Lords, a Queſtion was ſome Time ſince aſked by the Priſoner of Mr. *Partington*, the Anſwer to which I did not at this Diſtance hear.

Lord High Steward. That Queſtion was objected to by a noble Lord as improper, and therefore it was not anſwered.

Earl of *Denbigh*. I deſire that Mr. *Levinz* may be called to the Bar again, to be further examined.

Lord *Harwich*. Your Lordſhips cannot enter into any Debate here: If there be any Difference of Opinion, it will be neceſſary to go back to the Chamber of Parliament.

The Lords were then moved to adjourn to the Chamber of Parliament.

Lords. Ay, Ay.

Lord High Steward. This Houſe is adjourned to the Chamber of Parliament.

The Lords and others returned to the Chamber of Parliament in the ſame Order as they went from thence this Morning, and the Houſe was there Reſumed; and, after ſome Time, again adjourned to *Weſtminſter-Hall*; and the Peers and others went down in the ſame Order as before; and the Peers being there ſeated, and the Lord High Steward in his Chair,

Lord High Steward. My Lords, the Houſe is Reſumed: Is it your Lordſhips Pleaſure that the Judges may be covered?

Lords. Ay, Ay.

Then the Serjeant at Arms made Proclamation for Silence as uſual, and afterwards the following Proclamation.

Serjeant at Arms. Oyez, Oyez, Oyez! Lieutenant of the *Tower*, bring forth your Priſoner, *William* Lord *Byron*, to the Bar, purſuant to the Order of the Houſe of Lords.

The Deputy Governor of the *Tower* brought the Priſoner to the Bar in the like Form as before, and then he kneeled down.

Lord High Steward. Your Lordſhip may riſe.

Then the Lord High Steward, by Leave of the Lords, went down to the Table,

Lord High Steward. Mr. Attorney General, you will proceed in your Evidence.

Mr. Attorney General. My Lords, if I could have conceived that there remained a Doubt in the Minds of any one of your Lordſhips, that the Contents of this Paper were not true, I ſhould have thought it my Duty to have called all the Witneſſes to have ſubſtantiated the Contents: But as I cannot now treſpaſs upon your Lordſhips Patience, the Evidence on Behalf of the Crown is cloſed; and we leave it here.

Earl

Earl of *Denbigh*. I desire that Mr. *Levinz* may be called to the Bar.

Mr. Levinz *was called again.*

Earl of *Denbigh*. There was a Converſation paſſed between Mr. *Chaworth* and the noble Priſoner at the Bar, previous to Mr. *Chaworth*'s ſhutting the Door; now I ſhould be glad to know whether Mr. *Chaworth* ſaid any Thing to you, relative to the Converſation which paſſed between him and Lord *Byron* upon the Stairs, previous to their going into the Room where they fought?

Mr. *Levinz*. No, my Lords; what he told me was, that Lord *Byron* aſked him into the Room; that when he came into the Room, he ſaid, My Lord, if we are to talk we had better ſhut the Door, or elſe they may overhear what we ſay: And I never heard Mr. *Chaworth* ſay any Thing elſe about it.

Duke of *Newcaſtle*. When you aſked Mr. *Chaworth* whether it was fair, you were on one Side of the Bed, and Mr. *Chaworth* turned his Head, and ſaid ſomething which Mr. *Partington* did not hear; I deſire to know whether, upon that Occaſion, you heard any Anſwer to that Queſtion?

Mr. *Levinz*. At that Time I did not: I aſked him the ſame Queſtion once afterwards, and he gave me no Anſwer; but ſeemed to me to ſhrink his Head into the Pillow.

Lord Viſcount *Folkeſtone*. When Mr. *Chaworth* told you what paſſed in the Room where they fought, did he ſay that Lord *Byron* bid him defend himſelf, or any Thing to that Purpoſe?

Mr. *Levinz*. Mr. *Chaworth* told me, that, on his turning his Head from the Door, he ſaw Lord *Byron*'s Sword half-drawn. My Lord ſaid, Draw, Draw! I am ſure Mr. *Chaworth* ſaid the Word, Draw, twice.

Lord Viſcount *Folkeſtone*. Did Mr. *Chaworth* explain to you in what Manner he received the Wound?

Mr. *Levinz*. He told me he felt the Point of his Sword engaged in ſomething, and that he took it to be my Lord's Body; that, therefore, he wiſhed to diſarm him; and in endeavouring to cloſe in for that Purpoſe, my Lord ſhortened his Sword, or his Arm (I am not certain which Word he made uſe of), and gave him that Wound. This was all that he ſaid to me on that Subject.

Lord High Steward. The Witneſs may withdraw.

Mr. Attorney General. My Lords, as the Witneſſes have fully proved the Evidence and Facts which I ſtated to your Lordſhips in the Opening, I will not trouble your Lordſhips to call any more Witneſſes, but will reſt our Evidence, in Support of the Proſecution, here.

Mr. Solliciter General.

My Lords,

THE Evidence on the Part of the Proſecution being cloſed, it remains for me, according to the uſual Courſe of Proceeding, to collect, as far as it may be neceſſary, into one View, the Proofs that have been made, and to apply them to the preſent Charge: A very painful Taſk! but yet Juſtice to the public Peace, to the Memory of the Deceaſed, and to the Solicitude of his ſurviving Friends, authorizes and requires it. I ſhould wiſh to diſcharge this Part of my Duty with that Benevolence and Humanity which poſſeſſed the Mind of the Deceaſed in the laſt Hours of his Life.

The noble Priſoner at the Bar is charged with having killed Mr. *Chaworth* deliberately and maliciouſly: or, in the Terms of the Indictment, with Malice aforethought. That he killed him, is a Truth beyond Diſpute; and he who takes away the Life of another, is preſumed to have taken it away deliberately and maliciouſly, till it ſhall appear to have been the Effect of Neceſſity, of Accident, or of ſudden Paſſion; for as Neceſſity will juſtify, and Accident excuſe the Fact, an ungovernable Tranſport of Paſſion will ſo far alleviate the Crime, as to make that, which would otherwiſe have been Murder and a capital Offence, Manſlaughter only, which ſaves the Life of the Offender.

This is a Condeſcenſion the Law ſhews to the Frailties of the human Mind, which upon great and ſudden Provocations cannot command itſelf, nor maintain its Reaſon; but whilſt the Law ſhews this Condeſcenſion, it guards the Life of the Subject, with all poſſible Caution and Reſerve, againſt the Exceſs and Abuſe of the Benignity. It ſhelters no Man whoſe Mind is not free, perfectly free, from the Guilt of Malice, expreſſed in Words, or implied in Action. To be free from Malice, he muſt have acted from the Impulſe of a preſent Paſſion, without Deliberation or meditated Miſchief. If it ſhould ſo have happened that the Provocation did not irritate, or irritating did not overcome the Reaſon, or overcoming the Reaſon, the Mind cooled and deliberated, or had Time to cool and deliberate, and then he fought and killed, he has incurred the Guilt of malicious Murder; he did not act from the Impulſe of a preſent Paſſion; and whatever Motive actuated him, whether ſome ſecret Grudge, or an imaginary Neceſſity of vindicating his Honour, or of ſatisfying the World of his Courage, or any other latent Cauſe, he is no Object of this Benignity of the Law.

The Law Books do not make it Murder, only where the Paſſion has actually cooled; but where, in the Time that has paſſed, it ought in Reaſon to have cooled. And in Major *Oneby*'s Caſe, no more than an Hour had paſſed, and the Judges thought that ſufficient for the Purpoſe.

There is no ſpecific Evidence required to ſhew that the Mind has cooled, it muſt depend upon the particular Circumſtances of the Caſe; but all the Books, from the Time of Lord *Morley*'s Caſe, in the Reign of *Charles* II. down to the Treatiſe of a late learned Judge, agree, that the Party engaging in different Converſation, or in Amuſements, affords a convincing Proof that he labours under no Tranſport of Paſſion, but has cooled and recovered his Reaſon.

I will not abuſe your Lordſhips Patience with going through the Detail of the Evidence. Your Lordſhips ſerious and unwearied Attention, during the Courſe of this Trial, have made it unneceſſary. I ſhall only point out ſome Obſervations ariſing from what paſſed at the Three moſt material Periods of Time, that is, during the Converſation in the Room where the Company dined; upon the Stairs; and in the Room below.

Nothing could be more innocent than the Converſation of the Company about the beſt Method of preſerving of the Game; there could be no Offence in Mr. *Chaworth*'s ſaying, that he had more Game upon his Eſtate, than Lord *Byron* had upon his; nor was there any in Lord *Byron*'s ſaying, that he had the moſt. The firſt Offence, that ſeems to have been taken, was my Lord *Byron*'s repeating the Queſtion relative to Sir *Charles Sedley*'s Manors; Mr. *Donſton* underſtood it to be ſo. But it does not preciſely appear, whether the Offence was given by the bare Repetition of the Queſtion, or that it imported a Reflection upon an abſent Friend; or that it contained too flat a Contradiction of what he had aſſerted; or that there was any Thing particularly affronting in the Tone of Voice, or in the Countenance, or in the Geſture; but it is very plain, Mr. *Chaworth* thought himſelf offended, and Mr. *Chaworth*'s Expreſſions upon the Stairs, in aſking Mr. *Donſton* if he had been wanting in "*his Reply*," imports it. It is clear too, from the Queſtions Lord *Byron* aſked Mr. *Chaworth*, that Lord *Byron* ſaw Mr. *Chaworth* had taken Offence. But whatever Effect Lord *Byron*'s Behaviour had upon Mr. *Chaworth*, Mr. *Chaworth*'s had no viſible Effect upon Lord *Byron*: no Action or Expreſſion of Anger eſcaped him; there was no Change of Countenance; the Matter ended there. Other Converſation engaged the Company; Lord *Byron* appeared to Mr. *Hewett* to be converſing in good Humour with Mr. *Molyneux*; and Mr. *Molyneux* confirms the Reality of it. A full Hour paſſed in general Converſation. Mr. *Chaworth* does not ſeem to have been much diſcompoſed, though *Fynmore* ſays he was a little ruffled; which he collects from a Miſtake he made in Settling the Book; a trifling Circumſtance! from which no juſt Inference can be drawn. But the Queſtion is not, Whether Mr. *Chaworth* was ruffled, but whether Lord *Byron* was agitated with any Violence of Paſſion? It is for your Lordſhips to determine whether this Period affords any Proof of a ſudden Quarrel, or of a heated Temper; without Time to cool, or Leiſure to deliberate; and whether any Thing can be collected from hence, that will intitle the noble Priſoner to this Benignity of the Law, which is extended only to the Impetuoſity of a ſudden Paſſion.

In this Situation Lord *Byron* left the Room, in Appearance cool and deliberate; if he had then a Purpoſe to fight, I am afraid it muſt have been deliberate; if he had not, it imports Lord *Byron* to prove ſome new Occaſion of Quarrel. What paſſed upon the Stairs affords only one Obſervation, Lord *Byron* told Mr. *Chaworth* he wanted to ſpeak to him. If the Purpoſe for which he wanted to ſpeak to him is to be explained by what paſſed below, that Purpoſe was deliberate and without Provocation; if he had not ſuch Purpoſe in his Mind at that Time, will it not warrant Mr. *Chaworth*'s Suſpicions? Your Lordſhips will recollect what Mr. *Chaworth* ſaid, and what he thought was the Reaſon for calling him to an Account in that Place and in that Manner. Your Lordſhips will recollect likewiſe what Diſadvantages the Place gave to Mr. *Chaworth*. If Mr. *Chaworth* underſtood the Sword, he underſtood it as the Accompliſhment of a Gentleman. It never hurt his Innocence, he abhorred to ſhed the Blood of any Man. The Darkneſs of the Room, and Confinement of the Place, probably prevented him from giving a ſignal Proof of it in diſarming his Adverſary. There is Reaſon to believe it. How conſpicuous in his laſt Hours was his Benevolence to all Mankind, his Humanity to the Author of his Death, his ſerious and earneſt Attention to the Diſcharge of the remaining Duties of his Life, and the Magnanimity with which he beheld the approaching Minute of his Death!

I ſhall lay no Weight upon the Manner in which the Wound was given. Till Mr. *Partington* was examined, an Inference aroſe to the Diſadvantage of Lord *Byron* from the ſuppoſed Silence of Mr. *Chaworth*, when he was aſked, Whether the Wound was fairly given? Mr. *Partington*'s Evidence may have left it now in ſome Doubt, what Opinion Mr. *Chaworth* had of that Circumſtance. I will not allow myſelf to obſerve upon it; nor will I repeat that unguarded Expreſſion your Lordſhips have heard, that my Lord *Byron* uſed after the Wound was given, and after Mr. *Chaworth* had cloſed in, and was endeavouring to prevent further Miſchief. It muſt give Pain to the noble Priſoner to hear it repeated; it muſt have made its Impreſſion on your Lordſhips Minds; it is fitter to remain there than to be the Subject of public Diſcuſſion. It is for your Lordſhips to determine whether this Miſchief has happened from the Impulſe of a ſudden Paſſion, or reſulted from a deliberate and premeditated Purpoſe.

Lord High Steward. My Lord *Byron*, the Counſel for the Crown have done: Now is the Time for your Lordſhip to make your Defence; and if you have any Witneſſes to examine, now is your Time to call them.

Lord Byron. My Lords, I ſhall not call any Witneſſes. I have reduced into Writing what I have to offer to your Lordſhips; which, as my Voice is very low, I am apprehenſive of my not being heard by your Lordſhips, and therefore deſire it may be read by the Clerk.

Lords. Read, Read.

Clerk reads.

My Lords,

YOUR Lordſhips are now in full Poſſeſſion of the Evidence againſt me, and, I am convinced, will weigh it with the Wiſdom and Impartiality which have ever diſtinguiſhed the Court of the Peers of *Great-Britain*.

This Conſideration, my Lords, affords me Comfort and Support, though oppreſſed under the heavy Load of an Accuſation of Murder, againſt which I am now required to ſpeak in my own Defence.

My Inexperience in the nice Diſtinctions of Law, and in Proceedings of this Nature, but ill qualify me for this Taſk; and will furniſh very ample Occaſion for the Goodneſs and Indulgence of your Lordſhips.

The Witneſſes (as far as their Knowledge and Obſervation could lead them) have already ſufficiently proved the accidental Manner in which the greateſt Part of the Tranſaction happened; and the Innocence of my own Intentions, through the Whole of it, makes it difficult for me to ſelect any particular Paſſages which may more immediately demand your Lordſhips Attention.

Let me preſume, however, to lay before you my own Narrative of the Fact, according to the beſt of my Recollection. It agrees in Subſtance with great Part of what has fallen from the Witneſſes, but it ſupplies ſome Particulars which may poſſibly deſerve Weight and Credit. In doing this, the Reſpect which I owe to your Lordſhips, as well as a tender Concern for my own Honour, will not ſuffer me to prevaricate, neither will I conceal or deny what is true.

After we had dined at the Club, about Seven o'Clock, a Diſcourſe began concerning Game, and Mr. *Chaworth* inſiſted, that Strictneſs and Severity were the only effectual Methods with the Country People.

I muſt confeſs that I was of a different Opinion, being for gentler Meaſures; and therefore obſerved, that ſuch Severity might only prompt them to do more Miſchief; and added ſuch Circumſtances as I thought ſupported what I ſaid.

This Diſcourſe laſted ſome Time; and, during the Whole of it, I was concerned to obſerve that the deceaſed Gentleman, without any Cauſe, treated me in a ſlighting and contemptuous Manner.

Towards the Concluſion of it, he, with ſome Heat, ſaid, There would be no Game in the Country; and that I ſhould not have a ſingle Hare on my Eſtate, if it was not for the Care taken by himſelf and Sir *Charles Sedley*, to preſerve the Game on their Manors; and added, that he had more Game on five Acres than I had in all my Manors. The Propoſal of a Bet followed, but ſome of the Gentlemen interfered, and no Bet was made.

Mr. *Chaworth* again mentioned Sir *Charles Sedley*'s Manors, and his Care of the Game; upon which I happened to aſk what Manors of Sir *Charles Sedley* he meant; when he anſwered, *Nuttall* and *Bulwell*; to which I replied, I did not underſtand how that could be, for though I knew *Nuttall* was Sir *Charles Sedley*'s, yet *Bulwell Park* was mine.

Mr. *Chaworth* anſwered, that beſides *Bulwell Park*, there was the Lordſhip of *Bulwell* Town (a Point, which I believe may formerly have been in Diſpute between Mr. *Wentworth*'s Family and mine, but has long lain dormant), and that Sir *Charles Sedley* had a Deputation for that Lordſhip.

Upon which I made ſome inſignificant Obſervation on the Uncertainty of Deputations, as they are liable to be recalled at any Time, or ſomething to that Purpoſe.

Whereupon, to the beſt of my Recollection, Mr. *Chaworth* replied in the following Words: "Sir *Charles Sedley*, my Lord, lives at Mr. "*Cooper*'s, in ſuch a Place, and I doubt not, will be ready to give your "Lordſhip Satisfaction about his Manors, if you have any Thing to "ſay concerning them; and as to myſelf, you know where I live, and "I ſhall be ready to anſwer your Lordſhip whenever you will call upon "me, if you have any Thing to ſay to me."

Theſe Words, ſo unexpected, of ſuch an Import, uttered, and repeated in the Manner they were, would not admit of any Reply, but put an End to the Diſcourſe; ſo that nothing further paſſed between the deceaſed Gentleman and myſelf, at that Time; but during the ſhort Stay I made afterwards, I might poſſibly have ſome very ſhort Converſation, on indifferent Matters, with Mr. *Molyneux*, who was next me.

And here, I muſt obſerve, that as I ſat at the lower Corner on the one Side, and Mr. *Chaworth* at the upper Corner on the other Side of a long Table, at which Ten People had dined, no private Intimations for a future Meeting, or other Signs, could be given by either of us, without being perceived by all the reſt of the Company, to whoſe Evidence I muſt refer, obſerving only that no ſuch Thing is pretended, or even ſuſpected by any of the Gentlemen who have been called upon.

Soon after this Diſcourſe was finiſhed in the abrupt Manner I have mentioned, the Club Book was brought to Mr. *Chaworth*, who uſually ſettled it, and did ſo on this Occaſion, though with ſome Hurry and Confuſion, as *Fynmore*, the Maſter of the Tavern, has told your Lordſhips.

The Book being ſettled, and the Reckoning paid by Mr. *Chaworth*, and ſeveral of the Company, I ſaw him go behind a Screen in the Room which intirely conceals the Door, and I had every Reaſon to conclude that he was gone.

I ſtaid ſome Time to ſettle and diſcharge my Reckoning, which might detain me near Ten Minutes, and then I took my Hat, and left the Company.

As I was going out of the Room, I remember that Somebody paſſed me behind the Screen near the Door, and believe it might be Mr. *Donſton*, who (I think) ſays, he met me, but being in the Shade, I could not well diſtinguiſh him, ſo as to take particular Notice, or ſay any Thing to him.

When I opened the Door, I ſaw Mr. *Chaworth* on the Landing-Place, near the upper Step of the Stairs, with his Face towards the Door, and his Back to the Stairs, not moving (as he appeared to me), but rather as if he waited for Somebody coming out.

The Landing-Place is ſo narrow, that to go without the Door of the Room was unavoidably to paſs near Mr. *Chaworth*, who immediately ſaid, "Has your Lordſhip any Commands for me?" which he ſpake in a very particular and ſignificant Manner, and not (to my Apprehenſion) as a Queſtion either of Civility or Reſpect.

I only anſwered, "I ſhould be glad of an Opportunity of ſpeaking a "few Words to him." Mr. *Chaworth* replied, "That the Stairs were "not a proper Place, and, if I pleaſed, we would go into a Room."

We then went down together to the Landing-Place of the One Pair of Stairs (for we dined up Two Pair of Stairs), and there the Waiter was called, and as it was repeated Three or Four Times, it is moſt probable we both called him.

The Waiter ſoon came with a Candle, and being aſked (I am ſorry I cannot recollect who put the Queſtion) which of thoſe Rooms (meaning the Two Rooms on that Floor) was empty, he threw open the Door of One of them, and going in firſt, ſet his Candle upon the Table, which ſtood towards the Middle of the Room, whilſt we went to the Fire.

He retired immediately, and ſhut the Door after him.

I then ſaid to Mr. *Chaworth*, as we ſtill continued ſtanding by the Fire, "How am I to take thoſe Words you uſed above, as an intended Affront "from Sir *Charles Sedley*, or yourſelf?" Mr. *Chaworth* replied, "Your "Lordſhip may take them as you pleaſe, either as an Affront or not, and "I imagine this Room is as fit a Place as any other to decide the Affair "in."

Then turning round, he ſaid, He would bolt the Door to prevent any Interruption, or any Body interfering, or Words to that Effect. Accordingly, he went to the Door and faſtened it. In the mean time, his Intention being but too manifeſt, by this Action and his laſt Expreſſion, I went round on the further Side of the Table, towards the moſt open Part of the Room, which your Lordſhips have been informed by *Fynmore* is about Sixteen Feet Square, and the Furniture did not leave a vacant Space of more than Twelve Feet in Length, and, as I believe, Five Feet in Breadth, where it was my unhappy Lot to be obliged to engage.

Mr. *Chaworth* was now turned round from bolting the Door, and as I could not any longer continue in Doubt of his Intention, it was impoſſible for me in ſuch a Situation to avoid putting my Hand to my Sword, and I believe I might at the ſame Time bid him *Draw*, or uſe ſome other Words of the like Import, though I cannot now be certain of the Expreſſion.

Mr. *Chaworth* immediately drew his Sword, and made a Thruſt at me, which I parried; he made a ſecond, which alſo miſſed of its Effect: And then finding myſelf with my Back againſt the Table, with great Diſadvantage of the Light, I endeavoured to ſhift a little more to the Right Hand, which unavoidably brought us nearer to each other, and gave me an Opportunity to perceive that the deceaſed Gentleman was making a third Paſs at me. We both thruſt at the ſame Time, when I found Mr. *Chaworth*'s Sword againſt my Ribs, having cut my Waiſtcoat and Shirt for upwards of eight Inches; and I ſuppoſe it was then, that he received the unlucky Wound, which I ſhall ever reflect upon with the utmoſt Regret.

Mr. *Chaworth* pauſed, and ſaid, "*I am afraid I have killed you*;" at the ſame Time putting his Left-Hand to his Belly, which, on withdrawing it again, I could perceive was bloody.

I expreſſed the like Apprehenſion on his Account; and, Mr. *Chaworth* telling me that he was wounded, I ſaid that I was ſorry for it, and went to the Bell, near the Fire, to ring it, in order to call for Aſſiſtance, whilſt the unfortunate Gentleman, being ſtill near the Door, unbolted it.

I then returned to him; and as I was ſupporting him to an Elbow-chair which ſtood near the Fire, I could not help obſerving, that, He might thank himſelf for what had happened, as he had been the Aggreſſor; that I ſuppoſed he took me for a Coward, but I hoped I had as much Courage as another Man. Mr. *Chaworth* replied, My Lord, all I have to ſay is, you have behaved like a Gentleman.

During this Diſcourſe *Fynmore* came into the Room, took our Swords, whilſt I was employed, to the beſt of my Power, in ſupporting Mr. *Chaworth*, and at my Requeſt went for the Surgeon. The reſt of the Gentlemen alſo, who were above Stairs, being now alarmed, came down into the Room; where I continued for ſome Time, being deſirous to give every Kind of Aſſiſtance to the Deceaſed; and afterwards I waited in a Room below, till he was removed to his own Houſe.

My Lords, This is my melancholy Story. I cannot pretend to call any Witneſſes in Support of thoſe Parts of it, which relate to what paſſed during the few Minutes whilſt we were in private; but as the Declarations of the Deceaſed are admitted as Evidence, your Lordſhips will compare the broken Accounts collected by thoſe Gentlemen who diſcourſed with him, with ſuch Circumſtances as my Memory and Knowledge tell me are exactly true.

There are ſeveral Perſons now attending, and ready to atteſt various Inſtances of friendly Intercourſe and Civility from me to the Deceaſed; but as nothing has been offered to induce your Lordſhips to believe the contrary, I will not enter into that Evidence, nor offer any other on my Part, relying upon your Lordſhips Juſtice, and my own Innocence; not only as that Innocence may be preſumed from the Inſufficiency of Proof on the Part of the Proſecutors, to ſhew either Malice or Premeditation in me, but as moſt of the Witneſſes unanimouſly agree in declaring the Provocation, Challenge, and Inſult offered me; and your Lordſhips will not imagine that I felt them with leſs Emotion, becauſe my Manner and my Words were decent.

My Lords, As the Provocation was great, ſo the Time was very ſhort, between the Converſation and my meeting with Mr. *Chaworth* upon the Stairs, which was quite unexpected to me.

After that accidental Meeting, the Time of our continuing together (which was ſcarce Four Minutes), the Light, the Unfitneſs of the Place, and every other Circumſtance prove, in the ſtrongeſt Manner, that nothing could be more ſudden and unpremeditated than the Conflict that ended ſo unfortunately, and in which I received the Firſt Thruſt, at the Peril of my own Life.

Our Fighting could not be very regular, circumſtanced as it was; but notwithſtanding ſome Inſinuations, my own Mind does not charge me with the leaſt Unfairneſs. The Facts declared by Mr. *Chaworth*, import the contrary; and Mr. *Partington* has acquainted your Lordſhips, that the laſt Declarations, reduced into Writing, were underſtood by him, and by the other Gentlemen preſent, as an Anſwer to every Queſtion which had been aſked.

My Lords, It is very plain from the Evidence, that Mr. *Chaworth* had not cooled; and if the Infirmity of his Temper was ſuch, as not to have recovered itſelf in ſo ſhort an Interval, though he had done the Injury; your Lordſhips, I hope, will at leaſt make that Allowance (which the Law permits) to the like Infirmity of Nature in him who had been injured.

Grieved and affected as I am on this Occaſion, and willing to ſpare any Reflection on the Dead, the Neceſſity of my Defence obliges me to take Notice, that according to the Evidence of Mr. *Donſton*, whom he deſired to ſpeak with on the Stairs, he but too clearly explained the Senſe in which his Words were intended, by aſking that Gentleman, Whether he had obſerved what paſſed between himſelf and me, and whether he had left the Matter ſhort?

Such a Behaviour, my Lords, needs no Comment, eſpecially if conſidered with the Sequel of it; after we came into the Room below, where he declined giving me any reaſonable Explanation; though ſuch an one might eaſily have been given as would have been conſiſtent with my Honour and Character.

In ſuch a Caſe your Lordſhips will, no doubt, have ſome Conſideration

for

for human Weakneſs and Paſſion, always influenced and inflamed in ſome Degree by the Cuſtoms of the World.

And though I am perſuaded that Compaſſion can never obſtruct your impartial Juſtice, yet I truſt that you will incline to mitigate the Rigour of it, and adminiſter it, according to Law, in Mercy.

I am told, my Lords, that it has been held by the greateſt Authorities in the Law, that if contumelious Words (and ſtill more, I preſume, if contemptuous Words of Challenge) have been given by one Man to another, and, before they are cooled, either bids the other draw his Sword, and Death enſues, after mutual Paſſes, the Fact in that Caſe will not amount to Murder.

Therefore I am willing to hope, that your Lordſhips, in weighing theſe Circumſtances, may find ſufficient Cauſe to acquit me of all Malice, and to conſider me as an unhappy Man, innocent in Intention, conſcious only of Miſfortune.

My Lords, I will detain you no longer. I am in your Lordſhips Judgment, and ſhall expect your Sentence, whether for Life or Death, with all the Submiſſion that is due to the nobleſt and moſt equitable Court of Judicature in the World.

Then the Lord High Steward returned back to his Chair.

Lord High Steward. Lieutenant of the *Tower*, take *William* Lord *Byron* from the Bar.

Which was done accordingly.

Lord Preſident. My Lords, I move your Lordſhips to adjourn to the Chamber of Parliament.—*Lords.* Ay, Ay.

L. H. S. This Houſe is adjourned to the Chamber of Parliament.

The Lords and others returned to the Chamber of Parliament in the ſame Order they came down: And, after ſome Time, the Houſe was adjourned again into *Weſtminſter-Hall*; and the Peers being there ſeated, and the Lord High Steward in his Chair, and the Houſe reſumed, the Serjeant at Arms made Proclamation for ſilence as uſual.

L. H. S. Your Lordſhips have heard the Evidence, and every Thing that has been alledged on both Sides; and the Solemnity of your Proceedings requires that your Lordſhips Opinions on the Queſtion, of Guilty, or Not Guilty, ſhould be delivered ſeverally in the Abſence of the Priſoner, beginning with the junior Baron; and that the Priſoner ſhould afterwards be acquainted with the Reſult of thoſe Opinions by me. Is it your Lordſhips Pleaſure to proceed now to give your Opinions on the Queſtion, of Guilty, or Not Guilty?—*Lords.* Ay, Ay.

Then the Lord High Steward ſtood up uncovered; and, beginning with the youngeſt Peer, ſaid,

George Lord *Vernon*, What ſays your Lordſhip? Is *William* Lord *Byron* Guilty of the Felony and Murder whereof he ſtands indicted, or Not Guilty?

Whereupon *George* Lord *Vernon*, ſtanding up in his Place, uncovered, and laying his Right Hand upon his Breaſt, anſwered,

Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

In like Manner the ſeveral Lords after-mentioned, being all that were preſent, anſwered as followeth:

Edward Lord *Beaulieu.* Not Guilty, upon my Honour.

Joſeph Lord *Milton.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

John Lord *Montague.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

John Lord *Lovel* and *Holland.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

William Lord *Boſton.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Nathaniel Lord *Scarſdale.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Richard Lord *Groſvenor.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Thomas Lord *Grantham.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Lewis Lord *Sondes.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

William Lord *Wycombe.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

George Lord *Lyttelton.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Wills Lord *Harwich.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

William Lord *Mansfield.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Horatio Lord *Walpole.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honur.

Thomas Lord *Hyde.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Vere Lord *Vere.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

William Lord *Ponſonby.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Henry Lord *Ravenſworth.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Matthew Lord *Forteſcue.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Thomas Lord *Bruce.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Samuel Lord *Sandys.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

George Lord *Edgecumbe.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Frederick Henry Lord *Chedworth.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Thomas Lord *Montfort.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

John Lord *Monſon.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

William Lord *King.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Matthew Ducie Lord *Ducie.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Charles Lord *Cadogan.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Samuel Lord *Maſham.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Robert Lord *Trevor.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Edmund Lord *Boyle.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Charles Schaw Lord *Cathcart.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

William Lord *Craven.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Nathaniel Lord *Delamer.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

John Lord *Berkeley* of *Stratton.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Edward Lord *Leigh.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

John Lord *Clifton.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

John Lord *Saint John* of *Bletſoe.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

John Peyto Lord *Willoughby* of *Broke.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Norborne Lord *Botetourt.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

George Lord *Abergavenny.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Francis Lord *Le Deſpencer.* Not Guilty, upon my Honour.

John Viſcount *Dudley and Ward.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

William Viſcount *Courtenay.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Edward Viſcount *Wentworth.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

John Viſcount *Spencer.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

William Viſcount *Folkeſtone.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

George Viſcount *Torrington.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Hugh Viſcount *Falmouth.* Not Guilty, upon my Honour.

Frederick Viſcount *Bolingbroke and Saint John.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Thomas Viſcount *Weymouth.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

George Viſcount *Townſhend.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Richard Viſcount *Say and Sele.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Edward Viſcount *Hereford.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Stephen Earl of *Ilcheſter.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Thomas Earl *Fauconberg.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Philip Earl of *Hardwicke.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Charles Earl *Cornwallis.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Simon Earl *Harcourt.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Richard Earl *Temple.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Hugh Earl of *Northumberland.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Henry Arthur Earl *Powis.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

John Earl of *Buckinghamſhire.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

William Earl of *Harrington.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

George Earl of *Orford.* Not Guilty, upon my Honour.

John Earl of *Aſhburnham.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

John Earl *Waldegrave.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

John Earl *Ker.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

George Earl of *Macclesfield.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Henry Earl of *Suſſex.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

George Montagu Earl of *Halifax.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Heneage Earl of *Aylesford.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Charles Earl of *Tankerville.* Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

William Earl of *Dartmouth*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

William Earl of *Strafford*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Edward Earl of *Oxford and Earl Mortimer*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

John Earl of *Bute*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Hugh Earl of *Marchmont*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

William Earl of *March and Ruglen*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

William Earl of *Dunmore*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

John Earl of *Breadalbane*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

John Earl of *Loudoun*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

James Earl of *Abercorn*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Alexander Earl of *Eglington*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

James Earl of *Morton*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Vere Earl *Poulet*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

George William Earl of *Coventry*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

George Earl of *Albemarle*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Richard Earl of *Scarborough*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Other Lewis Earl of *Plymouth*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Henry Earl of *Gainſborough*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

George Henry Earl of *Litchfield*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Anthony Aſhley Earl of *Shaftesbury*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

George Earl of *Cardigan*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

William Anne Holles Earl of *Eſſex*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

John Earl of *Sandwich*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Daniel Earl of *Winchelſea and Nottingham*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Charles Earl of *Peterborough and Monmouth*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Thomas Earl of *Weſtmoreland*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Baſil Earl of *Denbigh*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Henry Earl of *Suffolk and Berkſhire*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Henry Earl of *Lincoln*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Henry Earl of *Pembroke and Montgomery*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Francis Earl of *Huntingdon*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Granville Leviſon, Earl *Gower*, *Lord Chamberlain of the Houſhold*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

William Earl *Talbot*, *Lord Steward of the Houſhold*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Charles Marquis of *Rockingham*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Francis Duke of *Bridgewater*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Henry Duke of *Chandos*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

George Duke of *Manchester*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

William Henry Cavendiſh, Duke of *Portland*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Thomas Holles, Duke of *Newcaſtle*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Peregrine Duke of *Ancaſter and Keſteven*, *Lord Great Chamberlain of England*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

John Duke of *Argyle*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

John Duke of *Rutland*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Thomas Duke of *Leeds*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Auguſtus Henry Duke of *Grafton*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Charles Duke of *Richmond*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

John Duke of *Bedford*, *Lord Preſident of the Council*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

His Royal Highneſs *William Henry* Duke of *Glouceſter and Edinburgh*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

His Royal Highneſs *Edward* Duke of *York and Albany*. Not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Then the Lord High Steward, ſtanding uncovered at the Chair, laying his Hand upon his Breaſt, ſaid;

Lord High Steward. My Lords, I am of Opinion that *William* Lord *Byron* is not Guilty of Murder, but Guilty of Manſlaughter, upon my Honour.

Lord High Steward. Your Lordſhips have found that *William* Lord *Byron* is not Guilty of the Felony and Murder whereof he ſtands indicted; but have found him Guilty of Manſlaughter; One Hundred and Nineteen of your Lordſhips having voted him Guilty of Manſlaughter, and the remaining Four having declared him to be Not Guilty generally: Is it your Lordſhips Pleaſure that he ſhould be called in, and acquainted therewith?

Lords. Ay, Ay.

Proclamation was then made for the Lieutenant of the *Tower* to bring the Priſoner to the Bar, which was done in the ſame Order as before; and afterwards Proclamation was made for Silence, as uſual.

Lord High Steward. *William* Lord *Byron*, The Lords have conſidered of the Charge and Evidence brought againſt you, and have likewiſe conſidered of every Thing which you have alledged in your Defence, and upon the whole Matter, their Lordſhips have found you Not Guilty of the Murder whereof you ſtand indicted, but Guilty of Manſlaughter. What has your Lordſhip to alledge againſt Judgment being pronounced upon you?

Upon which his Lordſhip claimed the Benefit of the Statute of *Edward* the Sixth.

Whereupon the Lord High Steward acquainted him, that he was allowed the Benefit of that Statute, and was diſcharged, paying his Fees.

Proclamation was then made for Silence in the uſual Manner.

Lord High Steward. My Lords, this Trial being at an End, nothing remains to be done here, but to determine the Commiſſion.

Lords. Ay, Ay.

Lord High Steward. Let Proclamation be made for diſſolving the Commiſſion of High Steward.

Serjeant at Arms. Oyez, Oyez, Oyez! Our Sovereign Lord the King does ſtrictly charge and command all Manner of Perſons here preſent, and that have here attended, to depart hence in the Peace of God, and of our ſaid Sovereign Lord the King, for his Grace my Lord High Steward of *Great-Britain* intends now to diſſolve his Commiſſion.

Then the White Staff being delivered to the Lord High Steward by the Gentleman-Uſher of the Black Rod upon his Knee, his Grace ſtood up uncovered, and holding the Staff in both his Hands, broke it in Two, and declared the Commiſſion to be diſſolved; and then leaving the Chair, came down to the Woolpack, and ſaid, Is it your Lordſhips Pleaſure to adjourn to the Chamber of Parliament?

Lords. Ay, Ay.

Lord High Steward. This Houſe is adjourned to the Chamber of Parliament.

Then the Peers and others returned back to the Chamber of Parliament, in the ſame Order they came down, except that their Royal Highneſſes the Duke of *Glouceſter* and Duke of *York*, walked after the Lord Chancellor.

LVIII. The Trial of KATHARINE NAIRN and PATRICK OGILVIE, for the Crimes of Inceſt and Murder, before the High Court of Juſticiary in *Scotland*, upon the 5th, 12th, 13th, 14th, 15th, and 16th Days of *Auguſt*, 1765.

Curia Juſticiaria S. D. N. Regis, tenta in Nova Seſſionis Domo de Edinburgh, quinto die menſis Auguſti, milleſimo ſeptingenteſimo ſexageſimo quinto, per Honorabiles Viros Dominum Gilbertum Elliot de Minto, Baronetum, Dominum Juſticiarium Clericum, Alexandrum Boſwell de Auchinleck, Andream Pringle de Alemoor, Henricum Home de Kames, Jacobum Ferguſon de Pitfour, et Georgium Brown de Coalſton, Commiſſionarios Juſticiariæ S. D. N. Regis.

Curia legitimè affirmata.

Intran.

KATHARINE NAIRN, Widow of the deceaſed *Thomas Ogilvie* of *Eaſtmiln*, in the County of *Forfar*;

AND

PATRICK OGILVIE, Lieutenant of the eighty-ninth Regiment of Foot, Brother-German of the ſaid deceaſed *Thomas Ogilvie*;

Both now Priſoners in the *Tolbooth of Edinburgh*;

PANNELS.

Indicted and *accuſed* at the Inſtance of *Thomas Miller* of *Barſkimming*, Eſq. his Majeſty's Advocate, for his Majeſty's Intereſt, for the Crimes of *Inceſt* and *Murder*, in Manner mentioned in the Criminal *Indictment* raiſed thereanent, *Bearing*, THAT WHEREAS, by the Law of God, and the Laws of this and all other well-governed Realms, the Crime of *Inceſt*, committed betwixt a Man and the Wife of his Brother-German, eſpecially when ſuch Crime is committed within the Dwelling-houſe of the injured Huſband, where the Offenders were cheriſhed and entertained by him with Confidence and Truſt, is a heinous Crime, and moſt ſeverely puniſhable; and particularly by an Act paſſed in the Parliament of *Scotland*, in the Year One thouſand five hundred and ſixty-ſeven, being the firſt Parliament of King *James* the Sixth, *chap.* 14. intituled, "Anent "them that commit Inceſt," it is ſtatuted and ordained, "That quhat-"ſumever Perſon or Perſones that committes the ſaid abhominable Cryme "of Inceſt, that is to ſay, quhatſumever Perſon or Perſones they be "that abuſes their Bodie with ſik Perſones in Degrie, as God in his "Word has expreſslie forbidden, in ony Time cumming, as is con-"tained in the xviii. Chapter of *Leviticus*, ſall be puniſhed to the Death:" And alſo whereas, by the ſame holy Law of God, and by the Laws of this and every other well-governed Realm, all wilful *Homicide* or *Murder*, eſpecially when perpetrated by Poiſon, and above all, when ſuch Murder is committed under Truſt, or upon a Perſon to whom Fidelity and Affection are due by the moſt ſacred Ties, is alſo a Crime of moſt heinous and atrocious Nature, and ſeverely puniſhable: Yet true it is, and of Verity, that the ſaid *Katharine Nairn* and *Patrick Ogilvie*, ſhaking off all Fear of God and Regard to the Laws, have preſumed to commit, and are guilty, Actors, Art and Part, of both, or one or other of the ſaid heinous Crimes of *Inceſt* and *Murder*, aggravated as aforeſaid: In ſo far as, the ſaid *Katharine Nairn* having been married to the ſaid deceaſed *Thomas Ogilvie* in the Month of *January* laſt, in this preſent Year One thouſand ſeven hundred and ſixty-five; and the ſaid *Patrick Ogilvie* having about that Time returned from abroad, and taken up his Reſidence at the Houſe of *Eaſtmiln*, belonging to the ſaid deceaſed *Thomas Ogilvie* his Brother, in the Pariſh of *Glenylla* and County of *Forfar*, the ſaid *Katharine Nairn* did, ſoon after her ſaid Marriage, alienate her Affections from her ſaid Huſband, and fall into a Courſe of indecent Familiarities with the ſaid *Patrick Ogilvie*, which ſoon became the Subject of Obſervation and Regret to her unhappy Huſband, and to her Friends and Family; and notwithſtanding repeated Admonitions given to the ſaid *Katharine Nairn*, and to the ſaid *Patrick Ogilvie*, by the ſaid *Thomas Ogilvie* and their other Relations, to abſtain from ſuch indecent Familiarities, they obſtinately perſiſted therein, frequently retired together, and continued in private for a conſiderable Time, as well in the Fields as within the Houſe of *Eaſtmiln*, and in other Houſes and Places of that Neighbourhood; and the ſaid *Katharine Nairn* and *Patrick Ogilvie*, yielding to their inordinate Deſires, did, after the ſaid Marriage, *viz.* in the Months of *January*, *February*, *March*, *April*, *May*, and *June*, all laſt paſt, and before the twelfth Day of that laſt Month, at different Times, and in one or other of the Rooms of the Houſe of *Eaſtmiln*, and in the Out-houſes adjacent thereto, lie together, and abuſe their Bodies with one another; and thereby they, and each of them, committed the abominable Crime of Inceſt; and their indecent Conduct having at laſt become the Subject of Obſervation and juſt Cenſure, not only to the ſaid deceaſed *Thomas Ogilvie* and his Family, but to the Neighbourhood, the ſaid *Patrick Ogilvie* was, on that Account, diſmiſſed by the ſaid *Thomas Ogilvie* from his Houſe, on or about the twenty-third Day of *May* laſt; and the ſaid *Katharine Nairn* did, upon that Occaſion, and thereafter, expreſs her Reſentment againſt her Huſband, and by the moſt outrageous Behaviour; and before the ſaid *Patrick Ogilvie* left the ſaid Houſe, or ſoon after, he and the ſaid *Katharine Nairn* did *treacherouſly and wickedly* conſpire to murder the ſaid *Thomas Ogilvie* by Poiſon; and, upon different Occaſions, the ſaid *Katharine Nairn* ſignified this her wicked Purpoſe to *Anne Clark*, Daughter of the deceaſed *Allan Clark*, Officer of Exciſe, who then lived in Family with her, and informed her, that the ſaid *Patrick Ogilvie* had undertaken to provide the Poiſon, which ſhe did not then believe either of them capable of, and endeavoured to divert the ſaid *Katharine Nairn* from ſuch wicked Thoughts; but, inſtigated by the Temptations of the Devil and of their own wicked Hearts, the ſaid *Katharine Nairn* and *Patrick Ogilvie* perſiſted in their wicked Conſpiracy; and from the Time the ſaid *Patrick Ogilvie* was diſmiſſed from his Brother's Houſe, he and the ſaid *Katharine Nairn* carried on a ſecret Correſpondence by Letters, and had private Meetings together for the Purpoſe of concerting the Perpetration of their wicked Deſign; one of which Letters, without a Date, and unſigned, but of the Hand-writing of the ſaid *Katharine Nairn*, will be produced in Evidence againſt them, and will be lodged in the Hands of the Clerk of the High Court of Juſticiary, before which they are to be tried, that they may ſee the ſame: And, for accompliſhing the Murder ſo concerted betwixt them as aforeſaid, the ſaid *Patrick Ogilvie* did, about the latter End of *May* laſt, repair to the Burgh of *Brechin*, in the County aforeſaid, and there bought and received from *James Carnegie*, Surgeon in that Burgh, a ſmall Phial Glaſs of Laudanum, which he pretended was for his own Health, and about Half an Ounce or more of Arſenick pulverized, and put up in three or four different Doſes, in ſeparate Paper-Covers, pretending that he had Occaſion for that Poiſon, in order to kill ſome Dogs, which deſtroyed the Game in that Part of the Country where he reſided. And the ſaid *Patrick Ogilvie* brought the ſaid Poiſon to *Alyth*, within a few Miles of *Eaſtmiln*, where he arrived upon or about *Monday* the third Day of *June* laſt, at the Houſe of *Andrew Stewart*, Merchant there, his Brother-in-law; and, upon the Day following, he did there receive a Letter from the ſaid *Katharine Nairn*, which, by her Orders, was delivered to him in Private, by *Elizabeth Sturrock* her Servant; to which he returned an Anſwer that ſame Day, with the ſaid *Elizabeth Sturrock*, by a Letter, with Injunctions to deliver it privately to the ſaid *Katharine Nairn*; which was done accordingly: And, upon the Day following, being the fifth Day of *June*, the ſaid *Andrew Stewart* having had Occaſion to go to the Houſe of *Eaſtmiln*, he, the ſaid *Patrick Ogilvie*, did ſend with him two ſmall Phial Glaſſes, one of which he ſaid contained Laudanum, and a Paper with Directions about the Manner of uſing it; and alſo a Packet, which he ſaid contained Salts, and a Letter cloſed with a Wafer, and likewiſe ſealed with Wax, addreſſed to the ſaid *Katharine Nairn* at *Eaſtmiln*; and he informed the ſaid *Andrew Stewart* that theſe were Medicines for the Uſe of the ſaid *Katharine Nairn* herſelf, and deſired him to deliver them and the Letter privately into her own Hands: And the ſaid *Katharine Nairn*, having been previouſly adviſed by the ſaid *Patrick Ogilvie*, that he was to ſend the Poiſon by the ſaid *Andrew Stewart*, watched his Arrival at the Houſe of *Eaſtmiln*, and, upon his coming there, conducted him into a private Room, and received from him the above Particulars, which ſhe preſently locked up in a Drawer alongſt with the Letter, without reading the ſame; and, in this Manner, or by ſome other Conveyance to the Proſecutor unknown, the Arſenick bought by the ſaid *Patrick Ogilvie* as aforeſaid, was conveyed by him to, and received by the ſaid *Katharine Nairn* at the Houſe of *Eaſtmiln*: And the ſaid *Andrew Stewart* having, ſome Time after his Arrival there, diſcovered to the ſaid *Anne Clark*, that he had brought ſome Medicines from the ſaid *Patrick Ogilvie*, which he had delivered to the ſaid *Katharine Nairn*, *Anne Clark* did thereupon diſcloſe to the ſaid *Andrew Stewart*, and to *Iſobel M'Kenzie*, the Mother of the ſaid *Thomas Ogilvie*, her Apprehenſions of Danger to the ſaid *Thomas Ogilvie*'s Life; and all theſe Perſons, or ſome of them, did that Night adviſe and caution the ſaid *Thomas Ogilvie*, to take no Meat or Drink from his Wife, except what he ſaw others taking; and ſome Time that ſame Night, the ſaid *Katharine Nairn* ſaid to the ſaid *Andrew Stewart*, *ſhe wiſhed her Huſband was dead*; and the ſaid *Thomas Ogilvie* did that ſame Night ſup with the ſaid *Katharine Nairn*, his Wife, and the other Perſons above named, in his ordinary State of Health, and went to Bed at the uſual Time of Night, having been abroad the preceding Day: That next Morning, the ſixth Day of *June*, or one or other of the Days in the Beginning of that Month, Breakfaſt was ſet in the Parlour earlier than uſual, and the ſaid *Thomas Ogilvie* not having then got out of Bed, the ſaid *Katharine Nairn* filled out the firſt of the Tea in a Bowl, which ſhe ſaid ſhe was going to carry up to the Laird, meaning her Huſband; and accordingly left the Parlour with the ſaid Bowl in her Hand; but inſtead of carrying it ſtraight to her Huſband, ſhe went into a Cloſet adjoining to his Bed-room, where ſhe remained for ſome Time, and there wickedly and felonioufly mixed the Arſenick which ſhe had received as aforeſaid, or ſome other deadly Poiſon, into the ſaid Bowl of Tea, which ſhe afterwards carried to her Huſband, and preſſed him to drink the ſame, which he accordingly did: And ſoon after he roſe from Bed, went abroad, converſed with ſome of his Tenants and Servants, and then appeared to be in his ordinary State of Health; but before he got back to the Houſe, and within the Space of an Hour or thereby after he had drunk the ſaid Bowl of Tea, he was ſeized with a violent Reaching and Vomiting, and having got into the Kitchen, he continued there for ſome Time in great Diſtreſs, upon which he was helped up to his own Room, and laid in Bed, where he remained reaching, vomiting, and purging with ſuch Violence, that he ſometimes appeared convulſed; and, in the Intervals of his Diſtreſs, he did ſay to his Friends, and others about him, that he had been poiſoned by the ſaid Bowl of Tea which he had got from his Wife; and he having called for Water to drink, which was brought up to the Room by *Anne Sampſon* his Servant-maid, in the ſame Bowl, or one like to that out of which he had drank the Tea, he ſaid, "*Damn that Bowl, for I have got my Death out of it already*," and ordered her to bring up the Water in the Tea-kettle, for he would drink out of nothing elſe; and having continued in the Situation above deſcribed for ſeveral Hours, his Tongue ſwelled, and his Mouth became ſo parched and dry, that he could ſcarcely ſpeak;

and, during his Illneſs, though from the Beginning very alarming, the ſaid *Katharine Nairn* not only endeavoured to hinder his Friends and Neighbours to have Acceſs to him; but when ſhe was preſſed, by the ſaid *Andrew Stewart*, to ſend for a Surgeon, ſhe obſtinately reſiſted that Propoſal till near Sun-ſet, when the ſaid *Thomas Ogilvie* her Huſband appearing to be then very low and near his End, ſhe ſent a Servant on Horſeback to bring *Peter Meik*, Surgeon at *Alyth*, who accordingly came with all Diſpatch; but, before his Arrival, her Huſband was dead, having died in the Night betwixt the ſixth and ſeventh Days of *June* laſt, or upon one or other of the Days or Nights in the Beginning of that Month: And from the Symptoms of his Diſorder, and whole Circumſtances of the Caſe above-recited, it evidently appears that he died of the Poiſon which was mixed and given to him, by the ſaid *Katharine Nairn*, in the Bowl of Tea as above-mentioned. And ſome Days thereafter, when it was propoſed to inſpect the dead Body, ſhe, *Katharine Nairn*, appeared like one diſtracted, and cried out, *What will I do!* And the ſaid *Patrick Ogilvie* being adviſed of the Death of the ſaid *Thomas Ogilvie* his Brother, to whom he is Heir, in caſe the ſaid *Katharine Nairn* be not with Child, he immediately came to *Eaſtmiln*, took up his Reſidence there, and gave the neceſſary Orders for the Interment. And the ſaid *Katharine Nairn* and *Patrick Ogilvie*, having been apprehended there, and committed to the Priſon of *Forfar*, by *George Campbell*, Eſq; Sheriff-Subſtitute of that County, as guilty of the Murder of the ſaid *Thomas Ogilvie*, and examined by the ſaid Sheriff Subſtitute upon the fourteenth and fifteenth Days of *June* laſt, did each emit two ſeveral Declarations, which were ſubſcribed by each of them, and by the ſaid Sheriff-Subſtitute; which Declarations are to be uſed in Evidence againſt them upon their Trial, and ſhall be lodged in the Hands of the Clerk of the ſaid Court of Juſticiary, that they may have Acceſs to ſee the ſame: And another Examination of the ſaid *Patrick Ogilvie*, taken before *James Balfour*, Eſq; Sheriff-Subſtitute of the County of *Edinburgh*, upon the twenty-ſecond Day of the ſaid Month of *June* laſt, and ſubſcribed by him and the ſaid *James Balfour*; and alſo an Examination of the ſaid *Katharine Nairn*, taken before the ſaid *James Balfour*, upon the twenty-fourth Day of the ſaid Month of *June* laſt, and ſubſcribed by him, will likewiſe be produced in Evidence againſt them in the Courſe of their Trial, and will in like Manner be lodged in the Hands of the Clerk of the ſaid Court of Juſticiary, that they may have Acceſs to ſee the ſame. At leaſt, at the Time and Place aforeſaid, the ſaid *Thomas Ogilvie* was murdered or died by Poiſon, wilfully adminiſtered to him; and of which Murder or Poiſoning the ſaid *Katharine Nairn* and *Patrick Ogilvie*, and each of them, or one or other of them, are guilty, Actors, or Art and Part. All which, or Part thereof, or that they were guilty of the Crime of Inceſt above charged againſt them, being found proven by the Verdict of an Aſſize before the Lords Juſtice-General, Juſtice-Clerk, and Commiſſioners of Juſticiary, they, and each of them, ought to be puniſhed with the Pains of Law, to the Terror of others from committing the like in Time coming.

THOMAS MILLER.

LIST of ASSIZE.

Sir *James Clark* of *Pennycuik*.
Sir *Alexander Gibſon* of *Pentland*.
Sir *Robert Morton* of *Gogar*.
Thomas Trotter of *Mortonhall*.
5 *George Warrender* of *Burntsfield*.
John Howieſon of *Braehead*.
John Borthwick of *Cruikſton*.
James Forreſt of *Commiſton*.
Alexander Muirhead of *Linhouſe*.
10 *Hugh Dalrymple* of *Fordel*.
John Wightman of *Maulſlie*.
John Chriſtie of *Baberton*.
Adam Cuningham of *Bonnyteun*.
Thomas Brown of *Braid*.
15 *Alexander Sheriff* of *Craigleith*.
James Finlay of *Wallyford*.
Alexander Gibſon of *Cliftonhall*.
James Linn of *Gorgie*.
Sir *Robert Dalziell* of *Binns*.
20 *Tho. Sharp* younger, of *Houſton*.
Robert Ramſay of *Blackcraig*.
John Paterſon of *Kirkton*.
David Dundas younger, of *Newhalls*.
James Dallas younger, of *Parklie*.
25 *Henry Cochran* of *Barbacklaw*.
Sir *George Suttie* of *Balgonie*.
Sir *John Hall* of *Dunglaſs*.
Sir *John Sinclair* of *Stevenſon*.
John Henderſon of *Liſton*.
30 *William Hay* of *Lawfield*.
Charles Hay of *Hopes*.
Richard Newton of *Newton*.
James Hume of *Gemmelſhiells*.
Alexander Wedderburn of *St. Germains*.
35 *William Ramſay* of *Preſton*.
Oliver Colt of *Auldham*.
John Forreſt ſenior, Merchant, in *Edinburgh*.
Wm. Callender, Merchant there.
Ralph Dundas, Merchant there.
40 *John Fordyce*, Merchant there.
Daniel Seton, Merchant there.
George Chalmers, Merchant there.
Wm. Ramſay, Merchant there.
Gavin Hamilton, Bookſeller there.
45 *Archibald Wallace*, Merchant there.

GILB. ELLIOT.
ALEX. BOSWELL.
AND. PRINGLE.
GEO. BROWN.

LIST of WITNESSES.

* The Witneſſes ſo marked were examined for the Proſecutor.

1 * *George Spalding* of *Glenkilrie*.
2 *Bethia Nairn* his Spouſe.
3 * *Andrew Stewart*, Merchant in *Alyth*.
4 *Martha Ogilvie* his Spouſe.
5 * *James Carnegie*, Surgeon in *Brechin*.
6 * *Gilbert Ramſay*, Surgeon in *Coupar* of *Angus*.
7 * *Peter Meik*, Surgeon in *Alyth*.
8 * Dr. *John Ogilvie*, Phyſician in *Forfar*.
9 * Lieutenant *George Campbell*, late of the 89th Regiment of Foot.
10 * *Patrick Dickſon*, Merchant in *Brechin*.
11 The Reverend Mr. *Thomas Maſſon*, Miniſter of *Glenylla*.
12 *Katharine Gruer*, Relict of *M'Kenzie*, late Servant in *Eaſtmiln*.
13 * *James M'Kenzie*, Seſſion-Clerk of *Glenylla*.
14 *James Rattray* of *Kirkhillocks*.
15 *Anne Robertſon* his Spouſe.
16 *William Clark* of *Holemerry*, one of the Elders of the Pariſh of *Glenylla*.
17 * *Elizabeth Sturrock*, late Servant to the deceaſed *Thomas Ogilvie* of *Eaſtmiln*.
18 * *Anne Sampſon*, late Servant to the ſaid deceaſed *Thomas Ogilvie* of *Eaſtmiln*.
19 * *Alexander Lindſay*, late Servant to the ſaid deceaſed *Thomas Ogilvie* of *Eaſtmiln*.
20 * *Katharine Campbell*, late Servant to the ſaid deceaſed *Thomas Ogilvie* of *Eaſtmiln*.
21 *John Guthrie* in *Dalnakebock*, late Servant to the ſaid deceaſed *Thomas Ogilvie* of *Eaſtmiln*.
22 *Anne Robertſon*, late Servant to the ſaid deceaſed *Thomas Ogilvie* of *Eaſtmiln*.
23 *John Rattray*, Servant to *John Robertſon* of *Cray*.
24 *Margaret Downie*, Servant to *William Ker*, Writer in *Forfar*.
25 *Jean Low*, Servant to *William Gorty*, Taylor in *Forfar*.
26 * *Anne Clark*, Daughter to the deceaſed *Allan Clark*, Officer of Exciſe.
27 * *George Campbell* of *Carſegownie*, Eſq.
28 * Mr. *John Ure*, Sheriff-Clerk of *Forfar*.
29 *Patrick Orr*, Writer in *Forfar*.
30 *Fergus Fergusſon*, Reſidenter in *Kirkton* of *Glenylla*.
31 *Margaret Rait* his Spouſe.
32 *William Shaw*, Reſidenter at *Little Forther* in the Pariſh of *Glenylla*.
33 * *John Gilloch*, Wright in *Dalnakebock*.
34 * Mr. *James Balfour* of *Pilrig*, Advocate, Sheriff-Subſtitute of *Edinburgh*.
35 * *William Dunbar*, Writer in *Edinburgh*.
36 *William Campbell*, Writer in *Edinburgh*.
37 *James M'Niccol* in *Newton* of *Glenylla*.
38 *John Hall*, Portioner of *Achliſh*.
39 * *James Millam*, Tackſman of the *Eaſtmiln* of *Glenylla*.
40 *James Dougal*, Surgeon in *Kerriemuir*.
41 Mr. *Lawrence Brown*, Miniſter at *Lintrethan*.
42 *Andrew Muriſon*, one of the Macers of Juſticiary.
43 *Charles Copland*, Meſſenger in *Edinburgh*.
44 * *David Rattray* younger, in *Cammock* in the Pariſh of *Glenylla*.
45 * *John Lamar* in *Craigendeach* in the ſaid Pariſh.
46 *Alexander Barnet* in *Cammock* in the ſaid Pariſh.
47 *Helen Murray*, Spouſe to the ſaid *Alexander Barnet*.
48 * *James Barnet*, Son to the ſaid *Alexander Barnet*.
49 *Alexander Reid*, Writer in *Edinburgh*.
50 *David Spalding* of *Whitehouſe*.
51 *Alexander Reid*, Tenant in *Ennoch* in *Glenkilrie*.
52 *John Tudhope*, Reſidenter at *Guardwell* in the Pariſh of *Libberton*.
53 *Iſobel Furquharſon* his Spouſe.
54 *Tudhope*, Relict of *Knight*, and Daughter to the ſaid *John Tudhope*, Reſidenter near *Dean*.
55 Mrs. *Dallas*, Spouſe to *Gibb*, Coachmaſter in *Canongate*.
56 Dr. *William Cullen*, Phyſician in *Edinburgh*.
57 *James Ruſſel*, Surgeon in *Edinburgh*.
58 * *Robert Smith*, Surgeon in *Edinburgh*.
59 *James Rae*, Surgeon in *Edinburgh*.
60 *William Forreſter* or *Froſter*, Tenant in *Eaſtmiln*.
61 *John Turnbull*, Writer in *Edinburgh*.
62 *John Stewart*, Writer in *Edinburgh*.
63 *Iſobel M'Kenzie*, Relict of the deceaſed *Thomas Ogilvie* of *Eaſtmiln*, and Mother to the deceaſed *Thomas Ogilvie* laſt of *Eaſtmiln*.
64 Dr. *John Rutherford*, Phyſician in *Edinburgh*.

LIST *of the* Writings *and other Particulars to be adduced in Evidence.*

The Bottle of Laudanum mentioned in the Indictment.
The Declarations therein mentioned.
The Letter therein mentioned.
A Letter from *Katharine Nairn* the Pannel to the deceaſed *Thomas Ogilvie*, dated *Glenkilry*, *Weenſday*.
A Letter from *Katharine Nairn* the Pannel to the ſaid *Thomas Ogilvie*, dated *Glenkilry*, *January* 4th 1765.

The ſaid *Indictment* being read over to the Pannels in open Court; and they being ſeverally aſked, What they had to ſay againſt the ſame? They anſwered, *They were not guilty*

Procurators for the Proſecutor.

Thomas Miller of *Barſkimming*, Eſq; his Majeſty's Advocate, for his Majeſty's Intereſt.
Mr. *James Montgomery*, Advocate, his Majeſty's Sollicitor.
Sir *David Dalrymple*, Advocate.
Mr. *Patrick Murray*, Advocate.
Mr. *David Kennedy*, Advocate.

Procurators in Defence.

Mr. *Alexander Lockhart*, Advocate.
Mr. *David Græme*, Advocate.
Mr. *David Rae*, Advocate.
Mr. *Andrew Croſbie*, Advocate.
Mr. *Henry Dundas*, Advocate.

DUNDAS, for *Katharine Nairn* the Pannel, *repeated* the ſigned Defences; and *repreſented*, That, in 1764, the now deceaſed *Thomas Ogilvie* of *Eaſtmiln*, a Gentleman rather advanced in Years, of a tender Conſtitution, and poſſeſſed of a very ſmall Fortune, made his Addreſſes to this unfortunate Pannel, (then ſcarce nineteen Years of Age) in Propoſals of Marriage: Which, contrary to the Opinion of her Friends, by reaſon of the Smallneſs of his Fortune, ſhe accepted of from Principles of pure Love and Affection: And the Marriage being accordingly celebrated in the Beginning of *January* laſt, 1765, was diſſolved, by Mr. *Ogilvie*'s Death, upon the 6th of *June* laſt; when the Affections ſhe had conceived for her Huſband can ſcarce be ſuppoſed to have had Time to cool or ſubſide.

Notwithſtanding of which, it is her now very ſingular Misfortune to be indicted and accuſed, at the Inſtance of his Majeſty's Advocate, upon the Information of *Alexander Ogilvie*, her Huſband's youngeſt Brother, as guilty of two of the moſt enormous Crimes known in the Law: *1ſt*, The Crime of Inceſt, which ſhe is charged to have committed with Lieutenant *Patrick Ogilvie*, her Huſband's immediate younger Brother; *2dly*, The Crime of Murder, committed upon the Perſon of her ſaid Huſband, by Poiſon adminiſtered to him.

Her Parentage, Education, Age, Sex, Character, and Behaviour, in that Stage of Life previous to her Marriage, when Female Paſſions are

are moſt powerful and predominant; which ſhe flatters herſelf will be atteſted by Perſons of the greateſt Honour and Probity, render it highly incredible, that any Perſon not hardened and inured to every Species of Wickedneſs, loſt and abandoned to every Principle of Virtue, ſhould at once plunge into Crimes of ſo deep a Dye.

Conſcious of her Innocence, ſhe wiſhes for nothing more ardently than a fair and impartial Trial, as the only Means of Reparation that can be made to her injured Character, ſo much traduced; and which, in the Event, ſhe is hopeful, will appear to be the Reſult of the moſt inveterate Rancour, Hatred, and deadly Malice, conceived againſt her by one of her own Sex, a Perſon of moſt flagitious Life, and abandoned Character, and who, ſhe is now told, is the principal Evidence meant to be uſed againſt her.

Since her Impriſonment, no Endeavours have been ſpared to impreſs the Public with Sentiments of her Guilt, by Publication of many falſe, malicious, and wicked Reports, induſtriouſly propagated to the Prejudice of her general Character.

But ſhe rejoices in the Appeal ſhe will ſoon be able to make to the World, to her Judges and Jury, to vindicate her from the Charge of thoſe horrid Crimes with which ſhe ſtands now arraigned. At the ſame Time ſhe cannot know what falſe Evidence may be produced againſt her, Self-Preſervation requires, that ſhe ſhould not paſs over any material Objection to the Form of this Indictment.

And in that View, ſhe objects to that Article of the Indictment which charges the Crime of Inceſt, ſaid to have been committed *in one or other of the Rooms of the Houſe of* Eaſtmiln, *and Out-houſes adjacent thereto, at different Times, in* January, February, March, April, May, *and* June, *all laſt paſt, and before the 12th Day of that laſt Month*; that is, in other Words, from the Day of her Marriage, till the 6th Day after her Huſband's Death.

She takes no Exception to the Generality of the Places charged, where this Crime ſhould have been committed, viz. "In one or other of the "Rooms of the Houſe of *Eaſtmiln*, and Out-houſes adjacent thereto;" though ſhe is adviſed, that after ſo full a Precognition as ſhe is told has been taken, by Examination upon Oath of every Perſon that could be ſuppoſed to have the leaſt Knowledge in theſe Matters, at which none were allowed to be preſent upon her Part, the Places where this ſuppoſed Crime is ſaid to have been ſo frequently repeated, ſhould have been ſpecially condeſcended upon, and deſcribed. But ſhe is adviſed, and humbly ſubmits it to the Conſideration of her honourable Judges, and the impartial World, that a moſt unbecoming and improper Latitude has been taken, in charging the Time of the Commiſſion of this ſuppoſed Offence, comprehending the whole Space, every Hour, Day, Week, and Month, from the Period of her Marriage, to her Huſband's Death, and even while he was lying a Corpſe, before his Interment on the 12th of *June*.

The Diſadvantages to which ſhe muſt neceſſarily be expoſed, in making her Defences againſt ſo general a Charge, are too obvious to need Illuſtration; and therefore ſhe does humbly inſiſt, that this Branch of the Indictment cannot be ſuſtained, or admitted to Proof.

But if, contrary to Expectation, the ſame ſhall be ſuſtained, ſhe propoſes, by undeniable Evidence, to traverſe and redargue every material Circumſtance charged in the Indictment, as well with regard to this as the other Crime with which ſhe is accuſed; and without departing from any other Defences which may occur to her Counſel, the great Lines of theſe Facts which ſhe propoſes to prove, will be theſe following:

1*ſt*, That ſhe accepted of Mr. *Ogilvie* for her Huſband, contrary to the Opinion of her Friends, out of pure Love and Affection: That Mr. *Ogilvie*, before his Marriage, was, and continued thereafter, ſo long as he lived, to be of a tender Conſtitution: That he had repeated and violent Attacks of internal Diſorders, Colic Pains, Convulſions in his Bowels, *&c.* inſomuch that he was not only looked upon to be in a dangerous Way, but having had ſome violent Attacks recently before his actual Death, gave himſelf up for loſt; and both the Day and the Night before he actually died, had ſuch violent Returns of theſe Diſorders, that he thought himſelf dying, and reſolved to have ſent for a Phyſician at many Miles Diſtance.

2*d*, That the Pannel herſelf, ſoon after her Marriage, did likewiſe fall into a bad State of Health, coſtive in her Body, and reſtleſs in the Night, which obliged her frequently to take ſmall Doſes of Salts and Laudanum.

3*d*, That Lieutenant *Patrick Ogilvie*, her Huſband's younger Brother, the ſuppoſed Aſſociate in the Crimes charged, having returned from the *Eaſt-Indies*, broken and ſhattered in his Conſtitution, much about the Time of the Pannel's Marriage, came to pay his firſt Viſit to his Brother, and for ſome Time had his principal Reſidence in his Brother's Houſe; whereby, and by Means of his near Relation, he diſtinguiſhed a becoming Friendſhip and Intimacy with the Pannel, his Siſter-in-Law.

4*th*, That the Pannel having inadvertently allowed herſelf to run ſhort of the Salts and Laudanum ſhe uſed to take, and having occaſionally mentioned this in the Hearing of Lieutenant *Ogilvie*, he told her, that as theſe were Medicines which he himſelf had been adviſed to uſe, he had brought Home in his Cheſt a ſmall Quantity of Laudanum, and a Parcel of Salts, of the very beſt Quality; and that if ſhe pleaſed, he would ſend her a ſmall Phial of the Laudanum, and a few Doſes of the Salts, how ſoon his Cheſt, in which they were, ſhould arrive from *Dundee*. She accepted of the Offer; and did accordingly ſome Time after receive from him, by the Hands of *Andrew Stewart*, Brother-in-Law to *Eaſtmiln*, who came to *Eaſtmiln* on an occaſional Viſit, a ſmall Phial of Laudanum, and two Doſes of Salts; and which are ſuppoſed to be the Particulars alluded to in this Indictment, as the Doſes of Poiſon ſaid to be ſecretly conveyed to the Pannel.

5*th*, That *Alexander Ogilvie*, the younger Brother of her Huſband, had, about the Beginning of this Year 1765, intermarried with a Woman of the loweſt Rank, the Daughter of a common Porter in *Edinburgh*, which gave great Offence to his two Brothers; and the Pannel does not doubt, but ſhe might, upon Occaſion thereof, have expreſſed her Senſe and Feeling of the Reproach thereby brought upon their Family. Of which the ſaid *Alexander Ogilvie* having got Intelligence, this, joined with the Diſappointment in the Expectation he had conceived of the Succeſſion to his Brother's Eſtate, he from thenceforward entertained a moſt groundleſs Reſentment againſt the Pannel, the innocent Cauſe of that Diſappointment; and took every Occaſion to publiſh the moſt ſcandalous Falſehoods, calculated to create a Miſunderſtanding between her and her Huſband.

6*th*, That for ſome Time before the ſaid *Alexander Ogilvie*'s Marriage, he had cohabited, in a moſt unbecoming Manner, with *Anne Clark*, a Couſin-German of the Family; a Woman of the moſt infamous Character, and who, for a Courſe of Years, had lived as a common Servant-Maid, in one of the moſt notorious Stews or lewd Houſes in *Edinburgh*, and other Houſes of bad Fame, till at length ſhe took up her Reſidence with the ſaid *Alexander Ogilvie*.

7*th*, *Anne Clark*'s Relation to Mr. *Ogilvie*'s Family furniſhed *Alexander Ogilvie* with a Pretence of ſending her over to *Eaſtmiln*, to paſs ſome Weeks there, and to endeavour, by every poſſible Means, to bring about a Reconcilement between Mr. *Ogilvie* and his Brother *Alexander*. In this View, ſhe attached herſelf at firſt to the Pannel, thinking by her Means to have ſome Influence with Mr. *Ogilvie*, himſelf; till at length, finding they were both equally averſe to have any further Correſpondence, either with *Alexander* or his Wife, ſhe fell to work in another Way; quarrelled with the Pannel; made her Court to Mr. *Ogilvie*; and firſt, by dark Inſinuations, thereafter more explicitly, endeavoured to inſtil into Mr. *Ogilvie*'s Mind, Suſpicions of the Pannel's Virtue, and of a criminal Intimacy between his Brother the Lieutenant and her; and that they had even gone the Length to form a Scheme to deprive him of his Life, by Poiſon or otherwiſe; and theſe her pretended Suſpicions ſhe communicated to the good old Lady Mr. *Ogilvie*'s Mother: The Tendency of all which was, to operate a Miſunderſtanding and Separation betwixt Mr. *Ogilvie* and the Pannel.

8*th*, This diabolical Contrivance happened unluckily, in Point of Time, to co-incide with ſome Differences that had ariſen between Mr. *Ogilvie* and his Brother the Lieutenant, in ſettling Accounts about Money-matters; which having at length produced high Words, and put both Brothers in a Paſſion, Lieutenant *Ogilvie* declared, he would ſtay no longer in a Houſe where he had been ſo uſed; and was preparing to leave it directly, when Mr. *Ogilvie*, giving Way to his Paſſion, gave the parting Blow, by acquainting the Lieutenant of the Information he had received of his Familiarity with the Pannel, his Siſter-in-law; by which Lieutenant *Ogilvie*, juſtly enraged, having peremptorily inſiſted to know his Author, *Anne Clark* came at laſt to be ſuſpected as the Author and Propagator of this wicked and malicious Story; and what afterwards happened, too fully juſtified the Suſpicion.

9*th*, Lieutenant *Ogilvie* immediately left the Houſe. Mr. *Ogilvie* ſoon cooled, and became ſenſible of the Folly of his Proceedings, and of the Injury he had done, both to his Wife and Brother; as ſo abrupt a Separation could not fail to put them in the Mouth of the World. He therefore wrote to his Brother the Lieutenant, preſſing him moſt anxiouſly to return to the Family: The Pannel, as far as Decency would permit, joined in the ſame Requeſt.

10*th*, At this unlucky Period was Mr. *Ogilvie* ſeized with a Return of one of thoſe violent Diſorders in his Bowels and Stomach. He had been almoſt dead the Day before; he relapſed at Night, complained much, thought himſelf a-dying, continued ill all Night; finding himſelf eaſier, aroſe in the Morning as uſual; again turning bad, returned to Bed, where he took a Bowl of warm Tea and Biſcuit; after which he made another Effort, got up, put on his Cloaths, went abroad to take the Air, relapſed, fell a-vomiting, threw up a deal of Bile, and expired about Twelve that Night.

11*th*, The Pannel's Behaviour upon that melancholy Occaſion was decent and becoming, expreſſive of the real Sorrow and Grief ſhe felt. The Tale that is told of her having adminiſtered the Poiſon in a Bowl of Tea that Morning, will be diſproved in the ſtrongeſt Manner. She had none to adminiſter; and every Circumſtance, as it is expected to come out on Proof, will ſhew, that ſhe had it not in her Power ſo to have done, had ſhe intended it; and that *de facto* none was adminiſtered.

12*th*, Mr. *Ogilvie*'s Corpſe remained uninterred until the 11th. It was viewed by Phyſicians and Surgeons of Character and Skill: The Appearances were nothing but what is uſual in natural Diſtempers proceeding from various internal Cauſes. A Diſſection of the Body would eaſily have ſhewn whether there had been Poiſon in the Caſe or not; and it was the Duty of *Alexander Ogilvie*, the Informer, who had come to the Houſe, and ſtopped Interment for one Day upon this very Suſpicion, to have cauſed the Body to be laid open. This was not done; whereby the infallible Means were loſt of detecting the Crime, if any was committed, and this unhappy Pannel was deprived of the only infallible Means of proving her Innocence.

Theſe are the great Lines of principal Facts which the Pannel propoſes to prove: Many others to the ſame Tendency, will, it is expected, come out in leading the Proof; and ſhe flatters herſelf, that theſe, with an intelligent Jury, will be effectual to detect the Falſehood of this Accuſation, and to vindicate the Character and Innocence of an unfortunate young Woman, whoſe preſent State, ſeveral Months gone with Child, renders her a very improper Object to undergo a Trial of this Nature; which, from the Accumulation of two Capital Crimes in one Indictment, and the great Number of Witneſſes given out in Liſt, beſides thoſe to be adduced for her Exculpation, muſt draw out to an immoderate Length.

Crosbie, for Lieutenant *Patrick Ogilvie*, Pannel, *repeated* his ſigned Defences; and *repreſented*, That the ſaid Lieutenant, *Patrick Ogilvie*, having obtained a Commiſſion in the Regiment, he behaved in the Execution thereof in a proper and inoffenſive Manner; and being ordered along with his Regiment to the *Eaſt-Indies*, he remained there till his Health obliged him to return Home; when he came to the Houſe of *Eaſtmiln*, where his Brother reſided, who was then about to be married to *Catherine Nairn*, the other Pannel, and where he continued for ſome Time with an inoffenſive Character, ſuitable to that which he had maintained in

in the Regiment in which he had ſerved, of which there are many Officers ready to atteſt the Character he held.

About the Time that the Pannel *Patrick Ogilvie* returned Home, and about the ſame Time that the Defunct *Thomas Ogilvie* of *Eaſtmiln* was married to *Katharine Nairn*, *Alexander Ogilvie*, the third and youngeſt Brother of the Family, married the Daughter of one *Rattray* a Porter, a Perſon greatly inferior in Rank to himſelf; and his Relations, and immediate Connections, highly diſapproved of the Match, and alienated themſelves from him on that Account. This Marriage happened near about the Time that the deceaſed *Thomas Ogilvie* was married to the Pannel *Katharine Nairn*.

There was one *Anne Clark*, who was related to the Family of *Eaſtmiln* by the Mother's Side. This Woman had for ſeveral Years reſided as a Servant in a Houſe of diſſolute Reputation in *Edinburgh*, and which, as a Houſe of bad Fame, had regularly been viſited by the Conſtables. Some Months, at leaſt Weeks, however, before the Marriage of *Alexander Ogilvie*, ſhe had cohabited with him in the ſame Room, and the ſame Houſe; and after his Marriage ſhe had lived in his Father-in-Law's Houſe. In conſequence of all which it may be preſumed a very particular Intimacy had ariſen between her and the ſaid *Alexander Ogilvie*.

The Friends of the Family of *Eaſtmiln* had taken Umbrage at the Marriage of *Alexander Ogilvie* with the Daughter of a common Porter; he thought it neceſſary, therefore, to ſend ſome Perſon to interpoſe as a Mediator with that Family; and the Perſon he made Choice of was *Anne Clark*.

Anne Clark was accordingly diſpatched to the Houſe of *Eaſtmiln*. She was received, without Suſpicion, as a Relation of the Family; and, in that Character, without Inquiry into her former Life and Converſation, ſhe was treated as an Equal, and a Gentlewoman.

Such was the Pretext of ſending *Anne Clark* to the Houſe of *Eaſtmiln*: Something deeper, however, ſeems to have been intended. The deceaſed *Thomas Ogilvie* of *Eaſtmiln* had for many Years been ſubject to conſumptive Symptoms; he had been afflicted with Ulcers in his Bowels, which had been diſcovered at the Diſtance of about five Years before his Death; ever after he had been in a valetudinary State: and there was Reaſon to apprehend he would not be long-lived. The Relations of Mrs. *Ogilvie* in particular had ſhewn ſome Apprehenſions, that by his premature Death the Proviſions in her Favour might be rendered ineffectual. The Pannel *Patrick Ogilvie* was alſo in a bad State of Health: He had been obliged to return from the *Eaſt-Indies*, where he had been in Service with his Regiment, on Account of his valetudinary Habit: And from the Situation which the two elder Brothers were then in, there is the greateſt Reaſon to believe, that *Alexander Ogilvie* had entertained the moſt ſanguine Hopes of Succeſſion to the Eſtate; which, by the Marriage of *Thomas*, and the Return of *Patrick* for the Recovery of his Health, ſeemed likely to be diſappointed.

That Iſſue ſhould not be procreated between *Thomas Ogilvie* and *Katharine Nairn* his Wife, and that *Patrick Ogilvie* ſhould be obliged to betake himſelf to thoſe inhoſpitable Climates which he had left, and whoſe Inclemencies had well nigh already put an End to his Life, ſeemed deſirable Objects in the Eyes of *Alexander Ogilvie*. To promote Diſſention, therefore, between *Thomas Ogilvie* and his Wife, and to alienate the Mind of *Patrick Ogilvie* the Pannel, from this Country, ſeemed to have been the Purpoſe for which *Anne Clark* was diſpatched from *Edinburgh*. As a Relation of the Family, ſhe was received with implicit Confidence at *Eaſtmiln*, particularly by the Pannels, who were little aware what a Snare was prepared for their unguarded Confidence.

Miſs *Clark* had but a ſhort Time reſided at the Houſe of *Eaſtmiln*, when ſhe made it her Buſineſs to ſow Diſſenſion and Animoſity among all the Members of the Family. She endeavoured to inſpire Mr. *Ogilvie* with Jealouſy towards his Wife, and Diſtruſt towards his Brother: And ſhe was but too ſucceſsful in her Endeavours; Mr. *Ogilvie*, a ſickly Man, and too ſuſceptible of ſuch Impreſſions, was ſoon miſled by the artful Miſs *Clark* into a Belief of what, if he had truſted his own Judgment, he could never have ſuppoſed.

The Period which was choſen to inſinuate theſe Jealouſies was remarkable. The Pannel, Lieutenant *Patrick Ogilvie*, had ſome Differences with his elder Brother, concerning his Patrimony; for a Diſpute had occurred about the Balance of a Bond of Proviſion reſting owing to *Patrick Ogilvie*. Miſs *Clark* laid hold of that Opportunity to propagate her malicious Alledgeances; and in the Heat of a Converſation which aroſe concerning the Balance of this Bond of Proviſion, and what *Thomas* had done with it after he took it up from the Cuſtodier, the Deceaſed firſt inſinuated his Apprehenſion of an improper Intercourſe between the two Pannels.

To Minds already heated by a Diſpute concerning Money-matters, this Incident ſerved to add greater Warmth. The two Brothers parted with ſome Animoſity, the Pannel *Patrick* declaring his Intention never to return to the Houſe of *Eaſtmiln*.

The Intention of the Pannel was, after viſiting his Friends in the Country, as he had now tolerably recovered his Health, to return to his military Service in the *Eaſt-Indies*; hoping, by Means of this, to avoid both the Jealouſy of his Brother, and the Envy of his other Relations. Though often ſolicited, therefore, to return to his Brother's Houſe, he kept always at a Diſtance, from that Day when he diſcovered the firſt Symptom of Jealouſy.

Mrs. *Ogilvie*, the other Pannel, had for ſome Time before this complained of bad Health; and particularly ſhe complained of Want of Sleep: On Account of her Complaints, ſhe had been in uſe to take Salts and Laudanum as Medicines. In the Hearing of the Pannel ſhe had expreſſed her Deſire to have ſome of theſe Medicines; and as he, while at Sea, had been in uſe to take both on Account of his bad State of Health, and in a ſhort Time expected one of his Sea-cheſts would arrive, in which he had a Quantity of both, he proffered to her to ſend her ſome Laudanum and Salts, as ſoon as the Trunk or Cheſt they were in ſhould be brought to the Country: And ſhe told him ſhe would be obliged to him for them, as they were ſo ill to be had of a proper Kind in that remote Part of the Country.

After the Pannel had left the Houſe of *Eaſtmiln* in the Manner abovementioned, his Trunk or Cheſt came to Hand; it was brought from *Dundee* by *Andrew Stewart*, Merchant in *Alyth*, to his Houſe; and was, in his Preſence, in the publick Shop, opened by the Pannel; who has Reaſon to believe, that the ſaid *Andrew Stewart* obſerved both the Salts and Laudanum that were therein. But the Quantity of Laudanum proving very ſmall, as a great Part of it had been uſed during the Voyage, the Pannel found himſelf under the Neceſſity of purchaſing a ſmall Quantity of Laudanum, in order to ſend as much as was requiſite to Mrs. *Ogilvie*. He did accordingly buy a ſmall Quantity of Laudanum for this Purpoſe; which, together with what he already had, he put into a Phial, and with two Doſes of Salts, which, in the Preſence of *Andrew Stewart*, he took out of the Cheſt or Trunk aforeſaid, put up, and ſent by the ſaid *Andrew Stewart*, who was going on an occaſional Viſit to ſee *Eaſtmiln* and Mrs. *Ogilvie*.

What Symptoms attended the deceaſed Mr. *Ogilvie*'s laſt Illneſs, the Pannel, not having been at the Houſe of *Eaſtmiln*, cannot, from his perſonal Knowledge, pretend to ſay. As far as he has been able to inform himſelf, however, he cannot diſcover, that there is the leaſt Evidence that he died by Poiſon. Nor did the Pannel, on any Occaſion, pretend to hinder a Diſſection of the Body, or any other Means of Diſcovery, whether the Defunct had died of Poiſon or not. On the contrary, he urged and inſiſted, that ſuch Trial ſhould be made. And he having ſent for a Surgeon to inſpect and open the Body, the Perſon whom he had diſpatched Expreſs for that Purpoſe, was privately ſtopped by *Alexander Ogilvie*, the younger Brother, who is the Perſon on whoſe ſigned Information he was originally committed to Priſon.

Such are the material Facts which the Pannel apprehends he is called on to explain, in Vindication of his good Fame: And to theſe Facts he ſubjoins the following Defence, in Terms of the Statute.

1*ſt*, That the Libel contains a *Cumulatio actionum in criminalibus*; which is reprobated in Law.

2*dly*, That ſo far as relates to the Inceſt, the Libel is utterly vague and inconcluſive, being deſtitute of all Circumſtances of Time or Place, or other Requiſites that can enable the Pannel to make a pointed Defence; and therefore ought not to paſs to the Knowledge of an Aſſize.

3*dly*, The Libel, as far as reſpects the Crime of Poiſoning, is utterly irrelevant *quoad* this Pannel.

Lockhart, *for* Katharine Nairn, } Adhering to the Defences ſeveral-
Rae, *for* Patrick Ogilvie, } ly proponed for them, *repreſented*, That the Indictment charges the Pannels with Inceſt committed betwixt them, in the Months of *January* and *June*, and intervening Months, and before the 12th Day of the ſaid Month of *June*: That the ſaid *Katharine Nairn* and the deceaſed *Thomas Ogilvie* were not married till the 30th Day of the ſaid Month of *January*; and to inſtruct that, produces and oppones their Contract of Marriage, dated the 29th of *January*, and they were married the ſubſequent Day. And therefore contended, That as to the Month of *January*, the Indictment could not go to Proof, farther than as to the laſt Day of that Month.

2*dly*, As the deceaſed *Thomas Ogilvie* died on the 5th of *June*, the Time intervening betwixt that and the 12th, were equally irrelevant, as Inceſt could not be committed with the Widow after the Death of the Huſband, at leaſt to infer the Pains of Law, by which, in our Practice, are generally meant the Pains of Death.

Sir David Dalrymple, for the Proſecutor, *anſwered*, That *cumulatio actionum criminalium*, is eſtabliſhed in the Practice of the Juſticiary Court; and in this Caſe is particularly neceſſary and proper. That it is eſtabliſhed in the Practice of the Juſticiary Court, is evident by the following Examples, ſelected from many of the ſame Nature which occur in the Books of Adjournal.

16th *February*, 1580. *Andrew Glencorſe* indicted for poiſoning his Wife, and for Inceſt with his Wife's Mother.

6th *September*, 1610. *William Douglas* of *Lincluden*, Slaughter and treaſonable Theft, being a landed Man.

30th *March*, 1638. *Iſobel Kailtie*, notour Adultery, and murdering two Children born of the adulterous Intercourſe.

30th *March*, 1638. *Andrew Harvie*, Art and Part of the Murder of *Iſobel Dalgleiſh*, and of Adultery with *Helen Stevenſon*.

27th *July*, 1642. *Margaret Cunningham*, Adultery, and Murder of the Child born in the Adultery.

12th *March*, 1645. *John Gordon*, Bigamy, Adultery, and Theft.

28th *March*, 1646. *Margaret Thomſon*, Adultery and Forgery.

20th *December*, 1649. *James Wilſon*, Inceſt with his Wife's Daughter, and Adultery with another Woman.

21ſt *April*, 1664. *John Swinton* and *Janet Brown*, notour Adultery, and Murder of *Swinton*'s Wife.

27th *May*, 1665. *Margaret Hamilton*, Adultery, and Murder of her Huſband.

9th *April*, 1670. Major *Thomas Weir*, Fornication, Adultery, Inceſt, and Beſtiality.

12th *September*, 1678. *Iſobel Hay*, Adultery, and Murder of her adulterous Child.

15th *January*, 1694. Doctor *John Elliot*, *Daniel Nicolſon*, and *Marion Maxwell*, Murder, Falſehood, Forgery, and notour Adultery.

9th *November*, 1702. *Margaret* and *David Myles*, Inceſt and Child-Murder.

9th *November*, 1703. *Mary Graham*, Inceſt with her Father, and Child-Murder.

21ſt *February*, 1706. *Elizabeth Hunter*, Inceſt and Adultery.

As this *Cumulatio actionum criminalium* is fully eſtabliſhed by Practice, ſo in this Caſe it is particularly proper and neceſſary: The two Crimes charged, Inceſt and Murder, are, from the Circumſtances of the Charge, intimately connected; and it is propoſed in general to prove both by the ſame Witneſſes. To make ſeparate Trials for each Crime would be oppreſſive to the Witneſſes, the Jury, and the Parties. It is true, that Accuſations for different Crimes may be thrown into one Libel, in

in ſuch Manner as to prove oppreſſive. Whenever this is attempted, the Court will interpoſe; but not in order to prevent the Trial of different Crimes in one Libel, where nothing oppreſſive is meant, and where the Expediency of the *Cumulatio actionum* is obvious. As to what is ſaid, that the Charge for Inceſt is unintelligible or vague, it is anſwered, That it is laid in Terms the moſt unexceptionable, in the expreſs Words of an Act of Parliament; and ſurely the Legiſlature muſt be preſumed capable of conveying, by Words, a juſt Idea of the Crime which it meant to puniſh.---As to what is ſaid, that the Libel for Inceſt is vague, charging the Crime as committed in *January* and *June* 1765, and the intervening Months, it is anſwered, That in all Criminal Indictments a Latitude of this Kind is allowed in Practice; for Witneſſes may be diſtinct as to the Circumſtances of the Crime charged, and yet may not be certain as to a Day, or even as to a Month. Indictments do generally comprehend the Term of three Months. In the Caſe, the King's Advocate againſt *Oliphant*, 4th *February* 1736, a Libel for a ſingle Act of Sodomy, bearing two Months in one Year, and two in another, was held ſufficiently articulated; and in that Form was remitted to the Knowledge of an Aſſize. When an Indictment contains the Charge of a Crime, which in its own Nature is capable of frequent Repetition, as Inceſt is, a ſtill greater Latitude is allowed. Thus in the Caſe of *Forbes* 1758, tried for corrupting young Girls, an Indictment was remitted to the Knowledge of an Aſſize, although it bore that the Crime was committed in ſome one or other of the Months from *May* 1757, to *April* 1758, incluſive.---If the Pannel Mrs. *Ogilvie* was not married till the 30th of *January* 1765, the Charge of Inceſt preceding that Date, will ceaſe of courſe. If it ſhall be proved that ſhe and Lieutenant *Ogilvie* defiled their Bodies after the Death of *Eaſtmiln*, it may not perhaps be Capital Inceſt by the Act 1567, which refers to the xviiith Chapter of *Leviticus*; but it will nevertheleſs be Inceſt puniſhable in Law: And if no Inceſt but what was committed after the Death of *Eaſtmiln* ſhould be proved, then the Jury will find accordingly, and the Court will adapt the Puniſhment to the Offence. As to what is ſaid, that the Murder by Poiſoning is not properly laid againſt Lieutenant *Ogilvie*, it is anſwered, That the contrary appears from the Tenor of the Indictment. But although this were not the Caſe, yet he is charged as guilty Art and Part of that Crime, which is in Law a relevant Indictment, and as ſuch muſt be remitted to the Knowledge of an Aſſize.

"The Lord Juſtice-Clerk and Commiſſioners of Juſticiary, having "conſidered the Criminal Indictment raiſed and purſued at the Inſtance "of *Thomas Miller* of *Barſkimming*, Eſq. his Majeſty's Advocate, for "his Majeſty's Intereſt, againſt *Katharine Nairn*, Widow of the deceaſed "*Thomas Ogilvie* of *Eaſtmiln* in the County of *Forfar*, and *Patrick Ogilvie*, "Lieutenant of the 89th Regiment of Foot, Brother-german of the "ſaid deceaſed *Thomas Ogilvie*, Pannels, with the foregoing Debate, "repell the haill Objections made to the Form of the Indictment; and "find the ſaid Indictment relevant to infer the Pains of Law: But allow "the Pannels and each of them to prove all Facts and Circumſtances "that may tend to their Exculpation, or Alleviation of their Guilt; and "remit the Pannels, with the Indictment as found relevant, to the Know-"ledge of an Aſſize."

(Signed) GILB. ELLIOT, I. P. D.

"The Lord Juſtice-Clerk and Commiſſioners of Juſticiary continue "the Diet againſt the ſaid *Katharine Nairn* and Lieutenant *Patrick* "*Ogilvie*, Pannels, till *Monday* next, the twelfth Inſtant, at Seven "o'Clock in the Morning; and ordain Parties, Aſſizers, Witneſſes, "and all concerned, then to attend, each under the Pains of Law; and "the Pannels in the mean Time to be carried back to Priſon."

Curia Juſticiaria S. D. N. Regis, tenta in Nova Seſſionis Domo de Edinburgh, ſexto die Auguſti, milleſimo ſeptingenteſimo ſexageſimo quinto, per Honorabiles Viros Dominum Gilbertum Elliot de Minto, Baronetum, Dominum Juſticiarium Clericum, Alexandrum Boſwell de Auchinleck, Andream Pringle de Alemoor, Henricum Home de Kames, Jacobum Ferguſon de Pitfour, et Georgium Brown de Coalſton, Commiſſionarios Juſticiariæ S. D. N. Regis.

Curia legitimè affirmata.

The which Day, there was a Petition preſented to the ſaid Lords in the Names of *Katharine Nairn*, Relict of the deceaſed *Thomas Ogilvie* of *Eaſtmiln*, and Lieutenant *Patrick Ogilvie*, Brother to the ſaid *Thomas Ogilvie*; *humbly ſhewing*,

That the Petitioners ſtood indicted before their Lordſhips, at the Inſtance of his Majeſty's Advocate, for the alledged Crimes of Inceſt, and Acceſſion to the ſuppoſed Murder of the ſaid *Thomas Ogilvie*.

That the Petitioners had pleaded Not Guilty to this grievous Accuſation; and were confident, that in the Courſe of the Trial their Innocence would be fully vindicated to the Satisfaction of the Court and Jury.

That as the Petitioners did aſſert, and had good Reaſon to believe, that that Proſecution took its Riſe from Malice, and moſt falſe and injurious Calumnies raiſed and propagated by Perſons, who, from moſt unjuſt Views, have been deſirous of ruining the Petitioners; it was therefore highly neceſſary and juſt, that the Petitioners, who were then to undergo that ſolemn Trial for their Lives, ſhould be ſecured as far as poſſible againſt every Kind of Influence and undue Practice, that might, or could be uſed, upon Witneſſes to be adduced in that Cauſe.

That, among other Misfortunes under which the Petitioners laboured, they had been accuſed, by Report, of Endeavours to ſecrete material Witneſſes in that Matter; and though conſcious of their Innocence in that, as well as in other Reſpects, yet ſeveral of the Witneſſes have, on that or ſome other Account, been ſecured as Priſoners in the Caſtle of *Edinburgh*.

That, among theſe Witneſſes, was *Anne Clark*, deſigned Daughter of the deceaſed *Allan Clark*, Officer of Exciſe, who is now confined in the ſame Room with two or more Maid-Servants, who were in the Houſe of *Eaſtmiln* at the Time of *Thomas Ogilvie*'s Death, and who would be moſt material Witneſſes for the Petitioners in that Cauſe.

That the Petitioners would make it appear, by unconteſtible Evidence, that the ſaid *Anne Clark* was not only a Perſon of the worſt Character and Diſpoſition, ſuch as rendered her improper and inhabile to be received as a Witneſs; but alſo, that ſhe had entertained and expreſſed deadly Malice and Hatred againſt both the Petitioners; and that, in purſuance thereof, ſhe had been the Author and Propagator of the falſe and malicious Stories which had given Riſe to the preſent Proſecution. And, in fine, that ſhe was in a Combination to ruin the Pannels, and, as far as ſhe could, to deprive them of their Lives, as well as their Reputation.

That it would occur to their Lordſhips, that the Petitioners were expoſed to imminent Danger by the ſaid *Anne Clark*'s being conſtantly confined in the ſame Room with other material Witneſſes, whoſe Sex, Station, and Inexperience, though otherwiſe honeſt and well-inclined, might expoſe them to be influenced and prejudiced by the malicious Endeavours of that artful Woman. For theſe Reaſons, the Petitioners were confident, that their Lordſhips would forthwith give Orders for ſeparating the ſaid *Anne Clark* from the ſaid other Witneſſes. *Therefore praying*, That it might pleaſe their Lordſhips forthwith to grant Warrant to the Deputy-Governor of the Caſtle of *Edinburgh*, or any other proper Officer, to remove the Perſon of the ſaid *Anne Clark* from the Room in which ſhe was preſently confined; or otherwiſe to ſeparate her from the ſaid Maid-Servants, and to keep her ſeparate from them, or any other Witneſſes to be adduced againſt the Petitioners in that preſent Proſecution. According to Juſtice, *&c.*

(Signed) HENRY DUNDAS. DAV. RAE.

Edinburgh, 6th Auguſt, 1765.

I THOMAS MILLER, Eſq. his Majeſty's Advocate, conſent, That the Prayer of the within Petition be granted; but upon this expreſs Condition, that no Perſon whatever be admitted or have Acceſs to any of the ſaid three Witneſſes, except in Preſence of one or other of the Officers of the Court of Juſticiary, which their Lordſhips ſhall think proper to appoint.

(Signed) THO. MILLER.

"The Lord Juſtice-Clerk and Commiſſioners of Juſticiary having ſeen "and conſidered the foregoing Petition, with the Conſent of his Ma-"jeſty's Advocate ſubjoined thereto, recommend to the Depute-Gover-"nor of the Caſtle of *Edinburgh*, or other proper Officers, to cauſe re-"move the ſaid *Anne Clark* from the Room where ſhe and the other two "Women before-named are preſently ſtaying, into ſome other Room in "the ſaid Caſtle, until *Monday* next the twelfth Day of *Auguſt* current; "and alſo recommend as above, that Care be taken that no Perſon get "Acceſs to any of the ſaid three Women, betwixt and that Time, "except in Preſence of *Robert Auld*, Writer, or *Andrew Muriſon*, Macer "of this Court, or either of them.

(Signed) GILB. ELLIOT, I. P. D."

Curia Juſticiaria S. D. N. Regis, tenta in Nova Seſſionis Domo de Edinburgh, duodecimo die Auguſti, milleſimo ſeptingenteſimo ſexageſimo quinto, per Honorabiles Viros Dominum Gilbertum Elliot de Minto, Baronetum, Dominum Juſticiarium Clericum, Alexandrum Boſwell de Auchinleck, Andream Pringle de Alemoor, Henricum Home de Kames, Jacobum Ferguſon de Pitfour, et Georgium Brown de Coalſton, Commiſſionarios Juſticiariæ S. D. N. Regis.

Curia legitimè affirmata.

Intran.

KATHARINE NAIRN, Widow of the deceaſed *Thomas Ogilvie* of *Eaſtmiln*,

AND

PATRICK OGILVIE, Lieutenant of the eighty-ninth Regiment of Foot, Brother-German of the ſaid deceaſed *Thomas Ogilvie*;

Both preſent Priſoners in the *Tolbooth* of *Edinburgh*;

PANNELS.

Indicted and *accuſed* as in the former *Sederunt*.

The Interlocutor on the Relevancy being read over to the Pannels in open Court,

The Lords proceeded to make Choice of the following Perſons to paſs upon the Aſſize of the ſaid Pannels:

Sir *James Clark* of *Pennycuik*.
John Howieſon of *Braehead*.
John Chriſtie of *Baberton*.
Adam Cuningham of *Bonnytoun*.
Alexander Sheriff of *Craigleith*.
David Dundas younger, of *Newhalls*.
Sir *George Suttie* of *Balgonie*.
Charles Hay of *Hopes*.
William Ramſay of *Preſton*.
John Forreſt ſenior, Merchant in *Edinburgh*.
George Chalmers, Merchant in *Edinburgh*.
Gavin Hamilton, Bookſeller in *Edinburgh*.
Archibald Wallace, Merchant in *Edinburgh*.
John Borthwick of *Cruikſton*.
Thomas Brown of *Braid*.

The above Aſſize being all lawfully ſworn, and no Objection to the contrary,

His Majeſty's Advocate proceeded to call the following Witneſſes:

DAVID RATTRAY younger, in *Cammock*, in the Pariſh of *Glenylla*, aged forty-two, married, purged of Malice and partial Counſel, ſworn, and interrogate, depones, That he lives in the Neighbourhood of *Eaſtmiln*, and did hear it talked in the Country, that Mrs. *Ogilvie* the Pannel, and Lieutenant *Ogilvie* the other Pannel, lived in too familiar a Way, and walked out together without others in their Company: That the Deponent himſelf once ſaw them at their Walk, when there was Nobody with them, when they were leading other Arm and Arm, and at that Time he ſaw the Pannel, Lieutenant *Ogilvie*, kiſs Mrs. *Ogilvie*, the other Pannel, once: That this happened after the late *Thomas Ogilvie* of *Eaſtmiln*'s Marriage with the Pannel, and before his Death; cannot remember the preciſe Time, but there was a Storm on the Ground then: That at the above-mentioned

mentioned Time the Pannels were walking near the Houſe of *Eaſtmiln*, croſſing the King's Highway, when the Witneſs ſaw as above, when he was no farther from them than the fourth Part of a Quarter of a Mile; and that the Pannels were in a hollow Way when he ſaw Lieutenant *Ogilvie* give the other Pannel one Kiſs as above. *Cauſa ſcientiæ patet.* And this is Truth, as he ſhall anſwer to God.

(Signed) DAVID RATTRAY. GILB. ELLIOT.

JOHN LAMAR in *Craigendeach*, in the Pariſh of *Glenylla*, aged forty-ſeven, married, purged of Malice and partial Counſel, ſworn and interrogate, depones, That he lives very near *Eaſtmiln*, and has heard the claſhing People of the Country commonly report, that the Pannel Mr. *Ogilvie* liked Mrs. *Ogilvie* the other Pannel too well; and that a Diſpute in the Family of *Eaſtmiln* about that Time aroſe, which took its Riſe, as was ſaid, from a Suſpicion, that the two Pannels liked other too well: That upon this Mr. *Ogilvie* the Pannel left the Houſe of *Eaſtmiln*, as was reported, upon the above Suſpicion; and it was even ſaid in the Country, that the two Pannels loved one another too well: That the Deponent himſelf knows, that Mr. *Ogilvie* the Pannel went away from the Houſe of *Eaſtmiln* about a Fortnight, as he thinks, before *Eaſtmiln*'s Death, and the Deponent ſaw him return to the Houſe of *Eaſtmiln* the Morning after *Eaſtmiln*'s Death: That before Mr. *Ogilvie* the Pannel left *Eaſtmiln*'s Houſe, the Deponent has often ſeen the two Pannels walking Arm in Arm, and their Arms about each other's Neck: That he has ſeen them in that Poſture at their Walk, even when Miſs *Clark* and the Laird of *Eaſtmiln* himſelf were in Company, as well as when there was Nobody elſe with them. Depones, That the Report of the Love between the two Pannels he did not hear in the Country till after Lieutenant *Ogilvie* had left the Houſe of *Eaſtmiln* as above; and that he never ſaw the Pannel Mrs. *Ogilvie* till after her Marriage: That ſince the Marriage he has ſeen Dr. *Alexander Ogilvie*, a Brother of *Eaſtmiln*'s, at the Houſe of *Eaſtmiln*; and that *Anne Clark*, a Witneſs cited in this Trial, was there before him, and at the ſame Time: That the Deponent's Houſe lies at about a Quarter of a Mile's Diſtance from *Eaſtmiln*'s Houſe, on the other Side of the River, from whence it is eaſy to ſee any Perſon who comes out or goes into the Houſe of *Eaſtmiln*. *Cauſa ſcientiæ patet.* And this is Truth, as he ſhall anſwer to God. And depones he cannot write.

(Signed) GILB. ELLIOT.

JAMES BARNET, Son to *Alexander Barnet* in *Cammock*, in the Pariſh of *Glenylla*, aged fifteen Years, unmarried, purged of Malice and partial Counſel, ſworn and interrogate. *Diſmiſſed.*

JOHN GILLOCH, Wright in *Dalnakebock*, aged twenty-ſix Years, married, purged of Malice and partial Counſel, ſworn, and interrogate, depones, That, about a Fortnight after *Eaſtmiln*'s Marriage, the Deponent was ſent for to the Houſe of *Eaſtmiln* to put on ſome Locks and Braſs-Work upon a Drawer: That accordingly the Deponent went to the Room where the Drawers ſtood, in which Room he ſaw the Pannel Mr. *Ogilvie* lying in Bed: That when he was ſo employed, Mrs. *Ogilvie* the Pannel came to the Room Door where the Deponent was at Work, ſhe having heard him, as he ſuppoſed, at Work. Upon Mr. *Ogilvie* the Pannel obſerving her, he deſired her to come in: That after having ſaid to the Deponent, *John, are you begun?* ſhe went in and aſked Mr. *Ogilvie* the Pannel, *What! are not you up yet?* and then ſhe went towards the Bed-ſide, where ſtood a little Cheſt, upon which ſhe ſat down, and then they eat ſome Sweet-Bread together, which had been got at a Market. Depones, That he obſerved her Hand about the Bed-cloaths, juſt upon Lieutenant *Ogilvie*'s Breaſt; at which Time ſhe ſaid to him, *You are not poor, but pretty fat*; but did not obſerve whether her Hand was below the Bed-cloaths, or above. Depones, That when Mrs. *Ogilvie* the Pannel was going out of the Room, Lieutenant *Ogilvie* kicked up the Bed-cloaths with his Feet, and threw them up upon his Body; upon which Mrs. *Ogilvie* ſaid, *Ah! you daſt Dog!* and the Deponent at that Time ſaw ſo much of the ſaid Lieutenant *Ogilvie*'s Body, that he the Deponent could judge whether he was a Man or a Woman: That after Breakfaſt, Mrs. *Ogilvie* came to where the Deponent was at Work, and gave him a Dram; and Lieutenant *Ogilvie* being preſent, ſhe gave him alſo a Dram, for he was by that Time dreſs'd. Depones, That the Week before *Eaſtmiln*'s Death, the Deponent went to *Eaſtmiln* to do ſome Work: That when he was ſawing, *Elizabeth Sturrock*, then a Servant in that Family, came to the Deponent, and aſked him, If he knew which Way the Laird had gone? He ſaid, He could not tell. Upon aſking her why ſhe put ſuch a Queſtion, ſhe anſwered, That as Lieutenant *Ogilvie* was expected at *Eaſtmiln* that Day, ſhe could wiſh the Laird and he might not meet. And depones, That he the Deponent ſaw *Eaſtmiln* walk away from the Houſe ſome Time before. Depones, That on the Evening of the Day laſt mentioned, as the Deponent was returning from his Work, he ſaw Mrs. *Ogilvie* the Pannel returning to *Eaſtmiln*, upon the Road that leads from the *Kirkton* to that Place, and obſerved Mrs. *Ogilvie* and *Anne Clark* meet upon that Road; and that ſame Night he ſaw Mr. *Ogilvie* the Pannel ſtanding at the *Kirkton*, which is not a Quarter of a Mile from *Eaſtmiln*: That, at the Time above-mentioned, when Lieutenant *Ogilvie* kicked up the Cloaths, and the Lady ſaid to him, *Ah! you daſt Dog!* the Deponent does not think ſhe ſaw the Condition the Lieutenant's Body was in, as ſhe was then going out of the Room. Depones, That while Mrs. *Ogilvie* was ſitting upon the Cheſt by Lieutenant *Ogilvie*'s Bed, as above deponed to, the Deponent could ſee Mr. *Ogilvie*'s Breaſt from the Poſture he was then in. Being interrogate for the Pannel, depones, That when he ſaw Mrs. *Ogilvie* the Pannel upon the Road from the *Kirkton* returning to *Eaſtmiln*, as above deponed on, and *Anne Clark* upon the ſame Road, that they were both walking towards *Eaſtmiln*, and *Anne Clark* foremoſt. *Cauſa ſcientiæ patet.* And this is Truth, as he ſhall anſwer to God.

(Signed) JOHN GILLOCH. GILB. ELLIOT.

KATHARINE CAMPBELL, late Servant to the deceaſed *Thomas Ogilvie* of *Eaſtmiln*, being called; againſt adducing of whom it was objected, That ſhe ought not to be received as a Witneſs, no Execution being returned againſt her twenty-four Hours before the Diet of Compearance, conform to the Forms of Court eſtabliſhed. 2*do*, That ſhe bears Ill-will and Malice againſt the Pannel Mrs. *Ogilvie*, having been diſmiſſed her Service for Theft; on which Occaſion ſhe expreſſed Reſentment in ſtrong Terms, and ſwore Revenge, which is offered to be proved *inſtanter*.

Sir DAVID DALRYMPLE *anſwered*, on the Part of his Majeſty's Advocate, That the *firſt* Objection ought to be repelled. The Fact is, that this Witneſs was given out in Liſt with others; but as ſhe had gone into a diſtant Part of *Scotland*, could not be cited by the Meſſenger ſo ſoon as the other Witneſſes were. She was cited on the *Saturday* before the firſt Diet of Compearance; but the Execution did not come up to *Edinburgh* till after that Diet. Upon its being received, it was on *Wedneſday* laſt in the Forenoon given out to the Agents for the Pannels. The Act 1672 ordains, That the Liſt of Witneſſes be given out with the Indictment, and this was done here; but no Law requires that the Executions ſhould be returned into Court twenty-four Hours before the firſt Diet of Compearance: In the preſent Caſe, it was impoſſible that the Execution could be ſooner produced, and the Pannels can ſuffer nothing by this; for they ſaw the Name of the Witneſs in Liſt, and they have had more Time for this Purpoſe than they would have had, if the Execution had been given out twenty-four Hours before the firſt Diet of Court, and then the Relevancy had been determined and the Proof taken at the ſame Diet.

As to the *ſecond* Objection, it ought alſo to be repelled. No particular Condeſcendence has been made of Malice or Cauſe of Malice at this Time, and the Witneſs will be purged of Malice in the Initials of her Oath in common Form; and therefore the Objections ought to be repelled, agreeable to the univerſal Practice of the Court.

"The Lord Juſtice-Clerk and Commiſſioners of Juſticiary, having "conſidered the foregoing Objections and Anſwers thereto, repell the "Objections, and allow the Witneſs to be received; reſerving to this "Conſideration of the Court, whether or not any ſpecial Expreſſions of "Malice and the Cauſe thereof, that may be condeſcended on by the "Pannels in their Exculpation, ſhall be admitted or not.

(Signed) GILB. ELLIOT, I. P. D."

On pronouncing of which Interlocutor, Mr. *Alexander Lockhart* Advocate, Procurator for the Pannels, proteſted for Remeid of Law; and that any Interrogatories he ſhall put afterwards to this or other Witneſſes, during the Trial, ſhall not be deemed a paſſing from this Proteſtation.

It being repreſented to the Court, That *Katharine Campbell*, the Witneſs before-named, could ſpeak the *Engliſh* Language but very ill; and that an Interpreter or Interpreters would be neceſſary to interpret what ſhe ſaid in the *Iriſh* or *Erſe* Language into the *Engliſh*; and *Robert Gray*, Writer in *Edinburgh*, and *James Frazer*, Writer to the Signet, having appeared, they were appointed to be Interpreters, and gave their Oaths as ſuch *de fideli*.

And the ſaid KATHARINE CAMPBELL, aged twenty-ſeven Years, unmarried, ſolemnly ſworn, purged of Malice and partial Counſel, and examined, depones, That twenty Days after the deceaſed Mr. *Ogilvie* of *Eaſtmiln*'s Marriage with *Katharine Nairn* one of the Pannels, ſhe was ſent by the Lady *Glenkilrie*, her Siſter, to ſerve as Waſher-woman at *Eaſtmiln*: That the Deponent ſtaid in that Service for ten Weeks: That about fourteen Days, to the beſt of her Remembrance, after ſhe went there, the ſaid deceaſed Mr. *Ogilvie* went from Home, and, as ſhe heard, to *Dunſinnan*: That before Mr. *Ogilvie* went to *Dunſinnan*, ſhe obſerved Lieutenant *Ogilvie* the Pannel frequently kiſſing Mrs. *Ogilvie* the Pannel, and ſhewing a great Fondneſs for her: That the Deponent having ſaid to Lieutenant *Ogilvie* the Pannel, that ſhe thought he ſhewed too great Fondneſs for his Siſter-in-Law, and that it would not be worſe if he ſhewed leſs, the Lieutenant anſwered, that his Brother deſired him to be fond of her, to keep her chearful in the Beginning. Depones, That ſhe ſaw the Lieutenant frequently holding the Pannel Mrs. *Ogilvie* in his Arms when he was kiſſing her. Depones, That when the deceaſed Mr. *Ogilvie* went to *Dunſinnan*, the two Pannels continued at *Eaſtmiln*: That the Deponent made up Beds for them in two ſeparate Rooms: That the Room ſhe made up for Mrs. *Ogilvie* was immediately above the Kitchen, where the Deponent ſlept: That before the Deponent went to Bed, her Miſtreſs called down to her, if ſhe was not yet to Bed; and that ſhe thought, ſhe ſaw the Deponent have a Light; the Deponent anſwered, ſhe was not yet gone to Bed, but was going ſoon: That after the Deponent had gone to Bed, ſhe heard the Pannel Mrs. *Ogilvie* utter theſe Words, *O fy! fy!* and that ſhe heard the Bed moving as if Somebody had been ſtirring in it: That the Deponent upon this became under great Terror, but thereafter fell aſleep. That next Morning when ſhe went up Stairs, ſhe found the Lieutenant's Bed in the ſame State that ſhe had made it up the Night before, and the Bed no Way diſcompoſed as if one had lain into it. Depones, That ſome Time before ſhe went to Bed, ſhe went up to Mrs. *Ogilvie*'s Room, where ſhe ſaw the Lieutenant ſitting with her: That the Deponent propoſed to mend the Fire in the Lady's Room, and to make a Shake-down there, for the Deponent's lying there all Night by her: That Mrs. *Ogilvie* deſired the Deponent to go to her own Bed, for that ſhe had no Difficulty to ſleep in a Houſe by herſelf. Depones, That the Cauſe of her being under the Terror as above, was, that ſhe thought the two Pannels were then in Bed together. Depones, That ſhe made up Mrs. *Ogilvie*'s Bed next Morning, which was much toſſed and tumbled; but as Mrs. *Ogilvie* might have done this herſelf, the Deponent did not, from the Appearance of that Bed, form her Conjecture. Depones, That the Kitchen where the Deponent ſlept had no plaſtered Ceiling, ſo that the ſmalleſt Noiſe in the Room above could be heard there. Depones, That there were two other Servant-maids at *Eaſtmiln* at that Time, to wit, *Anne Sampſon* and *Elizabeth Sturrock*. Depones, That ſhe never heard, while ſhe continued in *Eaſtmiln*, any Circumſtances happening between the two Pannels, ſuch as has been above deſcribed, except one Night as before mentioned; and remembers particularly, that the other Nights that *Eaſtmiln* was at *Dunſinnan*, the Lieutenant's Bed in the Morning had the Appearance as if it had

had been slept in; and so had Mrs. *Ogilvie*'s. Depones, That she never spoke of what she heard the Night above-mentioned, to the best of her Remembrance, till after she had left the House of *Eastmiln*, when she communicated the same to Lady *Glenkilrie*, the Pannel Mrs. *Ogilvie*'s Sister. Depones, That the Deponent constantly slept in the Kitchen alone, while *Eastmiln* was at *Dunsinnan*, and all the Time she was in the Service. Depones, That, while the Deponent was in the Service at *Eastmiln*, there was a Sister of the Laird's married in his House; after which the whole Family went to *Dunsinnan*, and when they returned, all of them, except *Eastmiln* and his Mother, expressed Dissatisfaction with the Deponent, but upon what Occasion they never explained to her. And being further interrogate, depones, That the Motion she heard in the Room above her, deponed to above, she then thought was the Motion of a Man and Woman in Bed together, and such as a Husband and Wife have together; and that she would have been of this Opinion, though she had not seen the Lieutenant's Bed unruffled next Morning. And being interrogate by one of the Jury, depones, That she always considered that it was *Anne Clark* who stirred up her Mistress against her the Deponent. And being specially interrogate, depones, That the Night aforesaid, when she heard the Noise in the Bed above described, she slept none till towards the Morning; then fell asleep, awakened again in a Fright, and told the old Lady *Eastmiln* that she was under Terror, but did not explain the Cause. Depones, That *Anne Clark* was not come to the Family at the Time the Laird went to *Dunsinnan*, and she heard the Noise as above in the Bed. And being interrogate for the Pannels, depones, That *Anne Clark* came to *Eastmiln* about a Fortnight, to the best of the Deponent's Remembrance, after the Deponent came there. And further depones, upon the Pannels Interrogatory, That she did not hear the Motion above-mentioned, but at the Time above deponed to, and did not hear these Motions repeated at any other Period that Night. Further depones, That while she staid in the House, she made all the Beds without the Assistance of any of the other Servants. And, upon Recollection, depones, That she slept in the Kitchen by herself ever till *Anne Clark* came to the House; but after she came, *Elizabeth Sturrock* slept in the Kitchen with her the Deponent. Depones, That *Anne Clark* met the Laird as he was going to *Dunsinnan*, and came to *Eastmiln* two Nights before he returned. Further depones, That when she found Lieutenant *Ogilvie*'s Bed in the State above described in the Morning, as if no Person had laid in it, it was about Sun-rising: That she saw the Lieutenant come down Stairs, and Mrs. *Ogilvie* the Pannel was still in Bed: That she made up Mrs. *Ogilvie* the Pannel's Bed that same Day, but after Dinner: That when *Eastmiln* went to *Dunsinnan*, to the best of her Remembrance, he staid away three Nights, and came home the fourth. And upon the Oath being read over to her, desired that it might be marked, That what is said of her having made up Mrs. *Ogilvie*'s Bed in the Morning, is a Mistake, and improperly taken down, for that it was after Dinner she made it up. Depones, That she never got any Wages but a Pair of Shoes from *Eastmiln*; and that when she asked her Wages, she was told by Mrs. *Ogilvie* the Pannel, in Presence of *Anne Clark*, Lieutenant *Ogilvie*, and the deceased *Eastmiln*, that she was well off that she got Leave to go without Wages; and that the deceased *Eastmiln* followed her, and desired her to return, which she did, and staid for a Day; but that Mrs. *Ogilvie* next Morning turned her off. *Causa scientiæ patet.* And this is Truth, as she shall answer to God. And depones she cannot write.

(Signed) Rob. Gray.
Alex. Boswell.
James Fraser.

Anne Clark, Daughter to the deceased *Allan Clark*, Officer of Excise, being called,

Mr. Henry Dundas, for the Pannels, made the following Objections to her being received:

1*mo*, That she is a Person of an infamous Character, being held and reputed to be a notorious Liar and Dissembler, a Disturber of the Peace of Families and Sower of Dissension, and also a common Whore and Prostitute.

2*do*, That she has not only been held and reputed such as above described, but it will be clearly proved, that she lived and resided for no less than three Years and a half in a noted Bawdy-house within the City of *Edinburgh*, as a common Prostitute, notwithstanding that at the same Time the said House was frequently visited by the Constables as a House of bad Fame, and that frequent Disturbances happened therein, to the great Offence and Scandal of the Neighbourhood.

3*tio*, The said *Anne Clark* did, in Confederacy with *Alexander Ogilvie*, Brother to the deceased *Thomas Ogilvie* last of *Eastmiln*, publish and propagate false, scandalous, and malicious Aspersions upon the Characters of the Pannels, relative to the Matters libelled, and did endeavour to make Dissension and Differences between the Pannel Mrs. *Ogilvie* and her deceased Husband. And,

4*to*, The said *Anne Clark* does, and has entertained and expressed, on sundry Occasions before and since the Decease of the said *Thomas Ogilvie*, deadly Malice and inveterate Ill-will against both the Pannels, and has threatened repeatedly to do all she could to bereave them of their Lives.

Sir David Dalrymple, on the Part of his Majesty's Advocate, *answered*, That all and every one of the Objections ought to be repelled; and that for the Reasons following:

With respect to the *first*, it is obviously irrelevant. No such Thing is ever allowed in the Practice of the Justiciary Court, as a general Proof of Character; and indeed, were it allowed, criminal Trials in *Scotland* would become inextricable; were the Character of each Witness to be thus inquired into, there would be as many separate Trials as there are Witnesses produced. Besides, were this new Form to be introduced, Witnesses would be deterred from appearing upon Citation given. Instead of being called to give Evidence, they would in Effect be called to stand an Inquiry upon the whole Conduct of their Lives. If they were to appear and undergo such a Scrutiny, they would come much worse prepared for their Defence than the Parties themselves when tried for the greatest Crimes. For the Parties know what is charged against them, and by what Evidence it is proposed to prove such Charge; they are therefore enabled to prepare for their Defence. But Witnesses neither know what may be charged against them; nor by what Evidence it is proposed to prove such Charge; they are therefore incapable of preparing for their Defence. Indeed, by the Forms established in *Scotland*, the public Prosecutor himself has no Means of confuting such a Charge brought against a Witness. He may be possessed, as he is actually in the present Case, of Certificates from credible Persons to prove the Character of the Witness to be unblemished; but he is not at Liberty to produce them; because he must confine himself to the Examination of the Witnesses whose Names are given out with the Libel, and to the Evidence therein mentioned.

With respect to the *second* Objection, That the Witness is a common Prostitute, *&c.* it cannot be received in this Case; for the Crimes charged are occult Crimes, said to have been committed *infra Familiam*; and they can only be proved by Witnesses who resided in the Family, be their Character what it will. The Witness against whom the Objection is moved, did reside in the Family at the Period when the Crimes charged are said to have been committed. She was a near Relation of the Family of *Eastmiln*, was received and entertained as such, and had Occasion to have daily Intercourse with the Pannels. If such necessary Witnesses were to be rejected, it follows, that the Crimes charged could not be proved at all. Against the last Witness, *Katharine Campbell*, it was objected, That she had been turned out of the Family for some small Thefts, had vowed Revenge, and entertained Malice against Mrs. *Ogilvie* the Pannel. Against this Witness it is objected, That she is of an abandoned Character and a common Prostitute. Like Objections might be moved against every other Person of the Family called as Witnesses; and thus it would follow, that in the House of *Eastmiln*, the greatest Crimes might be committed with certain Impunity, because there were in the Family no Witnesses of irreproachable Characters, who might give Evidence of such Crimes.

With respect to the *third* Objection, it is no less irrelevant. If the Witness did spread such Reports as are mentioned in the Objection, from her proper Knowledge or just Suspicion of the Truth of the Matters libelled, she did nothing unlawful; and until the closing of the Evidence, it cannot be known whether the Reports, if spread by her, were true or false. It is therefore premature in the Pannels to offer to prove the Falsehood of Reports while the Inquiry subsists, whether the Facts reported were true.

With respect to the *fourth* Objection of deadly Malice, it is a Charge in itself most improbable, That a Witness would deliberately resolve to perjure herself out of Malice. The Pannels ought to condescend, not only on the particular Expressions used, but also on the Cause of such deadly Malice. Were a general Proof of Malice expressed in Words to be permitted, then it would be in the Power of every Witness favouring the Pannel, to *incapacitate* himself from bearing Evidence to Facts which might be hurtful to the Pannel; and hence it is, that the Practice of the Court requires, that not only the Expressions importing Malice be proved, but that the probable Cause of such deadly Malice be also proved.

" The Lord Justice-Clerk and Commissioners of Justiciary, having
" considered the foregoing Objections and Answers thereto, repell the
" Objections; and allow the said *Anne Clark* to be examined, reserv-
" ing the Consideration of the Alledgeance, as to the said *Anne Clark*'s
" being the Author of the Report of the Pannels Guilt, till their Excul-
" pation; and also reserving to the Consideration of the Court, whether
" or not any special Expressions of Malice, that may be condescended on
" by the Pannels in their Exculpation, shall be admitted or not.
(Signed) Gilb. Elliot, I. P. D."

On pronouncing of which Interlocutor, Mr. *Alexander Lockhart* Advocate, Procurator for the Pannels, protested for Remeid of Law.

The said Anne Clark, Daughter to the deceased *Allan Clark*, Officer of Excise, aged thirty and upwards, unmarried, purged of Malice and partial Counsel, sworn, and interrogate, depones, That she was Cousin-german to the deceased Mr. *Ogilvie* of *Eastmiln*, and went to *Eastmiln* upon the first Day of *March* last: That her Reasons for going there were, not only to see *Eastmiln* and Mrs. *Ogilvie* who were then recently married, and Lieutenant *Ogilvie* who was then come from abroad, but also to endeavour to make up the Peace betwixt that Family and their Brother *Alexander*, who had entered into a very mean Marriage below the Rank of his Family: That after the Deponent had been some little Time at *Eastmiln*, she came to be informed, that Mrs. *Ogilvie* the Pannel was censured for being too familiar with the other Pannel, Lieutenant *Ogilvie*: That the Deponent informed Mrs. *Ogilvie* the Pannel of what she had thus heard; and desired Mrs. *Ogilvie* to be upon her Guard as to her Conduct, and to abstain from the Lieutenant's Company: That notwithstanding this, Mrs. *Ogilvie* was frequently in a Room by herself with the Lieutenant. Depones, That upon *Sunday* the nineteenth Day of *May* last, all the Family went to Church, excepting the two Pannels and the Deponent; and that they three staid together conversing in the lower Part of the House; but thereafter the two Pannels left the Deponent in the lower Room, and went up Stairs together to the East Room above Stairs, which was the Lieutenant's Room, and immediately over Head of the Room where the Deponent was left: That she heard, by the Motion of the Feet, that both of them had entered the Room above, and, as she judged, they went towards the Bed; and thereafter the Noise of the Feet ceased: That upon this the Deponent, in order to discover what was passing, went up the Stair; and as the Bed in the Lieutenant's Room was an Alcove Bed, the Back of which came to the Side of the Stair, and there was nothing betwixt the Bed and the Stair, but a Piece of Plaster and the Timber of the Bed, so that a Person standing in the Stair could hear distinctly what passed in the Bed, she stood and listened; and from the Motions that she heard, is positive that they were in Bed together, and abusing their Bodies together; by which she means, they were lying carnally together. Depones, That immediately after this she came up to the Room where the Pannels were, and walked to the End of the Room, without looking into the Bed: That she then

turned and ſaw the Lieutenant, one of the Pannels, ſtanding cloſe by the Side of the Bed buttoning his Breeches; and ſhe obſerved his Shirt at firſt out: That at this Time ſhe obſerved Mrs. *Ogilvie* was in the ſame Bed; and that ſhe ſaw her Cloaths which ſhe had then on, which were a red and white Callico Bed-gown and Skirt. Depones, That the ſame Evening ſhe told Mrs. *Ogilvie* the Pannel what ſhe had ſeen and heard: That Mrs *Ogilvie* made no Anſwer. Depones, That upon the *Monday* the Pannels repeated the ſame Thing, which the Deponent is poſitive of, becauſe ſhe ſaw them go out of the low Room, and heard them enter the Lieutenant's Room, move towards the Bed; and then the Deponent liſtened at the Stair, and heard the ſame Motions repeated: That, upon the *Tueſday* and the *Wedneſday*, ſhe heard them again retire together to that Room, and move towards the Bed; but ſhe did not any of theſe two Days go to the Stair. Depones, That ſhe told the deceaſed Mr. *Ogilvie* of *Eaſtmiln*'s Mother, the Deponent's Aunt, what ſhe had heard and ſeen; this ſhe told her *Sunday* Night, *Monday* and *Tueſday*. Depones, That ſhe heard afterwards from the deceaſed *Eaſtmiln*, that his Mother had ſaid to him, that the Pannel, Mrs. *Ogilvie*, was troubleſome to the other Pannel the Lieutenant: That, on Occaſion of this Information, there was ill Blood and high Words between the two Brothers, and at length *Eaſtmiln*, deceaſed, ordered the Lieutenant out of his Houſe; and that this happened upon the *Thurſday* immediately ſubſequent to the *Sunday* aforeſaid. And further depones, That upon the *Sunday*, *Eaſtmiln*, as ſhe believes, was at *Glenkilrie*: That the other Days he was at Home; but as he went to viſit his Workmen every Morning, when the Pannels went together to the Lieutenant's Room as aforeſaid, it was at the Times that *Eaſtmiln* was out with his Workmen. Depones, That Lieutenant *Ogilvie* left the Houſe of *Eaſtmiln* about Three o'Clock Afternoon of the *Thurſday* aforeſaid: That, upon his leaving it, the other Pannel, Mrs. *Ogilvie*, went up to the Room which had been his, and threw herſelf down upon a Bed in that Room, different from the Alcove Bed above-mentioned; and there fell a-tearing and crying; and that, when her Huſband came to the Room, ſhe ordered him to go out of it: That *Eaſtmiln*, upon that Occaſion, told his Wife, that her Conduct was improper, and that ſhe would ruin her Reputation, by intermeddling in the Differences betwixt him and his Brother. And being further interrogate, depones, That before the *Sunday* above-mentioned, the Deponent has frequently ſeen improper Familiarities between the two Pannels; particularly ſhe has ſeen them kiſſing one another, and him having his Hand down her Breaſt. Depones, That when the Lieutenant went off, as above-mentioned, and Mrs. *Ogilvie* was in the above Diſpoſition, *Eaſtmiln*, as he had frequently upon former Occaſions, when he and his Wife differed about the Lieutenant, expreſſed his Deſire to go and leave his own Houſe; and the Deponent, who at that Time ſaw little Proſpect of Harmony between them, propoſed to Mrs. *Ogilvie*, that ſhe ſhould agree to this Scheme, which ſhe ſeemed very well pleaſed with; but that next Day both ſeemed to have changed their Mind. And being further interrogate, depones, That about a Fortnight or Three Weeks after the Deponent went to *Eaſtmiln*, the two Pannels and the deceaſed Mr. *Ogilvie* of *Eaſtmiln* having gone to pay a Viſit at *Glenkilrie*, they all of them returned, as the Deponent thought, in very bad Humour; and, in particular, Mrs. *Ogilvie* the Pannel was ſo, and expreſſed her Diſſatisfaction with her Huſband, and ſaid, If ſhe had a Doſe, ſhe would give it him; but the Deponent at that Time did not think Mrs. *Ogilvie* ſerious in what ſhe ſaid: That thereafter, but ſhe cannot preciſely ſpecify the Times, Mrs. *Ogilvie* did frequently ſignify to the Deponent, that ſhe was reſolved to poiſon her Huſband; and told the Deponent, ſhe intended to get Poiſon either from Mr. *Robertſon* a Merchant in *Perth*, or Mrs. *Eagle* who keeps a Seed-ſhop in *Edinburgh*, upon Pretence of poiſoning Rats: That the Deponent, ſeeing Mrs. *Ogilvie* intent at that Time upon that Project, endeavoured to divert her from it by gaining Time, and ſignified, that if ſhe applied to theſe People for the Poiſon, ſhe would be brought to an untimely End; but that ſhe the Deponent would go to *Edinburgh*, and get a Brother of the Deponent's who lived there to buy the Poiſon: That Mrs. *Ogilvie* approved of the Deponent's Propoſal; but complained, that the Deponent was long in putting it in Execution, and therefore propoſed to the Deponent to ſpeak of it to Lieutenant *Ogilvie* the Pannel, as he could get it more expeditiouſly; and this the Deponent declined to do. Depones, That upon the Day that the Lieutenant was put from the Houſe, ſhe, Mrs. *Ogilvie*, told the Deponent, that with much Difficulty, ſhe had prevailed upon Lieutenant *Ogilvie* the Pannel to undertake to furniſh her with Poiſon. Depones, That upon a *Wedneſday*, which was the Day immediately before *Eaſtmiln*'s Death, Mrs. *Ogilvie* the Pannel told the Deponent, that ſhe had received a Letter the Day before from the Lieutenant, which was brought to her Hand by *Elizabeth Sturrock*; and in this Letter he had acquainted her, that he had got the Poiſon the length of *Alyth*, but did not chuſe to truſt *Elizabeth Sturrock* with it; and that he would ſend it by *Andrew Stewart* his Brother-in-Law, whom he was to ſend with it next Day; ſo that ſhe expected it there that Night. Depones, That, upon this Occaſion, ſhe told Mrs. *Ogilvie*, ſhe never believed it would come to that Pitch, and exhorted her moſt earneſtly againſt the Propoſal, ſaying, It would not only bring her to Miſery, both in this World and the next, but would be bringing a Diſgrace upon the Family ſhe was come of, and upon that into which ſhe was married: That upon this Occaſion, Mrs. *Ogilvie* ſaid to the Deponent, to let her alone, for the Converſation was diſagreeable to her, as the Deponent knew, and ſhe was determined to put her Reſolution in Execution, whatever might be the Event. Depones, That the Reaſons given by Mrs. *Ogilvie* for coming to this ſtrange Reſolution, and for rejecting all the Propoſals the Deponent made for her living in Friendſhip with her Huſband, were, that ſhe did not love her Huſband, and never could love him; and that he had uſed Lieutenant *Ogilvie* ill upon her Account; and ſaid, How happy could they live at *Eaſtmiln*, if there were none there but the Lieutenant, ſhe, and the Deponent! That, upon one Occaſion the Deponent, in remonſtrating againſt theſe wicked Propoſals, told Mrs. *Ogilvie*, that, although her Huband were dead, ſhe and the Lieutenant could not enjoy one another. Mrs. *Ogilvie* anſwered, That they could go and live in ſome of the Countries where he had been. And being further interrogate, depones, That when ſhe was remonſtrating to Mrs. *Ogilvie* againſt poiſoning her Huſband, ſhe ſpecially mentioned to her, that as ſhe had been guilty of Adultery and Inceſt, it was a dreadful Thing to crown all with Murder. Depones, That upon the *Wedneſday*'s Night aforeſaid, immediately preceding *Eaſtmiln*'s Death, Mrs. *Ogilvie* the Pannel, and the Deponent went out together, Mrs. *Ogilvie* having expreſſed her Impatience for *Andrew Stewart*'s Arrival: That they did not meet with *Andrew Stewart*; but when they returned to the Houſe, found him ſitting with the old Lady *Eaſtmiln*, he having come in another Way: That Mrs. *Ogilvie* the Pannel immediately carried *Andrew Stewart* up Stairs with her, who ſtaid with her about half an Hour, and then came down Stairs by himſelf: That the Deponent aſked him, if he had brought any thing with him? He anſwered, Nothing, at firſt; but, upon her preſſing, and ſaying, She was ſure he had brought Something with him, he then ſaid he had brought ſome Drugs for Mrs. *Ogilvie*, which, at that Time, he deſcribed as being in two Phial Glaſſes: That the Deponent, on this Occaſion, ſaid, they were black Drugs: That Mrs. *Ogilvie* the Pannel having come down Stairs very ſoon after, the Deponent did not get an Opportunity at that Time to explain to *Andrew Stewart* what ſhe meant by calling them black Drugs: But Mrs. *Ogilvie* and *Andrew Stewart* having gone out towards the *Kirkton*, and left the Deponent and her Aunt Lady *Eaſtmiln* by themſelves, the Deponent told her Aunt, that ſhe believed what *Andrew Stewart* had brought was Poiſon; for that Mrs. *Ogilvie* the Pannel had told her, the Deponent, that *Andrew Stewart* was to bring the Poiſon. Depones, That the old Lady *Eaſtmiln* was preſent when the Deponent ſaid to *Andrew Stewart*, they were black Drugs, as above-mentioned: That the Deponent, after acquainting the old Lady as above, aſked her, If ſhe ſhould inform the deceaſed Mr. *Ogilvie* of *Eaſtmiln* of the Particulars? That the old Lady ſaid it would be improper; for that Mrs. *Ogilvie* would perſuade her Huſband, that it was but Laudanum for her own Uſe, and would reſent it againſt the Deponent: and that the only Method that occurred to her proper was, that both ſhe and the Deponent ſhould caution *Eaſtmiln* againſt taking any thing from his Wife in private. Depones, That after this ſhe went to the *Kirkton* with a View of being adviſed by the Miniſter, what was fit to be done in ſuch a Caſe; but had the Misfortune to miſs him, he not being at Home, the Door locked, but the Key in it: That *Eaſtmiln*, and his Wife the Pannel, and *Andrew Stewart*, were all in the *Kirkton* at that Time, in the Houſe of *Fergus Ferguſon*, a Tenant of *Eaſtmiln*'s, who keeps a Public Houſe: That they having come away from the *Kirkton*, Mrs. *Ogilvie* and *Andrew Stewart* walked on like a Piſtol-ſhot before *Eaſtmiln*; and the Deponent joined *Eaſtmiln*, and ſignified to him, that it would be very proper and neceſſary for him to leave his own Houſe, for that ſhe believed his Life was in Danger; but did not tell him. That ſhe ſuſpected the Danger was from his own Wife: That *Eaſtmiln* ſaid, He could not leave Home at that Time, becauſe of his Labourers. She having ſignified, that there was Danger in a Delay, *Eaſtmiln* anſwered, He underſtood what ſhe meant; but that he was determined he would take nothing ſhe gave him, and ſo would put it out of her Power. Depones, That her Aunt, that ſame Night, both before and after Supper, told her, that ſhe likewiſe had cautioned *Eaſtmiln* to take nothing from his Wife. Depones, That the ſame Evening ſhe informed *Andrew Stewart*, that ſhe believed it was Poiſon he had brought, and told him her Reaſons for believing ſo; that *Andrew Stewart* appeared to give Credit to what the Deponent ſaid. After *Eaſtmiln* and his Wife had gone up Stairs to Bed, *Andrew Stewart*, the Old Lady the Deponent's Aunt, and the Deponent, had a long Converſation how to diſappoint Mrs. *Ogilvie*'s Deſign; and particularly, ſhe remembers, that *Andrew Stewart* propoſed, that as he knew the Drawer wherein ſhe had put the Things that he had brought her, Means ſhould be uſed in the Night-time to get Mrs. *Ogilvie*'s Keys to open the Drawer, and take out the Things; or, if that would not anſwer, that they might get a Tradeſman next Day, or as ſoon as they could get an Opportunity, to open the Back of the Cheſt of Drawers, and ſo get into the particular Drawer to get out the Things. Depones, That Mrs. *Ogilvie*, as *Andrew Stewart* told that Night, received a Letter from Lieutenant *Ogilvie*, which he *Andrew Stewart* brought along with him; and that the Lieutenant had deſired him to deliver that Letter with the Drugs privately to Mrs. *Ogilvie* the Pannel. Depones, That ſhe never inſinuated to *Eaſtmiln* any Suſpicions ſhe had of his Life being in Danger, till that Night above-mentioned, which was the one immediately preceding his Death; but that ſhe frequently told the old Lady his Mother of the Danger ſhe apprehended *Eaſtmiln* was in, from the Diſpoſition his Wife appeared to be in; and the old Lady ſaid, that ſhe likewiſe was ſuſpicious, becauſe ſhe thought her Daughter-in-law would ſtick at nothing: But that the Deponent did not explain to the old Lady the Affair of the Poiſon, till after the Lieutenant was turned away from *Eaſtmiln*, when ſhe adviſed her to warn her Son of his Danger. And being further interrogate, depones, That from the Time that the Deponent went to his Houſe in *March* laſt, *Eaſtmiln* appeared to be under great Diſtreſs of Mind on account of the Difference between him and his Wife; but ſhe did not hear him complain of any bodily Indiſpoſition, excepting ſometimes of a Pain in his Breaſt, which ſhe thinks happened twice; but he never kept his Bed one Day, nor even an Hour extraordinary. That the Day immediately before his Death, there had been a Quarrel between him and his Wife; and the Quarrel was, that Mrs. *Ogilvie* had given the Deponent ſome Cambrick to make into Ruffles for the Lieutenant, who, ſhe ſaid, had ſent the Cambrick to her, Mrs. *Ogilvie*; whereas *Eaſtmiln* ſaid, a Chapman had come that Day to the Houſe, and craved him for the Price of it, and that he had refuſed to pay it: That upon this Quarrel *Eaſtmiln* had gone out in bad Humour, and, as the Deponent thinks, without his Breakfaſt; and the Deponent heard, that he ſpent the Day among his Tenants over the Hill: That he returned in the Evening, and ſaid he was not well, and went to Bed without Supper. Depones, That *Eaſtmiln* never

never had at this Time, or at any Time, ſo far as ſhe knows, any violent Vomitings, Purging, or Convulſions; and, ſo far as ſhe knows, Nobody elſe ever heard of any ſuch Thing. Depones, That next Morning Mrs. *Ogilvie* the Pannel made the Tea for Breakfaſt ſomewhat earlier than uſual: That the Deponent having come into the Breakfaſting Room, heard Mrs. *Ogilvie* the Pannel ſay, that the Laird and *Elizabeth Sturrock* were well off that Morning, for they had got the firſt of the Tea: That the Deponent before this had been ſitting with her Face to the Window, and her Back to the Table, but did not take any Notice what Mrs. *Ogilvie* had been doing; but upon Mrs. *Ogilvie*'s expreſſing herſelf as above, turned about and aſked, *What! has the Laird got Tea?* And Mrs. *Ogilvie* anſwered, He had; upon which the Deponent ſaid nothing. Depones, That ſhe does not know the Reaſon why Mr. *Ogilvie* had not come down to Breakfaſt that Morning. Depones, That ſhe ſaid to the old Lady, as ſhe thinks, that ſhe was frightened about the Tea the Laird had got; but ſaid nothing to *Andrew Stewart* of it, and this ſhe means of the Time before the Laird was taken ill. Depones, That Mrs. *Ogilvie* the Pannel, during the Time of Breakfaſt, went out of the Room twice or thrice, and at length came in, and told the Laird was taken very ill: That the Deponent overheard a Report among the Servants, that he was troubled with a Purging and a Vomiting: That the old Lady deſired the Deponent to go up and ſee *Eaſtmiln*, which ſhe did in about half an Hour after Breakfaſt: That ſhe continued very ſhort while in the Room, ſhe looked to him, and he appeared to her to be in a dying Condition: That ſhe came off very ſoon, crying; Mrs. *Ogilvie* the Pannel met her, and aſked her if ſhe was daft? That the Deponent anſwered, in way of Surprize or Deriſion, *O! ay! and Mr.* Ogilvie *is dying*. Depones, That after ſhe had come down Stairs, and ſtaid half an Hour or ſo, the old Lady deſired her to go up Stairs to her Son *Eaſtmiln*, to keep him from theſe two Women; by which the Deponent underſtood ſhe meant Mrs. *Ogilvie* and *Elizabeth Sturrock*, who were then ſitting with him: That the Deponent accordingly went up Stairs before Mid-day, as ſhe thinks, and continued with him till his Death, which happened betwixt Eleven and Twelve o'Clock that Night: That *Eaſtmiln*, as the Deponent has above expreſſed, was ſeized, as ſhe heard, with a Purging and Vomiting: That after ſhe went up Stairs to him, he had for ſome Time ſome Purging, but not near ſo violent as ſhe had been informed it was before: That he had a moſt ſevere Vomiting, and called always to give him a cold Drink: That he drank great Quantities of cold Water: That the Deponent having mixed it with Milk, he complained of that, and inſiſted to have cold Water by itſelf, and then drank ſome ſmall Ale; but upon his Brother-in-law *Glenkilrie*'s coming there, which was in the Evening when it was almoſt dark, he diſſuaded him from taking more Ale; That the Deponent tried him once with a Glaſs of Wine and a Piece of Sugar in it, which he drunk, and for about an Hour after taking it vomited none: That the Deponent got the Glaſs of Wine from Mrs. *Ogilvie* the Pannel: That *Eaſtmiln* immediately after taking the Water or the Ale threw it up again; but after he had drunk the Glaſs of Wine, as aforeſaid, there was an Intermiſſion of the Vomiting for about an Hour; and though he drank both Water and Ale after that, he kept it longer than before. Depones, That *Eaſtmiln* complained of a Burning at his Heart, as he called it; and complained bitterly of Pains in the Brawns of his Legs, and ſaid they would rent, and deſired the Deponent to bind them up for him, which the Deponent accordingly did: That there was a ſevere Heaving at his Breaſt, and a ſtrong Caw, and he cried to keep open the Windows to give him Breath: That he was conſtantly in Motion, moving his Head, his Legs, and his Arms: That ſhe obſerved in the Afternoon he did not ſpeak plain, which ſhe ſuppoſed was owing to his Tongue having ſwelled; but ſhe did not ſee his Tongue: That about an Hour, or an Hour and a half before his Death, he had an Intermiſſion of the Vomiting; but that at length he was again attacked with a moſt ſevere Preſs of Vomiting, after which he fell back upon the Deponent, who was ſitting behind him in the Bed ſupporting him, and expired. Depones, That ſhe heard *Eaſtmiln* during his Diſtreſs ſay to *James Millam* his Tenant in the Mill, who was attending him, that it was either ſtrong Poiſon, or rank Poiſon, that was killing him. Depones, That before One o'Clock ſhe heard the old Lady *Eaſtmiln* ſay to *Eaſtmiln*, that he had broke his Promiſe to her in taking any Thing from his Wife: That he anſwered, *It is too late now, Mother; but ſhe forced it on me:* That at this Converſation there were none preſent but the old Lady and the Deponent. Depones, That ſhe knows nothing about ſending for any Surgeon to attend upon *Eaſtmiln*, further than that ſhe herſelf ſent *Annie Robertſon*, one of the Servants of the Houſe, to tell *Andrew Stewart*, who ſhe underſtood had then gone off for *Alyth*, to deſire Mr. *Meik* the Surgeon at that Place to come to *Eaſtmiln*; and that this happened the Forenoon of the Day on which *Eaſtmiln* died: That ſhe thinks, before ſhe ſent off *Annie Robertſon* herſelf, ſhe heard ſome Converſation about ſending for a Surgeon; and thinks that it was *Andrew Stewart* and the old Lady who were talking of it. Depones, That after *Eaſtmiln*'s Death, ſhe was told by *James Millam*, that he had got Orders from Mrs. *Ogilvie* the Pannel, to take a Horſe and go and acquaint Lieutenant *Ogilvie* of his Brother's Death; but that thereafter it was concerted, that as *Glenkilrie*, in whoſe Houſe the Lieutenant then ſtaid, was going Home from *Eaſtmiln*, that he ſhould acquaint the Lieutenant: That next Morning the Lieutenant arrived about Six o'Clock, as ſhe thinks. Depones, That the Day on which *Eaſtmiln* died, Mrs. *Ogilvie* the Pannel came in for a very little to him in the Forenoon: That thereafter ſhe frequently propoſed to come back to him, if the Deponent were diſmiſſed; but *Eaſtmiln* would not agree to this, and ſhe came no more near him. And being further interrogate, depones, That the Morning after *Eaſtmiln*'s Death, ſhe told the Lieutenant the Pannel, that ſhe knew the whole Affair of the Poiſon, and aſked him how he could ſend it to Mrs. *Ogilvie?* That the Lieutenant appeared to be under great Concern and Confuſion, and told, That ſuppoſe he had ſent it to her, he did not think ſhe had ſo barbarous a Heart as to give it. And three miſſive Letters, marked by the Deponent and the Lord Examinator's Subſcription, being ſhewn to her, depones, That the Letter which begins *Dr Captain*, and is not ſubſcribed, and has no Date, and another Letter which begins *Dr Sr*, and is dated *Glenkilry, Weenſday*, and ſigned *Ketty Nairn*, are both very like Mrs. *Ogilvie* the Pannel's Writing, but the firſt ſhe is ſure is her Writing; and the third Letter, which bears Date at *Glenkilry*, and addreſſed *To Thomas Ogilvie, Eſq. of Eaſtmiln*, depones, That ſhe does not know whoſe Hand-writing it is. Depones, That ſhe did not, either the Day of *Eaſtmiln*'s Death, or the Day after, acquaint any body, by Letters or otherwiſe, of her Suſpicions and Belief that *Eaſtmiln* died by Poiſon. And being interrogate for the Pannels, depones, That upon the *Monday*, *Tueſday*, and *Wedneſday* above-mentioned, when ſhe has deponed, That the two Pannels were together, in Manner above deſcribed, the Old Lady and the Deponent were in the Houſe, and ſome Servants, who were at the other End of the Houſe. And being interrogate, From what Place the Pannels went when they went to the Room above Stairs for the ſaid three Days? depones, They went from the low Room in which the Deponent was all theſe Days: That ſhe is poſitive the old Lady *Eaſtmiln* was in the low Room with them upon the *Monday*; but has been informed from her, that ſhe obſerved nothing: That ſhe deſired the old Lady, on the *Wedneſday*, to obſerve the Motion of their Feet in the Room above; but the old Lady ſaid ſhe did not hear it, which the Deponent imputed to her being dull of Hearing: That when the Deponent heard as above, theſe laſt three Days, it was after Breakfaſt, and, as ſhe thinks, about Eleven o'Clock before Noon. Depones, That when ſhe went into the Room where the two Pannels were upon the *Sunday*, the Door of the Room was open. Depones, That ſhe did not meet *Eaſtmiln* upon the Road that Day ſhe came to his Houſe; but ſhe ſaw him the Day before at the Boat of *Bermeny*, but did not ſpeak to him, he having paſſed before ſhe knew it was him: That when ſhe came to *Eaſtmiln*, ſhe found none in the Room that ſhe came into but *Eaſtmiln* and his Mother; That after ſhe came to *Eaſtmiln*, ſhe ſlept with her Aunt the old Lady. Depones, That ſhe does not know where the Servants lay; but has a Notion, that *Katharine Campbell* and *Elizabeth Sturrock* lay in the Kitchen. Depones, That ſhe has ſeen *Elizabeth Sturrock* ſeveral Times in her Bed in the Kitchen; and that ſhe does not remember to have ſeen *Katharine Campbell* in her Bed, though ſhe ſlept in the Kitchen: That the Servant-maids had no Place to ſleep in, in the Houſe, but the Kitchen; but the third Maid ſlept out of the Houſe. Depones, That Lieutenant *Ogilvie* ſlept in the Room ſhe has formerly mentioned; but ſhe never knew him ſleep in any of the Beds, but the Alcove Bed, except when his Brother was lying a Corpſe. Depones, That ſhe had once a Converſation with one Mr. *Dougal* a Surgeon, upon the Nature of Laudanum, which Mr. *Dougal* had been ſpeaking of the Day that Lieutenant *Ogilvie* was put from *Eaſtmiln:* That Mr. *Dougal* had been telling that he took it for the Gout; and ſhe aſked, If it was not dangerous? He told her, that there had been Inſtances of fatal Effects that it had; but ſaid, if it was cautiouſly taken, there was no Danger: That ſhe aſked, how much one might take with Safety? which he told her; but that ſhe did not aſk, how much of it would do a Man's Buſineſs. Depones, That from her own Knowledge ſhe cannot ſay whether *Eaſtmiln* was abroad on the Morning of that Day on which he died; but that ſhe heard it reported by others, particularly by *Anne Sampſon*, that he had been out that Morning; and heard it reported, that it was after he had got the Bowl of Tea; and that he was ſeized with a Vomiting before he got in again. Depones, That ſhe knows there was once a Doſe of Salts ſent from *Edinburgh* to *Eaſtmiln* for Mrs. *Ogilvie*'s Uſe; but never heard of any more Salts coming into the Family. Depones, There was Nobody preſent when the old Lady deſired her to go up Stairs and attend *Eaſtmiln*, and keep theſe two Women from him. Depones, That *Alexander Ogilvie*, one of *Eaſtmiln*'s Brothers, came to *Eaſtmiln* upon the *Tueſday* Forenoon after his Death. Depones, That when the Deponent once aſked *Eaſtmiln* when he was dying, If he did not chuſe that his Wife ſhould be with him? his Anſwer was, *Miſs* Clark, *I chuſe a Drink*; and that either *Glenkilrie*, or *James Millam*, or both, was preſent at this Time: That what *Eaſtmiln* vomited was much of the Colour of ſqueezed Eggs, or greeniſh-yellow: That *Alexander Ogilvie* aforeſaid came to *Eaſtmiln* upon the *Monday* eight Days after ſhe came there; and that ſhe came on a *Friday*; and that he ſtaid there till his Siſter was married: That ſhe never heard of any Report of the indecent Familiarities between the Pannels before ſhe came to *Eaſtmiln:* That ſhe never knew Mrs. *Ogilvie* the Pannel, till the Deponent went to *Eaſtmiln* as aforeſaid. Depones, That ſhe never had any Difference with any of the Family of *Eaſtmiln* while ſhe ſtaid there; That ſhe never heard that *Eaſtmiln* had employed *James Millam* to turn her away from *Eaſtmiln*, or borrow Money from him to give her to go away from the Houſe: That after *Eaſtmiln*'s Death, ſhe got a Meſſage from Mrs. *Ogilvie* the Pannel, by *Martha Ogilvie, Eaſtmiln*'s Siſter, to diſmiſs from the Houſe. Depones, That the Converſation ſhe had with Lieutenant *Ogilvie* the Pannel, about his ſending the Poiſon to the other Pannel, was at the Burn-ſide, upon the Eaſt Side of *Eaſtmiln*. And, upon the Proſecutor's Interrogatory, depones, That ſhe does not know that Mrs. *Ogilvie* the Pannel took any Salts after her Huſband's Death. Depones, That when ſhe ſaw *Eaſtmiln*, in coming to his Houſe, at the Boat mentioned above, ſhe was informed he was then returning from *Dunſinnan*. And being further interrogate, upon the Part of the Pannels, depones, That ſhe was informed, the Drawers into which the Things were put that *Andrew Stewart* brought, ſtood in the Lieutenant's Room. Depones, That after the Pannels were committed to Priſon at *Forfar*, ſhe the Deponent went back to *Eaſtmiln*, and ſtaid for a few Nights: That at this Time, *Alexander Ogilvie, Eaſtmiln*'s Brother, had a Roup of the Cattle at *Eaſtmiln*. *Cauſa ſcientiæ patet*. And this is Truth, as ſhe ſhall anſwer to God. And being further interrogate, upon the Part of the Proſecutor, depones, That when Mrs. *Ogilvie* the Pannel was carried Priſoner from *Eaſtmiln*, *Alexander Ogilvie* took up ſome ſmall Keys of hers, and aſked her, If he ſhould take care of them? And that ſhe anſwered, She did not care who took care of them. Depones, upon Recollection, That *Alexander Ogilvie* had the Keys in his Hands when he aſked the above Queſtion: That *Alexander Ogilvie* locked all the Rooms in the Houſe, except the laigh Room;

and put the Keys in a Drawer of that laigh Room, which he locked, and took the Key with him. And this is alſo Truth, as ſhe ſhall anſwer to God.

(Signed) ANNE CLARK. ALEX. BOSWELL.

ELIZABETH STURROCK, late Servant to the deceaſed *Thomas Ogilvie* of *Eaſtmiln*, aged Twenty-three Years, unmarried, purged of Malice and partial Counſel, and interrogate, depones, being ſolemnly ſworn, That about the End of laſt Harveſt, ſhe entered as a Servant to the deceaſed *Thomas Ogilvie* of *Eaſtmiln*, and continued in that Service till the ſaid *Thomas Ogilvie*'s Death: That about *Candlemas* laſt, the ſaid *Thomas Ogilvie* was married to Mrs. *Ogilvie*, at which Time the ſaid Mrs. *Ogilvie* came Home to *Eaſtmiln*: That much about the ſame Time Lieutenant *Ogilvie* the Pannel came likewiſe to reſide at *Eaſtmiln*, where he continued till about a Fortnight before the ſaid *Thomas Ogilvie*'s Death: That during Lieutenant *Ogilvie*'s Reſidence at *Eaſtmiln*, ſhe had Occaſion to obſerve too great a Fondneſs betwixt the ſaid Lieutenant and Mrs. *Ogilvie* the Pannels, which proceeded even to Indecencies, ſhe having frequently ſeen them kiſſing and hugging each other in and about the Houſe of *Eaſtmiln*: That the late *Thomas Ogilvie* uſed frequently to be from Home, particularly about his Workmen: That during his Abſence, ſhe has frequently obſerved the two Pannels retire by themſelves to the upper Rooms of the Houſe, both the Eaſter and Weſter Room, when ſhe believed there was Nobody in theſe Rooms but themſelves. Depones, That one Night about Sun-ſet, during the Time aforeſaid, the Deponent having Occaſion to ſpeak to Mrs. *Ogilvie* the Pannel, about what Ale the Deponent ſhould bring from *Kirkton*, the Deponent went up Stairs to the Eaſt Room, where the Lieutenant uſed to lie, to ſee for her Miſtreſs: That ſhe found the Door of the Room open; and upon looking into the Room, ſhe obſerved the two Pannels lying in the Bed in which Lieutenant *Ogilvie* uſually lay: That ſhe ſuſpected them to be there, by hearing them breathing: That upon diſcovering them, ſhe immediately turned back without ſpeaking to them, and run down to the firſt Flat of the Stair, where ſhe ſtopt, and called up to her Miſtreſs to ſee if ſhe was in the foreſaid Room; upon which her Miſtreſs anſwered her from that Room, as ſhe apprehended it, that ſhe was there: That Lieutenant *Ogilvie* the Pannel likewiſe ſpoke to her from the ſame Place at that Time. Depones, That at another Time, and before the Time above-mentioned, and ſoon after Mrs. *Ogilvie* the Pannel's Marriage with the late *Eaſtmiln*, and while the late *Eaſtmiln* was at *Dunſinnan*, ſhe was told pretty early in a Morning by *Anne Sampſon*, a Neighbour-ſervant, that ſhe, *Anne*, believed Lieutenant *Ogilvie* the Pannel was gone into her Miſtreſs's Room: That upon this the Deponent went up to her Miſtreſs's Room to ſee into the Truth of it; and when ſhe went into the Room, ſhe obſerved Lieutenant *Ogilvie* the Pannel going from the Bed-ſide towards the Window, in his Night-gown: That ſhe is ſure her Miſtreſs was then in Bed in that Room, as ſhe was not got up by that Time in the Morning, nor had ſhe come down Stairs, nor was ſhe in the only other Room above Stairs, which the Deponent immediately went and looked into. Depones, That at ſeveral other Times, when the Deponent had Occaſion to be ſitting at her Wheel in the Kitchen, which is immediately under Mrs. *Ogilvie* the Pannel's Room, and where one can eaſily hear any Noiſe, even to a laigh Word, that is made in Mrs. *Ogilvie*'s Room, the Deponent heard the Feet of the two Pannels in the Room, and ſhuffling at the Side of the Bed: That the Reaſon why ſhe believed it to be the Feet of the Pannels which ſhe heard there, was, that ſhe ſaw them go up together to that Room juſt before ſhe heard the Noiſe as aforeſaid. Depones, That ſhe believes Lieutenant *Ogilvie* the Pannel was put away by the late *Eaſtmiln* from the Houſe, upon *Eaſtmiln*'s Suſpicion, that the Lieutenant was too great with Mrs. *Ogilvie* the Pannel: That her Reaſon for believing ſo is, that about the Time Lieutenant *Ogilvie* went away, the Deponent, as ſhe was going to her Bed in the Kitchen, overheard the late *Eaſtmiln*, when he was going to Bed with his Wife in the Room above, ſay to his Wife, That ſhe was too great with Lieutenant *Ogilvie* the Pannel; and that they were as frequent together as the Bell was to ring on *Sunday*. Depones, That *Anne Sampſon* was in the Kitchen at the ſame Time; and the Deponent believes ſhe heard what paſſed betwixt *Eaſtmiln* and his Wife, as aforeſaid, and the Deponent challenged her for liſtening. Depones, That after Lieutenant *Ogilvie* the Pannel had left the Houſe of *Eaſtmiln*, the Deponent obſerved the other Pannel Mrs. *Ogilvie* in Tears and crying; upon which Occaſion Mrs. *Ogilvie* ſaid to the Deponent, That ſhe was ſorry, or grieved, Lieutenant *Ogilvie* had left the Houſe. Depones, That upon the Night of the Day that Lieutenant *Ogilvie* left the Houſe, as aforeſaid, Mrs. *Ogilvie* the Pannel gave the Deponent a Letter to be carried to Lieutenant *Ogilvie* at *Little Forther*, about three Miles from *Eaſtmiln*: That Mrs. *Ogilvie* deſired the Deponent to let Nobody know ſhe had got ſuch Letter: That the Deponent did not know what were the Contents of the Letter: That Mrs. *Ogilvie* deſired the Deponent to tell Lieutenant *Ogilvie*, that ſhe had been bad ſince he went away; and that her Huſband was not owning her: That ſhe delivered the Letter accordingly to Lieutenant *Ogilvie* at the Water-ſide near *Little Forther*: That the Lieutenant, in Anſwer, bid the Deponent tell Mrs. *Ogilvie*, that he was very well, and that ſhe ſhould keep up a good Heart; and that he was to go to Baron *Reid*'s. Depones, That afterwards Mrs. *Ogilvie* the Pannel gave her another Letter to carry to Lieutenant *Ogilvie* at *Glenkilrie*, and to deliver it privately, which the Deponent carried accordingly; and ſhe received an Anſwer in Writing from the Lieutenant to Mrs. *Ogilvie*, which the Lieutenant likewiſe deſired her to deliver privately; and ſhe did ſo. Depones, That upon another Time, being the *Tueſday* immediately before the late *Eaſtmiln*'s Death, Mrs. *Ogilvie* the Pannel ſent the Deponent with another Letter to Lieutenant *Ogilvie* at *Alyth*, likewiſe with Orders to deliver it privately. Depones, That ſhe delivered the Letter to Lieutenant *Ogilvie* accordingly, and then went and did ſome other Buſineſs in the Town of *Alyth*, and returned and received an Anſwer from Lieutenant *Ogilvie* to the laſt-mentioned Letter, which he deſired her to take care of, and deliver privately; when he likewiſe told her, that he had a Packet of Linens lying at a Houſe near by; and a Letter with them, which the Lieutenant deſired the Deponent to call for, and take to *Eaſtmiln* with her: That the Deponent returned ſtraight to *Eaſtmiln* with the Lieutenant's Anſwer; and Mrs. *Ogilvie* not being then at Home, the Deponent went and fetched a Bundle of Linens, and the other Letter, all which ſhe delivered to Mrs. *Ogilvie* at the ſame Time. Depones, That the Anſwer ſhe received laſt from the Lieutenant, as aforeſaid, was a large thick Letter, bigger than a Sheet of Paper; but ſhe did not think there was any thing in it but Paper. Depones, That *Eaſtmiln* appeared to be in his ordinary Health upon the *Tueſday* before he died, and that he uſually had very good Health, the Deponent having never known him to be in bad Health while ſhe was in his Service: That upon the *Wedneſday* before his Death, he was likewiſe in good Health: That upon the *Thurſday* Morning upon which he died, the Deponent knew little about *Eaſtmiln*, as ſhe herſelf was confined to Bed by Sickneſs, except that ſhe heard that *Eaſtmiln* had been taken ill: That Mrs. *Ogilvie* the Pannel came into the Kitchen where the Deponent was lying, and told the Deponent in a low Voice, or a Whiſper, that ſhe, Mrs. *Ogilvie*, had given the Laird his Breakfaſt that Morning, and ſhe deſired the Deponent to ſay, that ſhe had likewiſe got her Breakfaſt, although the Deponent had then got none: That ſome Time thereafter Mrs. *Ogilvie* ſent *Anne Sampſon* with ſome Tea to the Deponent in a Bowl, which the Deponent drunk: That the Deponent commonly got Tea in the Morning when ſhe was indiſpoſed. Depones, That after the Deponent had got out of Bed on the ſaid *Thurſday* Morning, and before ſhe got the Tea as aforeſaid, ſhe obſerved the late *Eaſtmiln* come in at the outer Door, and come forward to the Kitchen where the Deponent was: That he was then very ill, and vomited much: That at this Time ſhe believes the reſt of the Family were at their Breakfaſt, Mrs. *Ogilvie* the Pannel having come into the Kitchen for ſome Cream to the Tea. Depones, That Mrs. *Ogilvie*, ſeeing *Eaſtmiln* ſo ill, deſired him to go up to his Bed; which he did, and the Deponent helped him to go up Stairs, and to throw off his Cloaths: That after he had been a little while in Bed, he ſaid, he thought himſelf ſome eaſier. But depones, That in a ſhort Time he turned very ill again, fell a-vomiting and purging, and complained of every Part of his Body; ſaid his Heart was broken or riven, and he toſſed very much. Depones, That *Eaſtmiln*, during his Illneſs, called frequently for cold Water, and drank often of it. Depones, That about Ten or Eleven o'Clock that Forenoon, when old Lady *Eaſtmiln*, *Andrew Stewart*, and the Deponent, were in the Room together attending the late *Eaſtmiln*, *Eaſtmiln* ſaid, in the Deponent's hearing, That he was poiſoned, and *that Woman* had done it. Depones, That by *that Woman*, the Deponent underſtood *Eaſtmiln* meant his Wife: That the old Lady ſeemed to underſtand it in the ſame Way, and reproved her Son *Eaſtmiln* for ſaying ſo. To which *Eaſtmiln* anſwered, That it was very true, and his Death lay at her Door. Depones, That upon the Day *Eaſtmiln* was ill, as aforeſaid, Mrs. *Ogilvie* the Pannel came pretty often up to his Room to ſee him in the Forenoon; but ſhe did not come near him at all in the Afternoon; and that, in the Afternoon, Mrs. *Anne Clark*, who ſat cloſe by *Eaſtmiln*, deſired the Deponent to go down and tell Mrs. *Ogilvie* the Pannel to come up and ſee her Huſband: Upon which *Eaſtmiln* himſelf ſaid, *No! no! I do not want her:* That *Anne Clark* told the Deponent, ſhe might go down and bid her come up for all that: That the Deponent accordingly went and told Mrs. *Ogilvie*; but Mrs. *Ogilvie* refuſed to come up, ſaying, She did not like to ſee dying People. Depones, That, during her Huſband's Illneſs, Mrs. *Ogilvie* did not chuſe that the People in the Neighbourhood that came to ſee him, ſhould get Acceſs to his Room, for fear of diſturbing him: That the Deponent went and brought the Precentor in the Afternoon, or rather about Dinner-time, when the Precentor went and prayed by *Eaſtmiln*; Mrs. *Ogilvie*, who had ſent the Deponent for the Precentor, went up Stairs with him to *Eaſtmiln*'s Room. Depones, That Mrs. *Ogilvie* was not very dull, or ſhewed great Marks of Grief upon her Huſband's Death, till *Alexander Ogilvie*, *Eaſtmiln*'s Brother, the Doctor, came to the Houſe upon the *Tueſday* thereafter; when Mrs. *Ogilvie* having ordered the Deponent to deſire *Alexander Ogilvie* to ſpeak with her, and he having refuſed to do ſo, Mrs. *Ogilvie* fell a-crying, and wringing her Hands, throwing herſelf back upon the Bed, and ſaying, What could be the Meaning of this? Depones, That *Alexander Ogilvie* ſtopped the Burial, and ſent for Doctor *Ogilvie* of *Forfar*, and Doctor *Ramſay*, and Doctor *Meik* of *Alyth*, to inſpect the dead Body of his Brother: That, at this Time, Mrs. *Ogilvie* behaved very ill, weeping and crying, and wringing her Hands, and tearing herſelf; but the Deponent does not know the Cauſe of this Behaviour. Depones, That Lieutenant *Ogilvie*, at the Time of his Brother *Eaſtmiln*'s Death, lived at *Glenkilrie*'s Houſe; and *Glenkilrie* having been at *Eaſtmiln* when *Thomas Ogilvie* died, he went Home and deſired Lieutenant *Ogilvie* to go to *Eaſtmiln* upon that Event: That Lieutenant *Ogilvie* came to *Eaſtmiln* next Morning, and the Deponent ſeeing him approach the Houſe, told Mrs. *Ogilvie* that he was coming: Upon which Mrs. *Ogilvie* went out, and deſired the Deponent to tell Lieutenant *Ogilvie* to ſpeak to her in the Stable: That the Deponent went accordingly and delivered the Meſſage to Lieutenant *Ogilvie*, who was then walking with Doctor *Meik*, and the Lieutenant went to Mrs. *Ogilvie* in the Stable, as deſired. Depones, That after the late *Eaſtmiln*'s Death, and after Mrs. *Ogilvie* heard the Sheriff of *Forfar* was coming to examine them at *Eaſtmiln*, Mrs. *Ogilvie* deſired the Deponent to ſay to the Sheriff, That the Deponent had ſeen Mrs. *Ogilvie* mix up the Bowl of Tea, which ſhe, Mrs. *Ogilvie*, had given her Huſband the Morning of the Day on which he died; and that the Deponent had drunk ſome of it before *Eaſtmiln* taſted it; and that ſhe likewiſe drank off what *Eaſtmiln* left of it; ſhe likewiſe particularly deſired the Deponent to ſay, That the Deponent was in the Cloſet with her, Mrs. *Ogilvie*, when ſhe mixed up the Bowl of Tea; and that ſhe, Mrs. *Ogilvie*, gave her Huſband ſome ſhort Bread with it: That Mrs. *Ogilvie* told the Deponent, that if the Deponent would ſay as thus directed, ſhe would ſtand by the Deponent, that no Harm ſhould happen to her; that the Deponent ſhould go with her where-ever ſhe went; and while ſhe, Mrs. *Ogilvie*, had a Halfpenny, ſhe ſhould have the Half of it. Depones, That Mrs. *Ogilvie* ſpoke

to the Deponent in this Manner ſeveral Times: That Lieutenant *Ogilvie* was preſent upon theſe Occaſions, heard what Mrs. *Ogilvie* deſired the Deponent to ſay, and he himſelf deſired the Deponent to ſay as Mrs. *Ogilvie* directed her. Depones, That ſome Time before *Eaſtmiln*'s Death, the Deponent knows Mrs. *Ogilvie* took a Doſe of Salts, the Deponent having got a Part of them: That ſhe never knew Mrs. *Ogilvie* taking Salts but that Time. Depones, That before *Eaſtmiln*'s Marriage, ſhe lay in the laigh Room with old Mrs. *Ogilvie* and her Daughter: That after the Marriage, ſhe continued to lie with the old Lady, till *Anne Clark* came to *Eaſtmiln*: That after that *Anne Clark* lay with the old Lady, and the Deponent lay in the Kitchen with *Katharine Campbell*: That at this Time, *Anne Sampſon* lay in an Out-houſe till *Katherine Campbell* went away. Depones, being interrogate for the Pannels, That what ſhe has above deponed, concerning the Pannels kiſſing and hugging one another, happened at different Times, ſometimes when they were by themſelves, and at other Times when they were in Company with others. Depones, That when ſhe ſaw the Captain in Mrs. *Ogilvie*'s Room in his Night-Gown as above, the Door was in Part open, ſo that ſhe could ſee into it, and that ſhe did not go into the Room. And being interrogate for the Pannels, what Number of Perſons, not of the Family, got Acceſs to the Room in which *Eaſtmiln* was, after his being taken ill as above? depones, That, to the beſt of her Remembrance, the Perſons who got Acceſs, were, Mr. *Spalding* of *Glenkilrie*, *William Froſter*, *Anne Froſter*, *James Millam*, and *David Watſon*: That *James Millam*, *William Froſter*, and *Anne Froſter*, were brought in by the Deponent, without the Knowledge of Mrs. *Ogilvie*. Depones, That ſhe did not hear *Alexander Ogilvie* give Orders to the Perſons who were ſent for the Doctors, to inſpect *Eaſtmiln*'s Body; but ſhe afterwards heard of it from the Perſons who had been ſent, and who on that Account had come to get Meat in the Family; but that ſhe the Deponent was forbid by Mrs. *Ogilvie* to give them Meat. Depones, That when the Deponent was firſt brought to Town, ſhe was lodged, for about the Space of twenty Days, in the Houſe of one Mr. *Gardiner* at the Head of the *Cowgate*, by Mr. *Muriſon* the Macer: That from thence ſhe was carried to the Caſtle of *Edinburgh*, where ſhe has remained ſince that Time: That the Deponent, *Anne Clark*, *Anne Sampſon*, and *Katharine Campbell*, were lodged in the ſame Room till *Thurſday* or *Friday* laſt, when *Anne Clark* was put into another Room in the Caſtle, where ſhe remained a Day and a Night, and was thereafter put into the Room with the Deponent, and the other Perſons above-mentioned. Depones, That while the Deponent, and the other Perſons above-mentioned, were at the Houſe of one *Gardiner*, and in the Caſtle, they had ſome, though not much, Converſation upon the Subject of this Trial; but that in theſe Converſations, all of them declared, that they conſidered it as their Duty to tell nothing but the Truth. Depones, That upon the Morning of the Day after *Eaſtmiln*'s Death, *Anne Sampſon* told Mrs. *Stewart*, *Eaſtmiln*'s Siſter, in Preſence of the Deponent, that the Bowl out of which *Eaſtmiln* was ſaid to have drunk the Poiſon the Day before, was below in a Preſs in the Kitchen: That the Deponent having taken out the Bowl, obſerved ſomething greaſy in the Bottom of it; and intending to try if there was any Thing poiſonous in the Greaſe, ſhe put ſome Broth into the Bowl, and gave it to a Dog, who eat it up; but was nothing the worſe of it: That the Deponent made this Experiment of her own Accord, and not on the Suggeſtion or Deſire of any other Perſon whatſomever. And depones, That *Anne Sampſon* has often told the Deponent, that ſhe had filled the ſaid Bowl with Water, and offered it to *Eaſtmiln*, that Day on which he died; but that he had refuſed to drink out of it, damning the Bowl, and ſaying, he had already got his Death out of it. *Cauſa ſcientiæ patet.* And this is Truth, as ſhe ſhall anſwer to God. And being further interrogate, depones, That while the Deponent was in *Eaſtmiln*'s Service, ſhe never heard of his being troubled with Vomitings, Purgings, or Colicks, before that Day on which he died; and that ſhe never knew of his being indiſpoſed, except by ſlight Colds. Depones, That when Lieutenant *Ogilvie* went into the Stable where Mrs. *Ogilvie* was, as has been above deponed, he did not remain there above four or five Minutes. And this is alſo Truth, as ſhe ſhall anſwer to God: And depones ſhe cannot write.

(Signed) AND. PRINGLE.

ANNE SAMPSON, late Servant to the deceaſed *Thomas Ogilvie* of *Eaſtmiln*, aged nineteen Years, unmarried, purged of Malice and partial Counſel, ſworn and interrogate, depones, That ſhe entered Servant to the Family of *Eaſtmiln Whitſunday* was a Year: That after being ſome Time abſent, ſhe returned a few Days before Miſs *Clark* came to the Houſe: That after her Return, ſhe had more than once Occaſion to obſerve Mrs. *Ogilvie* and Lieutenant *Ogilvie* kiſſing one another; particularly once in the Kitchen before the Deponent and another Servant-Maid: That ſhe has ſeen them embrace and hug one another: That when the Laird was out of the Houſe, ſhe has known them retire to a Room by themſelves, but not ſtaying above an Hour at a Time. Depones, That one Morning when the Laird was at *Dunſinnan*, ſhe heard the two Pannels ſpeaking together in Bed in the Room above: That ſhe was in the Kitchen, the Ceiling of which is not plaſtered, and where ſhe could hear the loweſt Voice in the Room above: That upon this, ſhe deſired her Fellow-Servant, *Elizabeth Sturrock*, to go up Stairs and ſee what was going on; and that *Elizabeth*, upon her Return, told the Deponent, that the Lieutenant had got out of the Bed before ſhe was got to the Door; and that ſhe ſaw him going from the Bed towards the Window in his Night-gown. Depones, That this was about Sun-riſing. Depones, That the Lieutenant left the Houſe a Fortnight before his Brother's Death; and before that Time, the Deponent being in the Kitchen with her Fellow-ſervants, *Elizabeth Sturrock* and *Annie Robertſon*, they all heard the Laird and Lady talking together in Bed in the Room above: That the Talking begun with the Lady's ſcolding her Huſband; upon which the Laird bade her hold her Tongue, for that ſhe and the Lieutenant were as common as the Bell that rings on *Sabbath*. Depones, That the Morning the Lieutenant left the Houſe, ſhe ſaw Mrs. *Ogilvie* weeping: That this was before he went away; and that ſhe ſaw her alſo weep after he went away. Depones, That *Eaſtmiln* was a healthy Man; and that, before the Day he died, ſhe never heard him complain, if it was not ſometimes of an Head-ach; and that the Night before he died, he was in Health, ſo far as ſhe knows. Depones, That the Night before her Maſter died, ſhe ſaw *Andrew Stewart* in the Houſe of *Eaſtmiln*; and that ſhe was told by *Elizabeth Sturrock* and Miſs *Clark*, the Night thereafter, that the ſaid *Andrew Stewart* had retired with Mrs. *Ogilvie* into a private Room. Depones, That the Morning of the Day her Maſter died, Breakfaſt was ready betwixt Eight and Nine, a little ſooner than ordinary: That ſhe ſaw her Miſtreſs make up the Bowl of Tea in Preſence of her Mother-in-Law and Miſs *Clark*, for *Andrew Stewart* was not then up: That ſhe followed her Miſtreſs up Stairs, wanting ſome Beef out of the Beef-ſtand, and ſaw her go into a Cloſet adjoining her Maſter's Room: That the Deponent followed her into the Cloſet, demanding the Beef; but that her Miſtreſs bade her go down Stairs, as ſhe was not ready yet; and that ſhe was always wanting ſomething; and that Mrs. *Ogilvie* appeared to be in a Paſſion at her: That her Maſter was at that Time in Bed; and that, when the Deponent was in the Cloſet, ſhe ſaw Mrs. *Ogilvie* ſtirring about the Tea, with her Face to the Door; and that, upon what her Miſtreſs ſaid to her above, ſhe went out of the Cloſet down to the Kitchen; but that ſhe did not ſee her Miſtreſs, when in the Cloſet, put any Thing into the Tea. Depones, That at this Time ſhe ſaw *Alexander Lindſay*, a Servant-lad in the Houſe, ſtanding upon the Stair-head, near the Cloſet-door, at the Time her Miſtreſs was in the Cloſet. Depones, That her Maſter got up between Nine and Ten, and firſt went to the Stables to ſee his Horſes fed, and then to the *Shilling-Hill*, where he converſed with ſome of his Tenants: That, in his returning towards the Houſe, ſhe ſaw him vomiting, and ſtill more when he came into the Kitchen; and that, when he was there, Mrs. *Ogilvie* came into the Kitchen, and ordered *Elizabeth Sturrock* to help him up Stairs, and followed him herſelf. Depones, That ſome Time thereafter, ſhe was ordered to carry up ſome clean Water for her Maſter for drinking, which ſhe did in the ſame Bowl that he got his Tea in from Mrs. *Ogilvie*; but that ſhe firſt ſynded the Bowl with ſome Water: That ſhe went up Stairs with the Bowl into her Maſter's Room, and found him in Bed; but that upon ſeeing the Bowl, he cried, *Damn that Bowl, for I have got my Death in it already*; and bid her at the ſame Time, carry it down Stairs out of his Sight; and that ſhe carried up Water to him in the Tea-Kettle, which he drunk of. Depones, That the Reaſon for her ſynding the Bowl was, that it appeared to be greaſy and white; and that ſhe knew the Bowl to be the ſame as above, becauſe Mrs. *Ogilvie*, after giving her Maſter his Tea, came down Stairs with it, and ſet it down in the Kitchen, on the Fore-ſide of the Preſs. Depones, That, after ſynding the Bowl, as aforeſaid, the Greaſe did not come wholly out of it. Depones, That the Day her Maſter died, about Mid-day, ſhe was ſent by Mrs. *Ogilvie* two Miles to clip ſome Sheep. Depones, That Mrs. *Ogilvie* frequently went to ſee how her Huſband was in the Forenoon, but not once in the Afternoon; and that, when the Deponent was going up Stairs to ſee him between Twelve and One o'Clock, ſhe was turned back by Mrs. *Ogilvie*. Being interrogate on Behalf of the Pannels, depones, That when Mrs. *Ogilvie* made up the Bowl of Tea in the Breakfaſting-Room as aforeſaid, the Deponent ſaw her put in Milk and Sugar; but whether ſhe put in any Honey, the Deponent does not perfectly remember, nor whether ſhe ſaw any Honey upon the Table. Depones, That the Family ſeldom breakfaſted without Honey; but that the Day deponed upon, ſhe rather thinks there was none; becauſe, ſhe believes, at that Time the Houſe was out of Honey. And being further interrogate in Behalf of the Pannels, depones, That, at the Time deponed upon, when ſhe carried up the freſh Water to her Maſter to drink, ſhe ſynded the Bowl with Water, and not with Broth out of the Pot. Depones, That the next Day thereafter, the Bowl was ſynded with Broth out of the Pot, and given to a Dog; and that it was the Deponent that did ſo by the Direction of *Elizabeth Sturrock*; and that *Elizabeth Sturrock* gave her no Reaſon for doing ſo. Further depones, That ſhe took the Bowl for carrying Water to her Maſter, becauſe it was at Hand; and that ſhe had no Notion at that Time of her Maſter being poiſoned, nor till after his Death. Being interrogate in Behalf of the Pannels, when ſhe returned from the Sheep-clipping? depones, That it was about Nine at Night. Upon which being again interrogate, how ſhe came to depone as above, that Mrs. *Ogilvie* did not once viſit her Huſband in the Afternoon? anſwers, That was, becauſe ſhe was told ſo by the other Servants, who added, That her Maſter did not want Mrs. *Ogilvie* up, for fear of doing her Harm. Depones, That after ſhe ſaw her Miſtreſs make up the Bowl of Tea in the Breakfaſting Parlour, as aforeſaid, ſhe went into the Kitchen, and made up the Fire, before ſhe followed her Miſtreſs to the Cloſet, as above deponed to. *Cauſa ſcientiæ patet.* And this is Truth, as ſhe ſhall anſwer to God.

(Signed) HENRY HOME.

ANDREW STEWART, Merchant in *Alyth*, aged Thirty, married, purged of Malice and partial Counſel, ſworn and interrogate, depones, That upon the Evening before Mr. *Ogilvie* of *Eaſtmiln* died, being a *Wedneſday*, the Deponent was at the Houſe of *Eaſtmiln*, when, upon his coming into the Houſe, Mr. *Ogilvie* told him, that he had forbid his Brother the Captain the Houſe, on Account of Suſpicions he had, that his Wife was too much taken up in doing Things for his Brother the Captain, and not for himſelf; and that at the ſame Time he mentioned ſome Differences he had with his Brother concerning Money-matters. Depones, That on the *Monday* before *Eaſtmiln*, the Deponent's Brother-in-law, died, Lieutenant *Ogilvie* (who is above deſigned Captain) came to the Deponent's Houſe in *Alyth* on Horſeback; and that the Horſe he rode belonged to Mr. *Ogilvie* of *Eaſtmiln*. Depones, That on the Day thereafter, being the *Tueſday*, *Elizabeth Sturrock*, a former Witneſs, came to the Deponent's Houſe, and bought ſome Things for the Family of *Eaſtmiln*: That he does not know that ſhe brought with her any Letter for Lieutenant *Ogilvie*; nor does he know if Lieutenant *Ogilvie* gave her any Letter for Mrs. *Ogilvie* the Pannel. But depones, That he did that Day inform Lieutenant *Ogilvie*, that he the Deponent was to be at *Eaſtmiln* next Day. Depones, That upon the Day thereafter, he accordingly went to *Eaſtmiln*,

Eaſtmiln, and before he went off, Lieutenant *Ogilvie* delivered to the Deponent a ſmall Phial Glaſs containing ſomething liquid, which he ſaid was Laudanum; and alſo a ſmall Paper Packet, which he ſaid contained Salts; and that the Morning of the Day preceding, the Deponent ſaw the Lieutenant working among ſome Salts, at leaſt which appeared to the Deponent to be Salts, which were in a Cheſt belonging to the Lieutenant: That the Phial Glaſs was round, and knows that there was another Phial Glaſs in his own Houſe which was ſquare: That he is poſitive, as he has already deponed, that one Phial Glaſs was delivered to him by the Lieutenant; and cannot ſay, with Certainty, that two might not have been delivered to him by the Lieutenant; but rather thinks he got only one; and that at the Time when the above Particulars were delivered to the Deponent, the Lieutenant deſired him to deliver them privately into Mrs. *Ogilvie*'s own Hand: That he did not ſee the Packet made up, nor did he open it to ſee what it contained. Depones, That on the aforeſaid Packet, there was a Letter directed for Mrs. *Ogilvie* of *Eaſtmiln*, which Letter was ſealed both with Wax and a Wafer; and that round the Packet there was a looſe Paper of Directions, in what Manner the Laudanum was to be uſed. Depones, That when he came to *Eaſtmiln* in the *Wedneſday* Afternoon, he was carried into a Room where old Lady *Eaſtmiln* was; and that, within a ſhort Time thereafter, Mrs. *Ogilvie* the Pannel, and Miſs *Clark* came into the Room: That, at the Deſire of Mrs. *Ogilvie*, he followed her up to the Eaſtern Room, where Mrs. *Ogilvie* having aſked him, If he had brought any Word to her from the Lieutenant? he delivered to her the ſeveral Particulars above-mentioned, which the Deponent ſaw her immediately put into a Drawer in the Room: That he did not ſee her read the Letter at that Time; but that ſhe put the whole together into the Drawer: That ſoon thereafter Miſs *Clark* aſked the Deponent, What he had brought with him from the Lieutenant to Mrs. *Ogilvie?* Or if he had brought any Thing with him? He at firſt ſaid he had brought nothing; but, upon Miſs *Clark*'s preſſing him with great Earneſtneſs, he at laſt informed her of the Particulars he had brought: That, upon this, Miſs *Clark* ſaid, that ſhe was afraid Mrs. *Ogilvie* might poiſon her Huſband. Depones, That ſoon thereafter Miſs *Clark*, in Preſence of the Deponent and the old Lady, deſired *Eaſtmiln* not to take any Thing out of his Wife's Hand, except at the Table; to which he anſwered, That he would not: That the old Lady joined with Miſs *Clark* in deſiring *Eaſtmiln* to take nothing out of his Wife's Hand; but that the Deponent was at that Time very much diſpleaſed with both, as he then had no Suſpicion that Mrs. *Ogilvie* had any Deſign againſt the Life of her Huſband. Depones, That that ſame Night he heard Mrs. *Ogilvie* ſay, that ſhe lived a moſt unhappy Life with her Huſband; that ſhe wiſhed him dead; or, if that could not be, ſhe wiſhed herſelf dead. Depones, That the Deponent ſupped with *Eaſtmiln* and the reſt of the Family that Night: That he then appeared to be in his ordinary State of Health; but that ſome times before, that ſame Night, he told the Deponent and the reſt of the Company then at *Kirkton*, that he had ſwarfed or fainted on the Hill: that, for that Reaſon, he could drink no Ale: That, upon this, they called for a Dram, which he took, and thereafter ſeemed hearty, and in good Spirits; and *Eaſtmiln* then ſaid, that the Swarf had happened to him on the Hill that ſame Day. Depones, That that Night the Deponent told, that he intended to go off from *Eaſtmiln* early next Day, which occaſioned their getting Breakfaſt more early than uſual: That *Eaſtmiln* did not breakfaſt along with the Family, the only Perſons preſent at Breakfaſt being Mrs. *Ogilvies* elder and younger, Miſs *Clark* and the Deponent being then only preſent: That the Deponent ſaw Mrs. *Ogilvie* making a Bowl of Tea, by filling it out of the Tea-pot, and putting Sugar and Milk in it; and that ſhe ſaid, in Preſence of the Company, that ſhe was to give it to her Huſband, who was then in Bed; and that the Deponent ſaw her go out of the Room with the Bowl in her Hand: That, about an Hour and a Half after they had begun to breakfaſt, they were told that *Eaſtmiln* had been ſuddenly taken ill; upon which Miſs *Clark* immediately run up to the Room in which he was, and ſoon thereafter returned weeping, and told them, that *Eaſtmiln* had got a bad Breakfaſt. Depones, That the Deponent immediately run up Stairs, where he found *Eaſtmiln* vomiting and purging violently: That he heard him ſay that he was all wrong within; and that he had got what would do his Turn: That *Eaſtmiln* called very much for Drink: That they offered him Milk; but that he would drink nothing but Water: That he complained much that he was burning within. Depones, That he propoſed to Mrs. *Ogilvie* that a Surgeon ſhould be called to his Aſſiſtance, to which ſhe would not agree, ſaying, That he would be better: And upon the Deponent's renewing this Propoſal, ſhe ſaid, She would not for any Money that a Surgeon ſhould be called, as the Conſequence of this would be, to give her a bad Name, from what Miſs *Clark* had ſaid of her: That, upon this, the Deponent told Mrs. *Ogilvie*, That Mr. *Meik*, Surgeon in *Alyth*, whom the Deponent had recommended, was a diſcreet Perſon: That he would come; and that he would tell none but her what he thought of him: That, upon this, the Deponent left her, ſhe having previouſly agreed that Mr. *Meik* ſhould come: That the Deponent thereafter ſet out on his Journey; but, before he had got far from the Houſe, one of the Girls, whoſe Name he thinks was *Robertſon*, came up to him, and deſired that Mr. *Meik* might be ſent with all Haſte: That after Supper, the Deponent had a Converſation with Miſs *Clark* concerning the Suſpicions ſhe had of Mrs. *Ogilvie*'s Intentions againſt her Huſband, in which the Deponent propoſed, that they ſhould either take Mrs. *Ogilvie*'s Keys out of her Pocket, or break open her Drawers at the Back, in order that they might ſatisfy themſelves, if the Particulars brought by the Deponent were Poiſon or not; and that this was the only Method by which Miſchief would be prevented: That Miſs *Clark* did not ſeem to agree to either of theſe Propoſals, and the Deponent himſelf had at that Time no Suſpicion, that there was any Foundation for Miſs *Clark*'s Fears; and the Deponent was confirmed in this Opinion from his having been told, by the old Lady, that ſhe had gone up to the Room-door, after her Son and Daughter-in-law were in Bed; and that there was then more Kindneſs between them than uſual. Depones, That his Wife had frequently told him, before the Death of *Eaſtmiln*, that he was a tender Man; but that he never heard of his having been troubled with violent Vomitings, or Purgings, before the Day on which he died: That he had the Appearance of a tender Man; and that the Deponent has heard his Wife ſay, That he would not be a Long-liver. Depones, That at the Converſation above-mentioned at *Kirkton*, he heard *Eaſtmiln* ſay, that he had been ill of a Cough and ſore Breaſt; and that for ſome Time paſt, he had been thinking of writing to Doctor *Ogilvie* at *Forfar*, to ſend him ſome Things: That the Deponent laughed at him for talking in that Manner, and bid him take a Dram. Depones, That the Drawer into which Mrs. *Ogilvie* put the Particulars delivered to her by the Deponent, ſtood in that Room in which the Deponent ſlept that Night. Depones, That at the Time when *Alexander Ogilvie* the Deponent's Brother-in-law arreſted the Corpſe, the Deponent adviſed Lieutenant *Ogilvie* to make his Eſcape, if guilty; to which he anſwered, That God and his own Conſcience knew that he was innocent. Depones, That the two Pannels lived at the Houſe of *Eaſtmiln*, from the Time of *Eaſtmiln*'s Burial to the Time that Mrs. *Ogilvie* was apprehended; and that for ſome Time after the Pannels continued to live there; but how long he cannot ſay. Depones, That Mrs. *Ogilvie* had been blooded the Day before *Eaſtmiln*'s Death, or the Day before that; and that ſhe had been ill, and taking Drugs for ſome Time before, as the Deponent had heard. *Cauſa ſcientiæ patet.* And this is Truth, as he ſhall anſwer to God. And at reading over the Oath, depones, That at the Time when Lieutenant *Ogilvie* delivered the Particulars above-mentioned to the Deponent, he deſired him to put them into Mrs. *Ogilvie*'s own Hand: But did not mention the Words *privately*, or *by herſelf*; and that his Reaſon for denying at firſt to *Anne Clark*, that he had brought any Parcel from Lieutenant *Ogilvie*, was, becauſe he conſidered Miſs *Clark* as a Perſon given to raiſe Diſſenſion in Families; and becauſe that he had been deſired by the Lieutenant to put the Particulars into Mrs. *Ogilvie*'s own Hand. And this is alſo Truth.

(Signed) And. Stewart. Geo. Brown.

James Carnegie, Surgeon in *Brechin*, married, aged about forty and upwards, being ſolemnly ſworn, purged of Malice and partial Counſel, depones, That in the End of *May* laſt, he got a Meſſage from Lieutenant *Ogilvie* the Pannel, with whom he is acquainted, deſiring him to meet him at *Colin Smith*'s, Vintner in *Brechin:* That the Deponent having gone there, found him in Company with one Lieutenant *Campbell* of the ſame Regiment, and one Mr. *Dickſon:* That Lieutenant *Ogilvie* took the Deponent aſide, and told him, that he was troubled with Gripes, and wanted to buy ſome Laudanum from him, and at the ſame Time told him he wanted to buy ſome Arſenick, in order to deſtroy ſome Dogs that ſpoiled the Game: That the Deponent told him, that he was uncertain whether he could furniſh him with theſe Things or not; but that he ſhould look when he went Home: That the Deponent, when he went Home, found he had ſome of both, and put up a ſmall Phial Glaſs of Laudanum, and betwixt half an Ounce and an Ounce of Arſenick, both which he delivered next Day to the Lieutenant, after the Deponent had dined with him and Lieutenant *Campbell* next Day in *Smith*'s: That Lieutenant *Ogilvie* took the Deponent into another Room, away from Lieutenant *Campbell*, when he was to receive the Laudanum and the Arſenick, and there the Deponent delivered them to him: That the Price of both was a Shilling: That the Arſenick was pulverized; and Lieutenant *Ogilvie* having aſked how to prepare it, the Deponent gave him Directions. Depones, That he had ſold of the ſame Arſenick formerly to People for poiſoning of Rats, and heard that it had the deſired Effect. Depones, That he has been accuſtomed, when he ſold Arſenick, to take Receipts from low People who bought it, but never from Gentlemen; and as the Deponent knew Lieutenant *Ogilvie*, and had a good Opinion of him, the Deponent did not aſk a Receipt from him, although, when the Lieutenant ſpoke about it firſt, the Deponent ſaid to him, *We uſe to take a Receipt for Arſenick:* That the Lieutenant anſwered, *See firſt if you have it*; adding at the ſame Time, *Very good.* Depones, That he got his Arſenick from a Druggiſt in *Dundee*; but how long ago he cannot ſay, there being a ſmall Demand for Arſenick at any Time. *Cauſa ſcientiæ patet.* And all this is Truth, as he ſhall anſwer to God. Depones, That he wrapped it up in the Form of a Pennyworth of Snuff under three Paper Covers. Depones, That the Arſenick which he ſold as above was white Arſenick. Depones, That he cannot take upon him to ſay, from looking at Arſenick, whether it be Arſenick or not; nor can he ſay from the Taſte, for he never taſted it; but that he bought this as Arſenick, had the Name marked upon it upon the Package, and heard from thoſe he ſold it to that it had killed Rats, as above-mentioned. Depones, upon a further Interrogatory, That he heard of Mr. *Ogilvie* of *Eaſtmiln*'s Death after the Time that he ſold the Arſenick to the Lieutenant. *Cauſa ſcientiæ patet.* And this is alſo Truth, as he ſhall anſwer to God.

(Signed) Ja. Carnegie. Alex. Boswell.

Lieutenant George Campbell, of the late eighty-ninth Regiment, unmarried, aged about twenty-two, being ſolemnly ſworn, purged of Malice, partial Counſel, and interrogate, depones, That he has known Lieutenant *Ogilvie* the Pannel theſe five Years paſt: That in the Beginning of *June* laſt, as he thinks, the Pannel called for the Deponent at *Phinhaven*, and deſired him to go along with him to *Brechin*, becauſe he wanted to ſee his old Landlord *William Finlay*, Vintner there: That they accordingly went to *Brechin*, and put up at *Colin Smith*'s, Vintner, and the Pannel called for *James Carnegie*, Surgeon there, but had no Converſation at that Time apart from the Deponent; the Pannel invited Mr. *Carnegie* to Dinner, after he and the Deponent ſhould return from the Fiſhing, which they were going to next Day. And accordingly he came to Dinner, and the Pannel and Mr. *Carnegie* went out after Dinner to another Room, and had ſome private Converſation for ſome few Minutes, and then returned back to the Deponent; and the Deponent and the Pannel went to *Phinhaven* that Night, it being *Friday*'s Night, and he ſtaid with the Deponent *Saturday* and *Sunday* Nights, and left him on *Monday*; and on the *Saturday* after the Deponent heard of Mr.

Ogilvie of *Eaſtmiln*'s Death. *Cauſa ſcientiæ patet.* And this is Truth, as he ſhall anſwer to God.

(Signed) Geo. Campbell. James Ferguson.

Patrick Dickson, Merchant in *Brechin*, married, aged ſixty and upwards, being ſolemnly ſworn, purged of Malice and partial Counſel, examined, and interrogate, depones, That when the Pannel Mr. *Ogilvie* was in Priſon at *Forfar*, the Deponent went to viſit him; and he deſired the Deponent to go to *James Carnegie*, Surgeon in *Brechin*, and talk to him, that he might not be impoſed on by any body; and the Deponent accordingly went and converſed with Mr. *Carnegie*, who informed him that he had ſold the Pannel ſome Laudanum and ſome Arſenick, for both which he received a Shilling; and the Deponent returned to *Forfar*, and communicated to the Pannel what Mr. *Carnegie* had ſaid; upon which the Pannel ſeemed to be under ſome Concern, and ſeemed deſirous to ſpeak with Mr. *Carnegie*, without either confeſſing or denying to the Deponent that he had bought the Arſenick, for he had only acknowledged buying the Laudanum on the *Saturday* before, when the Deponent had been with him in Priſon; and the Deponent told him that he had ſome Buſineſs on hand which hindered him to ſend Mr. *Carnegie* to him; and the Pannel deſired the Deponent to tell the Sheriff that he wanted to ſee him, to amend ſomething in his Declaration with regard to the Laudanum which the Pannel received from Mr. *Carnegie*. *Cauſa ſcientiæ patet.* And all this is Truth, as he ſhall anſwer to God.

(Signed) Pat. Dickson. And. Pringle.

Peter Meik, Surgeon in *Alyth*, unmarried, aged about twenty-ſeven, being ſolemnly ſworn, purged of Malice and partial Counſel, examined, and interrogate, depones, That upon the Day that Mr. *Ogilvie* of *Eaſtmiln* died, the Deponent was ſent for as a Surgeon to him: That he was dead before he came, as the Deponent was informed, about two Hours: That immediately upon the Deponent's Arrival, he was carried up by a Servant to Mrs. *Ogilvie* the Pannel's Room, where ſhe was ſitting, and ſhe appeared to be in great Grief and Concern for her Huſband's Death, and deſired the Deponent, that whatever he might think he diſcovered to be the Cauſe of her Huſband's Death, that he would conceal it from the World. And depones, There was Nobody elſe preſent with the Deponent and the Pannel at that Time: That, upon going to the Room where the Corpſe lay, and afterwards going out of the Houſe, he met with Mr. *Ogilvie* the Pannel, who went up with him to the Room where the Corpſe lay, and appeared to be in great Grief and Concern for his Brother: That five or ſix Days after, he was called upon to inſpect the Body of *Eaſtmiln*; and, upon inſpecting it, he obſerved the Nails and a Part of the Breaſt diſcoloured, and his Tongue ſwelled beyond its natural Size, and cleaving to the Roof of his Mouth, and no Part of his Tongue was beyond his Lips, though it did come out beyond his Teeth: That he has obſerved the Symptoms of the Nails and the Breaſt to occur after a natural Death, but never that of the Tongue at the ſame Time, though he has obſerved the Tongue ſwelled without the other Symptoms. And being interrogate, Whether he underſtood theſe Symptoms to be the Effect of Poiſon? depones, That he is not ſo much acquainted with the Effects of Poiſon as to have formed a Judgment whether that was the Cauſe in this Caſe; but he was led to make that Conjecture from the Notice given him by *Andrew Stewart*, who had told him that the Defunct was thought to be poiſoned, and from the Caution given him by Mrs. *Ogilvie* the Pannel, to conceal any Thing that might diſcover the Manner of her Huſband's Death. Depones, That *Alexander Ogilvie*, the Defunct's youngeſt Brother, told the Deponent, that he was ſent for to open his Brother's Body; and *Gilbert Ramſay*, Surgeon in *Coupar*, being alſo there, the Deponent and he agreed to open the Body; but *Alexander* would not agree to it, unleſs Doctor *Ogilvie* at *Forfar* was there; and as the Deponent and Mr. *Ramſay* could not ſtay till he came, it was laid aſide. Depones, That neither of the Pannels made any Objection to it; and that *Alexander* deſired them to take a ſuperficial View of the Body; which they did, and diſcovered the Symptoms aforeſaid. *Cauſa ſcientiæ patet.* And all this is Truth, as he ſhall anſwer to God.

(Signed) Peter Meik. And. Pringle.

Gilbert Ramsay, Surgeon in *Coupar* of *Angus*, married, aged about thirty-eight Years, being ſolemnly ſworn, purged of Malice and partial Counſel, and interrogate, depones, That he was ſent for to *Eaſtmiln* about five or ſix Days after the Laird's Death, and was deſired by *Alexander Ogilvie*, his youngeſt Brother, to inſpect his Body along with the preceding Witneſs; and, upon looking at it, they obſerved the Nails and Part of the Breaſt diſcoloured, and his Tongue ſwelled: That he has obſerved the firſt two Symptoms to happen in a natural Death, in conſequence of Putrefaction; but has not obſerved the laſt Symptom: That theſe Symptoms are owing to ſomething very acrid, and made the Deponent ſuſpect that he died of Poiſon: That his Lips were very little ſwelled, but more diſcolcured than by a natural Death: That the Deponent had heard Suſpicions of Poiſon before he came there. And being interrogate for the Pannels, depones, That he had obſerved the Tongue ſwelled even in a natural Death, but not to that Degree it was in this Caſe. And depones, That if he ſaw a dead Body with theſe Symptoms, though he had got no Notice of any Suſpicion of Poiſon, he would ſuſpect it from theſe Appearances. And being interrogate, Whether all theſe Symptoms might not happen in a bilious Colick? depones, That the great Swelling in the Tongue, and Diſcolouring in the Lips, would not happen. And being interrogate for the Pannels, Whether all the uſual Symptoms of Poiſon happened in this Caſe? depones, That he cannot anſwer that Queſtion with any Certainty, never having ſeen the Body of any other Perſon who died of Poiſon. And being further interrogate, depones, That the uſual Symptoms that occur in Poiſon by Arſenick, are Vomiting, and Evacuating downwards, and a great Swelling in the Tongue, and the Blackneſs in the Breaſt. And being further interrogate, depones, That there was no Appearance of Ulcers, in this Caſe, either in the Tongue or the Lips. Depones, That the Deponent propoſed to open the Body; but he was oppoſed by *Alexander Ogilvie*, on Account that Doctor *Ogilvie* from *Forfar* was not there; but, as far as the Deponent knows, it was not oppoſed by either of the Pannels. And further depones, That he believes every Thing in the Body would, after being ſo long dead, be in a State of Putrefaction; ſo that he doubts if the Poiſon would have been certainly diſcovered, though the Body had been opened. *Cauſa ſcientiæ patet.* And this is Truth, as he ſhall anſwer to God.

(Signed) Gilbert Ramsay. James Ferguson.

Doctor John Ogilvie, Phyſician in *Forfar*, aged forty-eight Years, married, being ſolemnly ſworn, purged of Malice and partial Counſel, and interrogate, depones, That he heard, that the late *Eaſtmiln* died upon the ſixth of *June* laſt; and that a few Days after that, the Deponent was deſired by the Sheriff-Subſtitute of *Forfarſhire*, to go to *Eaſtmiln* to inſpect the Corpſe of the Defunct: That the Deponent forthwith obeyed their Order, and arrived at *Eaſtmiln* upon the twelfth of *June* laſt, about Noon: That upon his Arrival, *Alexander Ogilvie*, the Defunct's Brother, deſired the Deponent to go and inſpect the Corpſe, which were then lying in an Outhouſe: That he found the Corpſe in its Grave-cloaths, and in a Coffin; and having inſpected the Body, he obſerved, that the Face, the Arms, and ſeveral other Parts of the Body, were black and livid, and that the Nails were remarkably black; and as to the Tongue, it was locked faſt by the Jaws, ſo that he could only obſerve a ſmall Part of it, which projected beyond the Teeth, which Part being the Tip of the Tongue, he obſerved to be white and rough, and of a very unuſual Appearance: That the Breaſt was white, and the Lips pretty much of a natural Colour: That from the Appearances above deſcribed, he could draw no Concluſion as to the Cauſe of the Defunct's Death; as almoſt all theſe Appearances might have ariſen from the putrid State the Body was then in; and that the only Thing that appeared extraordinary to him, was the Appearance of the Tongue above deſcribed: That the Deponent had ſome Inclination to have opened the Body, and if the two Surgeons, who he heard had left *Eaſtmiln* that Morning, had been there, he believes he might have done ſo; but as they were gone, and as the Deponent, in his own Opinion, thought the Body too much putrefied, to be opened with Safety to the Operator; and as he was likewiſe of Opinion, that in ſuch a State of Putrefaction, no certain Signs could have been diſcovered of the Cauſe of the Death by opening the Body, the Deponent declined to do it. Depones, That the Appearance of the Tongue before deſcribed, was not ſuch as happens in common Deaths, but ſuch as occurs from Convulſions, or other ſtrong Cauſes. Depones, That Lieutenant *Ogilvie*, the Pannel, neither deſired nor forbid the Deponent to inſpect the Corpſe; but he was preſent with the Deponent when he inſpected them as aforeſaid. *Cauſa ſcientiæ patet.* And this is the Truth, as he ſhall anſwer to God.

(Signed) John Ogilvie. And. Pringle.

Robert Smith, Surgeon in *Edinburgh*, aged fifty Years and upwards, a Widower, who being ſolemnly ſworn, purged of Malice and partial Counſel, and examined, depones, That he had once Occaſion to attend a Patient, being a Woman, near *Ormiſton*, who had got Arſenick and died of it, as the Deponent verily believes: That the Deponent went and ſaw the Woman about two Hours after ſhe had taken the Arſenick in ſome Pottage, as ſhe told him: That the Deponent, when he came, found her ſeized with a violent Vomiting and a Purging: That ſhe complained of a burning Heat in her Stomach and Bowels, and had a great Thirſt, and drank frequently of Milk and Water: That the Deponent, after ſtaying ſome Time with her, went away, and after a few Hours, returned to her again, when he was informed, the before-mentioned Symptoms had continued upon her, that is to ſay, the Vomiting, Purging, Pain, and Drought: That ſhe ſoon thereafter died, having lived, as the Deponent thinks, about nine Hours after ſhe took the Arſenick. Depones, That the Deponent next Day inſpected the dead Body of the foreſaid Woman, and could diſcover nothing externally upon the Body different from the Appearances after a natural Death; but that, upon opening the Body, he diſcovered the Stomach and Guts to be red and inflamed, and the Stomach appeared to be gangrened, and in Parts of the Stomach he diſcovered ſome Arſenick. Depones, That at the Time the Woman had received the Arſenick, as above deponed, a Child had likewiſe taken a Spoonful or two of the Pottage, which occaſioned the Child to vomit, and thereby throw up the Arſenick, as he believes, ſo that the Child recovered. Being interrogate for the Pannels, depones, That a Perſon may be ſeized with a Vomiting, internal Pain and Drought, without having received Arſenick; as theſe Symptoms may occur in a bilious Colick and other Caſes. *Cauſa ſcientiæ patet.* And this is the Truth, as he ſhall anſwer to God.

(Signed) Robert Smith. And. Pringle.

George Campbell, Sheriff-Subſtitute of *Forfar*, aged ſeventy and upwards, *ſolutus*, who being ſolemnly ſworn, purged of Malice and partial Counſel, and examined, depones, That upon looking at the two Declarations now exhibited to him, emitted before him by Mrs. *Ogilvie* the Pannel, and other two by *Patrick Ogilvie* Pannel, that all theſe were emitted freely before him, and faithfully taken down from their own Mouths, and ſubſcribed by them before the Deponent. And alſo, that the Deponent's Name adjected thereto, is his Subſcription. Depones, That he, as Sheriff-Subſtitute of the County of *Forfar*, went to *Eaſtmiln* upon the firſt of *July* laſt, in order to ſearch for Papers or Letters belonging to any of the Pannels: He the Deponent did find in a Trunk, or Drawer, he cannot ſay which, the Letter now exhibited to him, marked by his Hand, and that of *John Ure* his Clerk, on the Day aforeſaid. And another Letter being exhibited to him, without Date or Subſcription by the Writer thereof, and with a Docquet on the Back, ſigned *George Spalding*, and another Docquet below, ſigned *Anne Clark* and *Alexander Boſwell*, depones, That to the beſt of his Memory, he thinks he received the ſaid Letter incloſed in one wrote by *Alexander Ogilvie*, the Pannel's Brother, addreſſed to the Deponent. And a third Letter being exhibit to him, ſigned *Ketty Nairn*, with a Docquet on the Back, ſigned

Anne

Anne Clark, Alexander Boſwell, depones, That he found the ſaid Letter in one of the Repoſitories at *Eaſtmiln*, when he made the Search above-mentioned. *Cauſa ſcientiæ patet.* And this is Truth, as he ſhall anſwer to God.

(Signed) GEO. CAMPBELL. GILB. ELLIOT.

JOHN URE, Sheriff-Clerk of *Forfar*, aged forty Years, married, being ſolemnly ſworn, purged of Malice and partial Counſel, and interrogate, depones, That the four Declarations now exhibited to him, two by Mrs. *Ogilvie* Pannel, and two by *Patrick Ogilvie* Pannel, were all freely emitted before the preceding Witneſs, and in Preſence of the Deponent, and all ſigned by him the Deponent, by the Sheriff-Subſtitute *George Campbell*, and the Pannels. *Cauſa ſcientiæ patet.* And this is the Truth, as he ſhall anſwer to God.

(Signed) JOHN URE. GILB. ELLIOT.

The three Letters and four Declarations before deponed to were read to the Court and Jury, and of which the Tenor follows:

FIRST LETTER.

Dr Captain

I was ſorrie I miſſed you this Day. I ſat at the Water-Side a long Time this Forenoon; I thought you would have comed up here; if you had as much Mind of me as I have of you, you would have comed up, tho' you had but ſtayd out-by as there was no Uſe for that, there is more Rooms in the Houſe then one. God knows the Heart that I have this Day and inſtead of being better its worſe, and not in my Power to help it. You are not minding the Thing that I ſaid to you, or you went out here and what I wrote for. Meat I have not taſted ſince Yeſterday Dinner, nor wont or you com here, tho' I ſhould never eat any it lyes at your Door. Your Brother would give any thing you would come, for God's ſake come.

SECOND LETTER.

Dr Sr

I received yours juſt now; I am very glead to hear that you went ſafe home, no thing could give me greater Pleaſure then to here of you being well; Mrs. *Spaden* was ſafley delivert of a Daughter laſt Night, and is in a very good Way; Mr. *Spaden* thought it needles to write you as I have wrote you: As for that you write me about any body clattring any Noncens you need not be afraid of that about any thing, for I am determind not to mind any thing; We ſhall ſend to you when *Willie* and *Chairtle* comes up, but in the mean time I think you may ſend one *Sunday* to ſee and to let us here how you are; the Pain will not write for me: I have no more Time to write, but my beſt Reſpects to your Mother is all from Dr Sr

yours while

Glenkilrie Weenſday. KETTY NAIRN.

THIRD LETTER.

Dr Sr

I recved yours, and as you propoſe coming this Day eight Days, Mr. *Spalding* thinks it proper that hi runs an Expreſs to *Edinburgh* to my Uncle, which I think very right, and till you heare the Conſequance thereof, I think you better not truſt any Writer, which you ſhall hear the Moment the Expreſs comes back; as I ſee you mean nothing but what is genteel, you may expect nothing elſe at my Hand, and tell wee ſee you heare is all with Compts to you and Feamily

Dr Sr

Glenkilry your moſt humble Servt

Jany 4. 1765. KETTY NAIRN.

Addreſſed on the Back, *To Thomas Ogilvy Eſq. of Eaſtmiln.*

FIRST DECLARATION by KATHARINE NAIRN.

Forfar, 14 *June*, 1765. In Preſence of *George Campbell*, Eſq. Sheriff-Subſtitute,

Compeared KATHARINE NAIRN, lawful Daughter of the deceaſed Sir *Thomas Nairn* of *Dunſinnan*, Baronet, and Relict of the deceaſed *Thomas Ogilvie* of *Eaſtmiln*, who being examined, declares, That Lieutenant *Patrick Ogilvie* was at *Eaſtmiln* when ſhe was married to his Brother, and continued there as his proper Reſidence till within theſe three or four Weeks, when he left ſame, as his Brother and he did not agree. That the Evening *Patrick Ogilvie* left *Eaſtmiln*, the Declarant wrote him a Letter, which ſhe ſent by *Elizabeth Sturrock*, one of the Maid-ſervants, to *Little Forther*, as ſhe was going there, at leaſt about a Gun-ſhot from *Little Forther*, for ſome Whiſky from one *Robert Eaſſon*. Declares, That ſhe did not write any Letter to ſaid *Patrick Ogilvie* when at *Glenkilrie*, nor to be ſent him to one *John Spalding*'s, nor to *Glenkilrie*. Declares, That on *Tueſday* before her Huſband's Death ſhe was ſending ſaid *Elizabeth Sturrock* to *Alyth* with ſome Yarn, when ſhe wrote a Letter by her to deliver to ſaid *Patrick Ogilvie* relative to ſome of his Shirts ſhe had been mending to him, and the Letter was directed to the Care of *Andrew Stewart*, and that ſhe got no Return by *Elizabeth Sturrock*; but that next Day ſhe got a Return to her Letter by ſaid *Andrew Stewart*, a Merchant in *Alyth*, who was coming to *Eaſtmiln* however, and that it was the Afternoon of the Day before her Huſband died. That *Andrew Stewart*, beſide the Letter, brought her two Doſes of Salts, and a ſmall Phial Glaſs with a little Laudanum; and that the Letter was but a Quarter of a Sheet of Paper, containing moſtly Directions about the Salts, and how much of the Laudanum to take; but whether the Letter was open or ſealed ſhe does not remember. That before *Patrick Ogilvie* left his Brother's Houſe, ſhe aſked him, any Time he was at *Alyth*, to buy for her and ſend to *Eaſtmiln* two Doſes of Salts and a little Laudanum, as ſhe ſlept very ill: That when *Andrew Stewart* delivered the Letter, ſhe read ſame, being only a Direction as above, and after laid the Salts and Laudanum into a Drawer, till ſhe ſhould uſe ſame; and that ſhe took one of the Doſes of Salts on the *Friday* after her Huſband's Death, and the other on the *Saturday*; and on the *Sunday* and the *Monday* Nights ſhe took Laudanum each Night, and as ſhe did not uſe the whole Laudanum, ſhe delivered back the Glaſs, and the Remainder of Laudanum, to the ſaid *Patrick Ogilvie* on his Return to *Eaſtmiln*, after his Brother's Death. That on *Thurſday* Morning the ſixth of *June*, her Huſband being diſtreſſed the Night before, and many Days preceding; and that Morning he complained of a Shortneſs of Breath, and that through the Night he had been diſtreſſed with it; ſhe therefore gave him his Tea in his Bed; and that when the reſt of the Family were at their Tea, ſhe filled up a Bowlful for her Huſband, which, with a Bit of hard Biſket from *Dundee*, ſhe carried ſtraight from the low Room, where they were at Breakfaſt, up Stairs to her Huſband's Room, and gave him; and that ſhe took the Biſket out of a Baſket ſtanding on a By-table in the Room, aſide the Family then ſitting at Breakfaſt; but that ſhe did not go into any Cloſet with the Tea, before giving it to her Huſband: That ſhe never heard from her Huſband, nor any Perſon elſe, that he blamed the Tea for his Illneſs. Declares, That *Elizabeth Sturrock* got ſo much of the Tea Mr. *Ogilvie* left, as he did not drink it out, and alſo got another Bowl of Tea after, both which ſhe gave her out of her own Hands. And this ſhe declares to be Truth.

KETTY OGILVIE. GEO. CAMPBELL. JOHN URE, Clk.

SECOND DECLARATION by KATHARINE NAIRN.

Forfar, 15 *June*, 1765. In Preſence of the ſaid *George Campbell*, Eſq. Sheriff-Subſtitute,

Compeared the ſaid KATHARINE NAIRN, alias OGILVIE, who being re-examined, declares, That before the Lieutenant left *Eaſtmiln*, ſhe heard him ſay that he had both Salts and Laudanum in a Cheſt that he brought from the *Eaſt-Indies*, and that ſhe ſaid ſhe would be obliged to him for a little of the Salts and Laudanum, as ſhe had much Need thereof.

KETTY OGILVIE. GEO. CAMPBELL. JOHN URE, Clk.

FIRST DECLARATION by PATRICK OGILVIE.

Forfar, 14 *June*, 1765. By *George Campbell*, Eſq. Sheriff-Subſtitute of *Forfarſhire*.

Compeared Lieutenant PATRICK OGILVIE, of the Eighty-ninth Regiment of Foot, who being examined, declares, That ſo far as he remembers, he came to this Country from Abroad in *January* laſt, and that his principal Reſidence was at the *Eaſtmiln* of *Glenyila*, his Brother *Thomas Ogilvie*'s Houſe, and that he left that Place about three Weeks ago. That the Reaſon he left it, was on account of ſome Dryneſs betwixt his Brother and him, occaſioned by ſome Surmiſes or Reports in the Country; but though theſe had not happened, he was determined not to ſtay longer about his Brother's. That ſince leaving ſame he has had no fixed Reſidence, but has been going about ſeeing his Friends and old Acquaintances. Declares, That Evening he left his Brother's Houſe, he went to Mr. *Shaw*'s Houſe at *Little Forther*, and when walking by the Water-ſide there with *George Shaw*, *Elizabeth Sturrock*, a Servant of his Brother *Thomas Ogilvie*'s, brought him a Letter from Mrs. *Ogilvie* his Brother's Lady, the Contents of which were deſiring him to return to his Brother's Houſe; and that he ſent a verbal Meſſage, he was not to return at that Time, as he then intended going the Length of Baron *Reid*'s on a Viſit. Declares, That the next Day, when at *Little Forther*, he received another Letter from his Brother by *James Millam*, the Contents of which were to the ſame Purpoſe as Mrs. *Ogilvie*'s, which *James Millam* knew. That ſome Days after, when at *Glenkilrie*, he received another Letter from ſaid Mrs. *Ogilvie*; but who was the Bearer of it he does not remember, nor does he remember if he wrote any Anſwer to that Letter. Declares, That he was in *Alyth* the *Tueſday* before his Brother's Death, when he received a third Letter from Mrs. *Ogilvie* by the aforeſaid *Elizabeth Sturrock*, but to which he returned no Anſwer in Writing. That the ſaid Evening of *Tueſday*, he gave to *Andrew Stewart*, Merchant in *Alyth*, his Brother-in-Law, a ſmall open Note, by way of Wrapper or Direction round a ſmall Phial Glaſs in which were ſome Drops of Laudanum, and in the Wrapper two Doſes of Salts folded cloſe by the Glaſs; and that the Write in the Note or Wrapper properly contained Directions for Mrs. *Ogilvie* how to uſe the Laudanum, and, ſo far as he remembers, was to take fourteen or fifteen Drops at a Time. That all this he told to *Andrew Stewart*, and that it was for Mrs. *Ogilvie*'s own proper Uſe, and to deliver it to Nobody elſe; but did not deſire him to do it privately, or to let Nobody ſee him deliver it, only deſired him to be ſure to deliver it to herſelf. Neither did he deliver a ſealed Letter to *Andrew Stewart* at the Time for Mrs. *Ogilvie*. That the ſaid Laudanum and Salts he brought from the *Eaſt-Indies* with him, as a Remainder of what he uſed when his Health was bad there, and on his Paſſage home, having done the ſame by his Surgeon's Directions both at Land and Sea. And this he declares to be Truth.

PAT. OGILVIE. PATRICK ORR, Clk.
GEO. CAMPBELL. JOHN URE, Witneſs.

SECOND DECLARATION by PATRICK OGILVIE.

Forfar, 15th *June*, 1765. By *George Campbell*, Eſq. Sheriff-Subſtitute.

Compeared the ſaid Lieutenant PATRICK OGILVIE, who, being re-examined, declares, That it conſiſts with his Knowledge, that of the Laudanum he ſent as mentioned in his laſt Declaration, there was not above thirty Drops or Gutts of it uſed, ſo far as he can recollect, from the Quantity he ſent, and what remained in the Phial Glaſs the Day after his Brother's Death. That the Declarant came to *Eaſtmiln*, when Mrs. *Ogilvie* returned him the Glaſs, and the Remainder of Laudanum therein, and which he inſtantly produces, and is immediately ſealed up with the Declarant's own Seal, and lodged in the Sheriff-Clerk's Office. And that when the Declarant delivered the Glaſs to *Andrew Stewart*, he ſhook the ſame to him, and ſhewed him betwixt him and the Light the Quantity of Laudanum therein, who, upon looking at the ſame juſt now, muſt be ſenſible that there is no more out thereof than about the Quantity of thirty Gutts as above; and that Mrs. *Ogilvie* told him ſhe had uſed about that Quantity, and alſo made uſe of the Salts. Declares, That within theſe two Weeks he was at the Town of *Brechin*, and in Company with *James Carnegie*, Surgeon of that Place, but that he received from him no Laudanum or any other Medicine whatever. That when he was at *Alyth*, in the Courſe of Converſation

verſation with Mrs. *Ogilvie*, he happened to ſay that he had ſome Salts and Laudanum, that he uſed when at the *Eaſt-Indies*, in his Cheſt at *Dundee*, which would be very ſoon at *Alyth*; when Mrs. *Ogilvie* deſired to have ſome of both Salts and Laudanum, as it might give her Reſt when uneaſy, and could not procure Sleep. And this he declares to be Truth.

PAT. OGILVIE.
GEO. CAMPBELL.
PATRICK ORR, Clk.
JOHN URE, Witneſs.

Mr. JAMES BALFOUR of *Pilrig*, Sheriff-Subſtitute of the Shire of *Edinburgh*, aged fifty and upwards, married, who being ſolemnly ſworn, purged of Malice and partial Counſel, examined, and interrogate; and two Declarations or Examinations being now exhibited to the Deponent, depones, That, at the Deſire of the Lord Advocate, the Deponent, upon the twenty-ſecond of *June* laſt, went to the Laigh Council-houſe of *Edinburgh*, where *Patrick Ogilvie* Pannel being brought before him for Examination, depones, That the Declaration now exhibited to him, ſigned by the Deponent and the ſaid *Patrick Ogilvie* Pannel, is what was emitted by the Pannel before the Deponent at that Time: That, on the *Monday* thereafter, the Deponent, at my Lord Advocate's Deſire, went to the *Tolbooth* of *Edinburgh*, in order to examine *Katharine Ogilvie* the other Pannel. The Paper now exhibited to him, and ſigned by him before *William Dunbar* and *John Stewart*, both Writers in *Edinburgh*, Witneſſes ſubſcribing thereto, contains a faithful Narrative of what paſſed on that Occaſion. *Cauſa ſcientiæ patet.* And this is Truth, as he ſhall anſwer to God.

(Signed) JA. BALFOUR.
GILB. ELLIOT.

WILLIAM DUNBAR, Writer in *Edinburgh*, aged twenty-four, unmarried, who being ſolemnly ſworn, purged of Malice, partial Counſel, examined, and interrogate, depones, That the Examination of *Patrick Ogilvie* Pannel, mentioned in the Depoſition of the preceding Witneſs, was emitted in the Deponent's Preſence, and he ſaw the ſaid Pannel and the Sheriff-Subſtitute ſubſcribe the ſame. Another Paper being exhibited to him, containing what paſſed on the Examination of Mrs. *Ogilvie* Pannel, by Mr. *James Balfour*, Sheriff-Subſtitute of the Shire of *Edinburgh*, in the *Tolbooth* thereof, depones, That the ſaid Paper contains a faithful Account of what paſſed on that Occaſion; and that the Deponent is a ſigning Witneſs to the ſaid *James Balfour*'s Subſcription thereto annexed. *Cauſa ſcientiæ patet.* And this is Truth, as he ſhall anſwer to God.

WILL. DUNBAR. GILB. ELLIOT.

The two Papers before deponed to were read to the Court and Jury, and the Tenor thereof follows:

Edinburgh, the twenty-ſecond Day of *June*, One thouſand ſeven hundred and ſixty-five Years.

In preſence of Mr. *James Balfour* of *Pilrig*, Sheriff-Subſtitute of the Shire of *Edinburgh*, *Compeared* PATRICK OGILVIE, late of Colonel *Morris*'s Regiment; and being interrogate, Whether he ſent any Salts to Mrs. *Ogilvie* of *Eaſtmiln*, his Siſter, or any Medicine, or any Thing wrapt up in a Paper? Refuſes to anſwer this Queſtion.

Being interrogated, Whether he was in uſe to take Laudanum and purging Salts in one and the ſame Day for his Health? Anſwers, That he was not.

Being interrogated, Whether he had in his Poſſeſſion a Bottle of Laudanum during his Voyage Home from the *Eaſt-Indies*? He refuſes to anſwer this Queſtion.

Being interrogated, How many Gutts or Drops of Laudanum he was in uſe to take at a Doſe? He refuſes to anſwer this Queſtion.

Being interrogated, Whether Laudanum was in uſe to bind or looſe him while at Sea? He refuſes to anſwer this Queſtion.

Being interrogated, What was the Bulk of each Doſe of Salts he took? Refuſes to anſwer this Queſtion.

Being interrogate, Whether he ſent a Bottle to the ſaid Mrs. *Ogilvie* by the Hands of *Andrew Stewart*? and whether he told *Andrew Stewart* that there were Salts along with the Bottle? Refuſes to anſwer this Queſtion.

Being interrogated, What was the Nature of the Surmiſes and Reports, which occaſioned a Dryneſs betwixt him and his Brother *Eaſtmiln*? He refuſes to anſwer this Queſtion.

Being interrogated, What were the Contents of any Letters ſent to him by the ſaid Mrs. *Ogilvie*, after that the Declarant had left his Brother's Houſe this Summer? and what were the Contents of the Anſwers he made to them? Refuſes to anſwer this Queſtion.

Being interrogated, When he firſt heard of his Brother's Illneſs, and from whom? Refuſes to anſwer this Queſtion.

Being interrogated, Whether he had any Converſation with his Mother, or any of the Family, or in the Family, as to the Nature of his Brother's Diſtemper, or Cauſe of his Death? Refuſes to anſwer this Queſtion.

Being interrogated, Whether he ſlept in the Houſe of *Eaſtmiln* after his Brother's Death? for how many Nights, in what Room, and who ſlept in the Room with him? He refuſes to anſwer any of theſe Queſtions.

Being interrogated, In what Room the ſaid Mrs. *Ogilvie* ſlept during the Nights between the Death and Burial of her Huſband? He refuſes to anſwer this Queſtion.

Being interrogated, Whether he did ever ſend for any Medicines from one *Dougal*, a Surgeon in *Kerriemuir*? or did ever hear any body ſend for any Medicines from him? He refuſes to anſwer this Queſtion.

Being interrogated, Whether he has had any Converſation with any of his Brother's Servants concerning the Circumſtances which happened on the Day of his Brother's Death? He declines anſwering this Queſtion.

Being interrogate, Whether, while he was in the Priſon of *Forfar*, he ſent any Meſſages by Word or Writing to the ſaid Mrs. *Ogilvie*? He refuſes to anſwer this Queſtion.

Being interrogated, Whether he is acquainted with one Mr. *Carnegie*, a Surgeon in *Brechin*? or whether he ever bought any Medicines or Poiſon from the ſaid Mr. *Carnegie*? He refuſes to anſwer this Queſtion.

Being interrogate, Whether he recollects what Time his deceaſed Brother was married? Anſwers, He does not recollect juſt now.

Being interrogated, Whether he the Declarant was preſent at the Marriage? Anſwers, That he was.

Being interrogated, Whether he was acquainted with the ſaid Mrs. *Ogilvie* before her Marriage with his Brother? Anſwers, That he was not.

Being interrogated, Whether he abſolutely refuſes to anſwer the above Queſtions, which it is ſaid above he refuſes, or declines to anſwer? or whether he declines at preſent to anſwer them? He now anſwers, That he abſolutely refuſes to anſwer them To-night; but he does not know, whether he may hereafter anſwer ſome of them or not.

And being interrogated, Whether he inclines to give any Reaſon for this Refuſal? Anſwers, That he does not think it neceſſary to give any Reaſons.

This Declaration and Anſwers were emitted in Preſence of *William Dunbar* and *William Campbell*, Writers in *Edinburgh*.

PAT. OGILVIE. JA. BALFOUR.

At *Edinburgh*, the twenty-fourth Day of *June*, One thouſand ſeven hundred and ſixty-five Years.

In Preſence of Mr. *James Balfour* of *Pilrig*, Advocate, Sheriff-Subſtitute of this Sheriffdom of *Edinburgh*, *Compeared* Mrs. KATHARINE NAIRN, Widow of the deceaſed *Thomas Ogilvie* of *Eaſtmiln*; and a Copy of two ſeveral Declarations emitted by her, upon the fourteenth of *June* inſtant, before *George Campbell*, Eſq; Sheriff-Subſtitute of *Forfar*, and ſubſcribed of this Date by the ſaid Mr. *James Balfour*, being read over to her, ſhe was aſked, If there was any Thing in the ſaid Declarations which ſhe now deſired to correct or alter? She refuſed to anſwer this or any other Queſtion put to her, having been ſo adviſed by her Friends and Counſel: And the following Queſtions were ſeparately put to her.

In what Drawer and in what Room in the Houſe did ſhe put the Medicines and Letter which were delivered to her by *Andrew Stewart*, the Day before her Huſband's Death?

Did ſhe read the Letter? What were the Contents? Has ſhe the Letter? or how has ſhe diſpoſed of it?

By whoſe Advice did ſhe order the above Medicines to be ſent to her?

What was her Ailment? Did ſhe mention ſuch Ailment to any in the Family? Did ſhe mention her Ailment to Lieutenant *Ogilvie*? If ſhe did, how came ſhe to take his Advice about her Health?

Did ſhe ſleep with her Huſband the Night before his Death? When did ſhe firſt ſee and ſpeak to him next Morning, the ſixth of *June*?

Was ſhe in uſe to give him Tea in his Bed? Did he deſire Tea that Morning? Did any body ſee her make the Tea and fill the Bowl for her Huſband? Did ſhe carry up the Tea from the Place where it was made ſtraight to his Room? Did he refuſe or ſhew any Unwillingneſs to take it? Did ſhe give any of the Tea which her Huſband had drank to any other Perſon?

Did any body propoſe ſending for a Surgeon when her Huſband was taken ill? Did ſhe oppoſe the Surgeon being ſent for? And what was the Reaſon for ſo doing?

Where did ſhe ſleep from the Time of her Huſband's Death, till the Time of her Commitment to the Priſon of *Forfar*?

Where did Lieutenant *Ogilvie* ſleep during that Time?

How many Letters did ſhe write to Lieutenant *Ogilvie* from the Time he was diſmiſſed from her Huſband's Family? If ſhe ſent any Letters, mention how many, by whom ſent, and to what Places ſent, and what were the Contents, and what Anſwers ſhe received. Does ſhe know what is become of theſe Letters and Anſwers?

To all and each of which Queſtions, put ſeparately to her, ſhe refuſed to give any Anſwer. And further refuſes to adhibite her Subſcription hereto.

In Witneſs whereof, the ſaid Mr. *James Balfour*, *William Dunbar*, Writer in *Edinburgh*, and *John Stewart*, Writer there and hereof, have adhibited their Subſcriptions, Time and Place foreſaid.

(Signed) JA. BALFOUR.
WILLIAM DUNBAR, Witneſs.
JOHN STEWART, Witneſs.

JAMES M'KENZIE, Seſſion-Clerk of *Glenylla*, aged forty Years, married, who being ſolemnly ſworn, purged of Malice and partial Counſel, examined, and interrogate, depones, That ſome Time after the late *Eaſtmiln*'s Death, the Deponent was in the Houſe of *Eaſtmiln*, where *Alexander Ogilvie*, Brother of the late *Eaſtmiln*, likewiſe was: That he ſaw the ſaid *Alexander Ogilvie* have ſeveral Papers in his Hand, one of which, he ſaid, he was to ſend to *Forfar*, as it might be Evidence againſt Mrs. *Ogilvie* the Pannel; and that the Deponent looked at that Paper, and ſaw that it was in the Form of a Letter without a Subſcription; but the Deponent did not read it, nor hear it read: And a Letter libelled upon, beginning *Dr Captain*, and indorſed on the Back by the Names of *George Spalding* and *George Campbell*, being now exhibited to the Deponent, he depones, That he cannot now ſay poſitively whether or not that is the Letter ſhewn to him by *Alexander Ogilvie* as aforeſaid; but thinks it is like it. *Cauſa ſcientiæ patet.* And this is Truth, as he ſhall anſwer to God. (Signed) JA. M'KENZIE. AND. PRINGLE.

JAMES MILLAM, Tackſman of the *Eaſtmiln* of *Glenylla*, aged thirty-ſix Years, married, and being ſolemnly ſworn, purged of Malice and partial Counſel, examined, and interrogate, depones, That, during the late *Eaſtmiln*'s Illneſs, upon that Day on which he died, the Deponent was ſometimes in the Room with him, particularly about Two o'Clock in the Afternoon, when the Deponent aſked the late *Eaſtmiln*, How he was? To which *Eaſtmiln* anſwered, That he was very ill: And the Deponent further aſked him, What he thought was the Matter with him? To which *Eaſtmiln* anſwered, *I am gone*, James, *with no leſs than rank Poiſon! Cauſa ſcientiæ patet.* And this is the Truth, as he ſhall anſwer to God. (Signed) JAMES MILLAM. AND. PRINGLE.

GEORGE SPALDING of *Glenkilrie*, aged thirty and upwards, who being ſolemnly ſworn, purged of Malice and partial Counſel, examined, and interrogate,

interrogate, depones, That he is married to a Sister of Mrs. *Ogilvie* the Pannel, and has had frequent Occasion of seeing Mrs. *Ogilvie*'s Hand-writing; and a Letter, without a Subscription, beginning D^r *Captain*, and indorsed on the Back by the Subscriptions of *George Spalding* and *George Campbell*, being exhibited to the Deponent, he depones, That he thinks that Letter is of the Hand-writing of Mrs. *Ogilvie* the Pannel; but cannot be quite positive, as he has seen her write sometimes better, and sometimes worse, according as her Pen was. *Causa scientiæ patet.* And this is Truth, as he shall answer to God.

(Signed) GEO. SPALDING. AND. PRINGLE.

ALEXANDER LINDSAY, late Servant to the deceased *Thomas Ogilvie* of *Eastmiln*, aged twenty-one, unmarried, who being solemnly sworn, purged of Malice and partial Counsel, examined, and interrogate, depones, That he came to be a Servant at *Eastmiln* about Six o'Clock of the Morning of that Day on which *Eastmiln* died: That, about Nine o'Clock that Morning, he saw Mrs. *Ogilvie* the Pannel standing in a Closet up Stairs between the two Bed-rooms: That the Deponent was going up to the Garret to take down a Wheel: That the Door of the Closet was open; but the Deponent did not go into the Closet; and that he did not then observe any Thing that Mrs. *Ogilvie* was doing, nor that she had any thing in her Hand; and that, when the Deponent went up to the Garret, Mrs. *Ogilvie* called up to him not to walk over the Closet for fear of shaking down something. Depones, That when he was in the Garret, he saw *Anne Sampson* standing at the Stair-head, near the Closet where Mrs. *Ogilvie* was. *Causa scientiæ patet.* And this is Truth, as he shall answer to God.

(Signed) ALEX. LINDSAY. AND. PRINGLE.

His Majesty's Advocate declared he concluded his Proof.

The following Witnesses were adduced by the Pannels, for proving their Exculpation.

LIST of WITNESSES summoned for KATHARINE NAIRN.

The Witnesses so marked * were examined.

1 * *George Spalding* of *Glenkilrie.*
2 *Andrew Stewart*, Merchant in *Alyth.*
3 *Martha Ogilvie* his Wife.
4 Lieutenant *George Campbell*, late of the 89th Regiment of Foot, at *Phinhaven.*
5 *Patrick Dickson*, Merchant in *Brechin.*
6 *Colin Smith*, Vintner there.
7 *James Rattray* of *Kirkhillocks.*
8 *Anne Robertson* his Wife.
9 *Alexander Lindsay*, late Servant to the said deceased *Thomas Ogilvie* of *Eastmiln.*
10 * *George Campbell*, Esq. Sheriff-Substitute of the County of *Forfar.*
11 *John Ure*, Sheriff-Clerk of *Forfar.*
12 *Fergus Fergusson*, in *Kirkton* of *Glenylla.*
13 * *Margaret Kait* his Wife.
14 * *James Millam*, Tacksman of the *Eastmiln* of *Glenylla.*
15 *David Spalding* of *Whitehouse.*
16 *Isobel M^cKenzie*, Widow of the deceased *Thomas Ogilvie* sometime of *Eastmiln*, and Mother of the said last deceased *Thomas Ogilvie* of *Eastmiln.*
17 *David Watson*, Miller at *Eastmiln* of *Glenylla.*
18 *Thomas Farquharson*, eldest Son of *Paul Farquharson* of *Persie.*
19 *John Farquharson* at *Formall.*
20 *Gilbert Ramsay*, Surgeon in *Coupar* of *Angus.*
21 * *Jean Wallace*, Servant to *George Spalding* of *Glenkilrie.*
22 * *John Paterson*, Son of *James Paterson*, in *Clocknocater* in *Glenylla.*
23 *Andrew Paterson*, also Son of said *James Paterson.*
24 * *Margaret Paterson*, Daughter to the said *James Paterson.*
25 *Katharine Fergusson*, Daughter of *Fergus Fergusson*, in *Kirkton* of *Glenylla.*
26 *James M^cKenzie*, Schoolmaster at *Glenylla.*
27 *James Dougal*, Surgeon in *Kerriemuir.*
28 * *Elizabeth Fergusson*, Spouse to *John Bresack*, Portioner of *Invercarity.*
29 *Alexander Robertson* at *Binzean.*
30 *Alexander Ramsay* at *Bridge-end* of *Lintrathen.*
31 *Janet Irons*, Spouse to *William Glass* at *Burnside* of *St. Martin's.*
32 * *Isobel Douglas*, at *Wardhead* of *Formall.*
33 Mr. *James Warden*, Schoolmaster at *Alyth.*
34 *Patrick Ramsay* at *Achmuir.*
35 * *Thomas Jack*, Tenant in *Kirkton* of *Glenylla.*
36 *Thomas Ogilvie*, in *Little Kenny.*
37 *John Ramsay* of *Kinalty.*
38 *James Manson*, Servant to *Collin Smith*, Vintner in *Brechin.*
39 *Thomas Morgan*, Vintner in *Dundee.*
40 *Helen Knight*, his Servant.
41 *Helen Sinclair*, Spouse to *Robert Dow* in *Dundee.*
42 *Charles Farquharson*, Watchmaker there.
43 *Patrick Ogilvie*, Shipmaster there.
44 *James Kay* junior, Mariner there.
45 *James Dickson*, Stabler at *Cowgate-Head* of *Edinburgh.*
46 *Robert Heron*, Shoemaker there.
47 *John Gardiner*, Stabler there.
48 *Gardiner*, his Wife.
49 *Anne Younger*, Spouse to *Charles Ramsay*, Barber in *Edinburgh.*
50 *David Murray*, Stabler there.
51 *Joseph Baron*, Porter at the Foot of *Merlin's-Wynd*, *Edinburgh.*
52 *Christian Ogilvie*, his Wife.
53 *Andrew Murison*, Macer to the Court of Justiciary.
54 *Murison*, his Wife.
55 *Robert Gibb*, Coachmaster in *Cannongate-Head.*
56 *Mary Dallas*, his Wife.
57 *Thomas Miller* of *Barskimming*, Esq. his Majesty's Advocate.
58 *John Davidson*, Writer to the Signet.
59 Mrs. *Hay*, Widow of *Cuthbert* of *Castlehill.*
60 *Donald Farquharson*, Cadie or Council-post, and Resident in *Edinburgh.*
61 *John Laing*, Journeyman-Wright, Foot of *Old Assembly-Close*, *Edinburgh.*
62 *Francis Shaw*, Carpenter, Son of *Duncan Shaw* at *Cortachie.*
63 *Robertson*, Son of *John Robertson* of *Cray.*
64 *Farquharson*, Wife of *Wallace*, Porter and Inndweller in *Edinburgh.*
65 *John Farquharson*, some time in *Sheithie*, now in Ground of *Dirie.*
66 *Elizabeth Sturrock*, late Servant to the deceased *Thomas Ogilvie* of *Eastmiln.*
67 *Anne Sampson*, late Servant to the said deceased *Thomas Ogilvie.*
68 Dr. *Robert Menzies*, Physician in *Coupar* in *Fife.*
69 *Moir*, Wife of the said Dr. *Robert Menzies.*
70 *Hay*, Relict of *Bruce* of *Bunzean.*
71 *George Rodger*, Sawyer of Timber in *North Leith.*
72 *John Rodger*, his Son.
73 Mrs. *Sarah Young*, late Boarding-mistress in *Edinburgh*, now in —.
74 *James Rattray*, Porter or Workman in *Edinburgh.*
75 *Margaret Spalding*, his Spouse.
76 *Anne Rattray*, Spouse to *Alexander Ogilvie*, Brother to the said deceased *Thomas Ogilvie* of *Eastmiln.*
77 *Thomas Black*, late Surgeon in *Dundee*, now in *Perth.*
78 Mr. *James Hill*, Preacher of the Gospel, residing at *Wester Gowrdie.*
79 *John Sword*, Merchant in *Edinburgh.*
80 *John Ballantyne* in *Kirkton* of *Glenylla.*
81 *John Shaw*, Tenant in *Downie.*
82 *James Rob*, Tenant in *Tullich.*
83 *John Farquharson* at *Dykehead*, in Ground of *Dirie.*
84 * *James Scott*, late Druggist in *Edinburgh*, now in *Alloa.*
85 Dr. *James Christie*, late of *Keith.*
86 *George Jaffray*, Writer in *Edinburgh.*
87 *James Smith*, Writer in *Edinburgh.*
88 *Anne Cameron*, Spouse to *Alexander M^cGregor*, Stabler there.
89 *Henry Walker*, late Servant to *Peter Fyfe*, Stabler in *Edinburgh.*
90 *Jean Haig*, Widow of *John Allan*, Baker in *Edinburgh.*
91 *Charles Stewart*, Taylor in *Edinburgh.*
92 *John Armstrong*, Writer there.
93 *Francis Carlyle*, Writer there.
94 *John Fenton*, Journeyman-Painter in *Edinburgh.*
95 *James Rae*, Writer in *Edinburgh.*
96 *John Pearson*, Writer there.
97 *James Corrie*, Writer there.
98 *James Harrower*, Writer there.
99 *Gilbert Stewart*, Writer there.
100 *Janet M^cLaughlan*, Servant to *John Gilloch* in *Dalnakelock.*
101 *Isobel Robertson*, Wife of *Alexander M^cKenzie* in *Inveredry.*
102 *Bethia Nairn*, Spouse to *George Spalding* of *Glenkilrie.*
103 Dr. *Adam Austin*, Physician in *Edinburgh.*
104 Dr. *Clerk*, Physician in *Edinburgh.*
105 Dr. *Stewart Threipland*, Physician there.
106 *John Scott*, Son to Dr. *James Scott*, Physician in *Alloa.*
107 *James Carnegie*, Surgeon in *Brechin.*
108 Mrs. *Margaret Murray*, Relict of *Archibald Eagle*, Seed-merchant in *Edinburgh.*

The List of Witnesses summoned for Lieutenant *Patrick Ogilvie* is the same as the above, with the Omission of the 108th.

N. B. *The List of Witnesses summoned for the Prosecutor, the List of Assize given out in the Indictment, and the List of Witnesses summoned for the Pannels, are not engrossed in the Record.*

GEORGE SPALDING of *Glenkilrie*, aged thirty and upwards, married, who being solemnly sworn, purged of Malice and partial Council, examined, and interrogate, depones, That in *February* last, he wrote a Letter to the Lady *Nairn*, pressing her Ladyship that Infeftment should be taken in Favour of Mrs. *Ogilvie* of *Eastmiln*, upon her Contract of Marriage, because her Husband *Eastmiln* appeared to be in a bad State of Health. Depones, That, for some Years past, *Eastmiln* appeared to him to be in an indifferent State of Health, complaining often of a Heart-Colick, or a Pain in his Stomach, attended with a short Cough, which was not continual, but which seldom left him. Depones, That he wore a plaiden Jacket, and a Belt round his Middle, much broader than ever he saw another wear, with Lappets of Leather hanging down his Haunches: That, upon his Marriage, he took off these Happings. Depones, That before he got the said broad Belt, he wore a striped woollen Night-Cape upon his Breast, the lower End of which reached near his Breeches; but never observed him wear it after he got the Belt. Depones, That about six Years ago, the Deponent was told, that Mr. *Ogilvie* of *Eastmiln* had an ulcerous Fever; after which the Deponent saw him frequently, but never saw him look so well as formerly. Depones, That the old Lady *Eastmiln* told the Deponent, that her Son *Eastmiln* was about forty Years of Age when he died. Depones, That *Eastmiln* was married the thirtieth Day of *January* last. Depones, That when *Eastmiln* was complaining of the said Pain of his Stomach, in the Deponent's House, he the Deponent has frequently given him a Dram to comfort him; and particularly a little before *Eastmiln*'s Marriage, *Eastmiln* being ill of the said Disease in the Deponent's House, he got hot Ale and Whiskey, with a Scrape of Nutmeg in it, and was put to Bed without any Supper. Depones, That he does not certainly know how old Mrs. *Ogilvie* the Pannel is, but believes her to be about twenty-one. *Causa scientiæ patet.* And this is Truth, as he shall answer to God.

(Signed) GEORGE SPALDING. HENRY HOME.

JAMES MILLAM, Tacksman of the *Eastmiln* of *Glenylla*, formerly sworn this Day on the Part of the Prosecutor, and now examined on his said Oath on the Part of the Pannels, depones, That the very next Day after Lieutenant *Ogilvie* had left the House of *Eastmiln*, *Eastmiln* employed the Deponent to carry a Letter to his Brother, and he read this Letter to the Deponent, the Contents of which the Deponent has forgot, further than that it contained a Request to the Lieutenant to return to *Eastmiln*: That upon this Occasion the Deponent was informed by *Eastmiln* of indecent Familiarities which his Mother told him had passed betwixt the Lieutenant and his Wife Mrs. *Ogilvie*; but that for his Part he did not believe them: That the Deponent delivered the Letter according to his Instructions, and received an Answer from the Lieutenant, which was also read to him by the Lieutenant, importing the Lieutenant's declining to return to the House of *Eastmiln*, because of the Reports that were raised against him. Depones, That Reports were in the Country of indecent Familiarities betwixt the two Pannels: That he knows not what gave Rise

to theſe Reports; but that for his Part he never ſaw any Indecencies betwixt them. Depones, That his Dwelling-houſe is within a Penny-ſtone Caſt of the Houſe of *Eaſtmiln*, and that he has been frequently in that Houſe. Depones, That he was very well with *Eaſtmiln*; and that if any thing concerned *Eaſtmiln*, he would have imparted it to the Deponent as ſoon as to any other. Depones, That *Eaſtmiln*, four Days before his Death, complained to the Deponent of a Gravel, and a Colick; and that he could not live, if he got not the better of it: That on the Evening of the *Tueſday* before his Death, he went into the Deponent's Houſe, ſaying he was cold, and ordered ſome Shilling Seeds to be ſet on Fire for warming him: That he complained of his being ill, refuſing to eat, and ſaying he would have no other Supper but the Fire; and that he was fading as faſt as Dew goes off the Graſs. Depones, That the ſame Night was not cold. Depones, That *Eaſtmiln*, the Night before he died, was again in the Deponent's Houſe, and ſaid he was no better. Depones, That the Day after *Eaſtmiln* died, he ſaw the Lieutenant ſitting on a Bed-ſide of the Houſe of *Eaſtmiln*, with his Mother on the one Hand, and Dr. *Meik* on the other; and that he could not be pacified: That Mrs. *Ogilvie* was in another Room, and did not ſee her: That the Lieutenant, in the Situation above-deſcribed, was guſhing out of Tears. Depones, That he does not know whether there was any Quarrel betwixt Mrs. *Ogilvie* and *Anne Clark* before *Eaſtmiln*'s Death; but that *Eaſtmiln* complained to him, that he could not get peaceable Poſſeſſion of his own Houſe for *Anne Clark*: That he wiſhed her away; and that he got from the Deponent a Ten-ſhilling Note for the Expence of her Journey. Depones, That upon the *Monday* after *Eaſtmiln*'s Death, *Anne Clark* left the Houſe of *Eaſtmiln*; and that the Deponent ſaw her get Money from Mrs. *Ogilvie* the Pannel immediately before her Departure. Depones, That when the Mournings came Home upon Occaſion of *Eaſtmiln*'s Death, *Anne Clark* complained to the Deponent for Want of a mourning Apron, adding, that ſhe ſhould make it as dear to them as if it was a Gown, meaning the Pannels, as he underſtood; and his Reaſon for underſtanding ſo, was, that it was the Lieutenant who ſent for the Mournings. Depones, That the Day *Eaſtmiln* died, he was ſent for to ſee him; and that he came about Twelve o'Clock, at which Time there was no Perſon with him but *Anne Clark*: That upon that Occaſion he ſtaid but a very ſhort Time: That he returned about an Hour thereafter, and ſeveral other Times, till *Glenkilrie* came: That he ſaw ſeveral Perſons in the Room beſides *Glenkilrie*, who came to ſee *Eaſtmiln*; but that he does not remember their Names. And being interrogate for the Proſecutor, depones, with reſpect to the Letter which he got from *Eaſtmiln* to deliver to his Brother the Lieutenant, That he now recollects a Paſſage in it, importing, that *Eaſtmiln* was to go to *Edinburgh*, to ſtay there a Fortnight, perhaps a Month, or ſix Weeks. Depones, That the ſaid Letter, which the Deponent carried from *Eaſtmiln* to his Brother the Lieutenant, was incloſed by the Lieutenant in the ſaid Letter which the Lieutenant wrote in Return, and which Letter the Deponent put in his Pocket without looking at the Direction: That he offered the ſaid Letter to *Eaſtmiln*, which *Eaſtmiln*, without opening it, bade the Deponent give to his Wife—becauſe it was directed to her; and which he did accordingly. And being further interrogate for the Proſecutor, How it came, that when the Lieutenant's Letter was read over to him, that he did not know it was addreſſed to a Woman? depones, That he took no Notice of this, but only of the Lieutenant's refuſing to return to the Houſe, becauſe of the Reports raiſed againſt him. Depones, That before the Day on which *Eaſtmiln* died, the Deponent never heard that he was ever troubled with any violent Vomitings or Purgings. Being interrogate, Whether, to the Deponent's Knowledge, *Eaſtmiln* did not continue in the ſame State of Health after his Marriage that he was for a Year before? depones, That he never heard him complain before his Marriage; but has heard him often complain after it, though he was as intimate with *Eaſtmiln* before his Marriage as after it. *Cauſa ſcientiæ patet.* And this is Truth, as he ſhall anſwer to God. And being further interrogate, depones, That the *Monday* after the Pannels were put in *Forfar* Gaol, *Alexander Ogilvie*, youngeſt Brother to *Eaſtmiln*, rouped the Stocking upon the Farm of *Eaſtmiln* that belonged to his deceaſed Brother: That he gave it out, that he did this by Authority of a Letter from his Brother the Lieutenant: That he received the ready Money got at the Roup; and that the Bills were taken payable to him at *Martinmas* next. And this is alſo Truth, as he ſhall anſwer to God.

(Signed) JAMES MILLAM.
HENRY HOME.

JEAN WALLACE, Servant to *George Spalding* of *Glenkilrie*, unmarried, aged thirty and upwards, being ſolemnly ſworn, purged of Malice and partial Counſel, examined, and interrogate, depones, That ſhe was Servant in the deceaſed *Eaſtmiln*'s Family for three Years, and left it, as ſhe thinks, about ſix Years ago: That the laſt Year ſhe was in his Service, as ſhe thinks, *Eaſtmiln* had an Ulcer, and was attended by Dr. *Ogilvie*: That ſince that Time the Deponent had little Occaſion to ſee *Eaſtmiln*, and did not hear him make any Complaints of his Health; but that the Deponent from his Looks did not think he was in good Health. Depones, That while he was bad of the Ulcer, he was confined, as ſhe thinks, for ſix Weeks, and ſhe herſelf ſat up frequently with him. *Cauſa ſcientiæ patet.* And all this is Truth, as ſhe ſhall anſwer to God. And depones, ſhe cannot write.

(Signed) ALEX. BOSWELL.

ISOBEL DOUGLAS at *Wardhead*, *diſmiſſed* of Content of the Pannels.

THOMAS JACK in *Kirkton* of *Glenylla*, married, aged forty and upwards, being ſolemnly ſworn, purged of Malice and partial Counſel, examined, and interrogate, depones, That about Ten o'Clock of the Day upon which *Eaſtmiln* died, the deceaſed *Eaſtmiln* told him, that he had been out the Day before viſiting ſome of his Tenants Biggings; and that he was very bad that Day, and had been obliged to reſt himſelf three Times; but told the Deponent, that he was better that Morning; and that he told the Deponent, that he had been a Mile, or a Mile and a Half, from Home the Day before. *Cauſa ſcientiæ patet.* And all is Truth, as he ſhall anſwer to God.

(Signed) THOMAS JACK.
ALEX. BOSWELL.

ELIZABETH FERGUSSON, Spouſe to *John Breſack*, Portioner of *Invercarity*, aged thirty-five, or thereby, being ſolemnly ſworn, purged of Malice, examined, and interrogate, depones, That the Day before *Thomas Ogilvie* of *Eaſtmiln* died, the Deponent ſaw him in her own Houſe, which is, as ſhe thinks, about three Miles from *Eaſtmiln*: That he was on Foot: That he told her he was not very well; and that he had been taken ill, as he ſaid, when he was going Home ſome Time before that, and had not got the better of it, or was not much better yet. *Cauſa ſcientiæ patet.* And all is Truth, as ſhe ſhall anſwer to God. And depones ſhe cannot write.

(Signed) ALEX. BOSWELL.

JOHN PATERSON, Son of *James Paterſon* in *Clocknocater* of *Glenylla*, married, aged twenty-two Years and upwards, being ſolemnly ſworn and interrogate, depones, That he ſaw *Eaſtmiln* the Day before he died about a Mile from his own Houſe: That he was going Weſt to ſee ſome of his Tenants Biggings: That *Eaſtmiln* complained to the Deponent that he was ſick: That he ſaid his Bowels were all ſore; and that he had not been ſo ill for ſix Years: That he lay down and took a Sleep upon the Ground: That the Deponent's Siſter, *Margaret Paterſon*, was with the Deponent at this Time, and none other. *Cauſa ſcientiæ patet.* And all is Truth, as he ſhall anſwer to God.

(Signed) JOHN PATERSON.
ALEX. BOSWELL.

MARGARET PATERSON, Daughter of *James Paterſon* in *Clocknocater* of *Glenylla*, unmarried, aged thirty or upwards, being ſolemnly ſworn, purged, and interrogate, *ut antea*, depones and concurs with her Brother the preceding Witneſs in all Things; with this Addition, That *Eaſtmiln* likewiſe complained of ſore Bones. *Cauſa ſcientiæ patet.* And being further interrogate, depones, That *Eaſtmiln* after this went further Weſt, and did not return Home that ſhe ſaw. And depones, All this is Truth, as ſhe ſhall anſwer to God.

(Signed) ALEX. BOSWELL.

MARGARET RAIT, Spouſe to *Fergus Ferguſſon* in *Kirkton* of *Glenylla*, aged about threeſcore Years, being ſolemnly ſworn, purged, and interrogate, depones, That ſhe ſaw the deceaſed *Eaſtmiln* in her own Houſe, which is about a Quarter of a Mile diſtant from his, the Day before he died: That *Eaſtmiln* told her that he was not well, and he behoved to get Dr. *Ogilvie* to give him ſomething to do him good: That *Eaſtmiln* was then walking, and had come from the Hill. *Cauſa ſcientiæ patet.* And all is Truth, as ſhe ſhall anſwer to God. And depones ſhe cannot write.

(Signed) ALEX. BOSWELL.

Doctor JAMES SCOTT, Phyſician in *Edinburgh*, married, aged about forty, being ſolemnly ſworn, purged of Malice and partial Counſel, examined, and interrogate, depones, That he has made ſundry Experiments upon Arſenick: That he knows it will not diſſolve in warm Water; and that the common Arſenick that is to be met with in the Shops, although pretty fine pounded, falls to the Bottom of a Veſſel with Water almoſt inſtantaneouſly: That it never puts on a greaſy Appearance. But being further interrogate upon the Part of the Proſecutor, depones, That if Arſenick be put into a Bowl of Tea with Milk and Sugar, that, if it was ſtirred round, the Arſenick would be ſuſpended ſo long, that it would kill a Perſon that had drunk it; and if there was Honey in the Bowl, the Arſenick would be ſtill more ſuſpended thereby. *Cauſa ſcientiæ patet.* And all this is Truth, as he ſhall anſwer to God.

(Signed) JAMES SCOTT.
ALEX. BOSWELL.

GEORGE CAMPBELL, of *Carſegownie*, Sheriff-Subſtitute of *Forfarſhire*, a Witneſs formerly ſolemnly ſworn, and examined on the Part of the Proſecutor, depones, That ſome Time after the late *Eaſtmiln*'s Death, the Deponent went to the Houſe of *Eaſtmiln* to make a Search for any Thing that might appear there to clear up the Cauſe of *Eaſtmiln*'s Death: That the Deponent not having the Keys of the Drawers in the Houſe, broke up ſeveral of them, and particularly the Drawers of what was ſaid to be the late *Eaſtmiln*'s Cabinet: That in one of theſe Drawers he found ſome browniſh white Powder, wrapped up in two or three ſmall Parcels: That the Deponent not knowing what that Powder was, carried it away with him, and afterwards ſhewed it to *James Carnegie*, Surgeon in *Brechin*, and aſked him, What Kind of Powder he took it to be? and particularly, Whether or not he thought it was Arſenick? That *James Carnegie*, after looking attentively upon the Powder, declared, That he did not know Arſenick but by the Effects of it; and could not ſay, upon Sight, whether that Powder was, or was not Arſenick. Depones, That *Alexander Ogilvie*, Brother to the late *Eaſtmiln*, was not preſent with the Deponent either at the foreſaid Search at the Houſe of *Eaſtmiln*, or when he ſhewed the Powder to *James Carnegie*, as aforeſaid. Depones and produces ſome of the Powder foreſaid which he found at *Eaſtmiln*; which Powder, upon the Opinion of Dr. *Cullen*, Phyſician in *Edinburgh*, and Mr. *James Ruſſel*, Surgeon there, who tried it before the Court and the Jury, he believes to be Saltpetre. *Cauſa ſcientiæ patet.* And this is the Truth, as he ſhall anſwer to God.

(Signed) GEO. CAMPBELL.
AND. PRINGLE.

The Procurators for the Pannels renounced all further Probation.

"Betwixt the Hours of One and Two o'Clock in the Morning of the "fourteenth current,

"The Lords Commiſſioners of Juſticiary ordain the Aſſize inſtantly to "incloſe in this Place, and to return their Verdict at Four o'Clock this "Afternoon, being the fourteenth Day of *Auguſt* current, and appoint "the haill fifteen Aſſizers then to be preſent, and the Pannels in the "mean Time to be carried back to Priſon; and continue the Diet to that "Time."

Curia

Curia Juſticiaria S. D. N. Regis, tenta in Nova Seſſionis Domo de Edinburgh, decimo quarto die Auguſti, anno milleſimo ſeptingenteſimo ſexageſimo quinto, per Honorabiles Viros Dominum Gilbertum Elliot de Minto, Baronetum, Dominum Juſticiarium Clericum, Alexandrum Boſwell de Auchinleck, Andream Pringle de Alemoor, Jacobum Ferguſon de Pitfour, et Georgium Brown de Coalſton, Commiſſionarios Juſticiariæ S. D. N. Regis. Curia legitimè affirmata.

Intran.

KATHARINE NAIRN
AND
PATRICK OGILVIE,
PANNELS:

Indicted and *accuſed* as in the foregoing *Sederunt.*

The Perſons who paſſed upon the Aſſize of the ſaid Pannels returned the following Verdict:

" At *Edinburgh*, the fourteenth Day of *Auguſt*, One thouſand ſeven " hundred and ſixty-five Years,

" The above Aſſize having incloſed, did make Choice of the ſaid Sir " *George Suttie* of *Balgonie*, Baronet, to be their Chancellor, and the ſaid " *Alexander Sheriff* of *Craigleith* to be their Clerk; and having conſidered " the Criminal Indictment raiſed and purſued at the Inſtance of THOMAS " MILLER of *Barſkimming*, Eſq. his Majeſty's Advocate, for his Ma- " jeſty's Intereſt, againſt KATHARINE NAIRN, Widow to the deceaſed " *Thomas Ogilvie* of *Eaſtmiln* in the County of *Forfar*, and PATRICK " OGILVIE, Lieutenant of the Eighty-ninth Regiment of Foot, Brother- " german to the ſaid deceaſed *Thomas Ogilvie*, Pannels, with the Lords Juſtice- " Clerk and Commiſſioners of Juſticiary their Interlocutor pronounced " upon the Relevancy thereof, together with the Depoſitions of the Witneſſes " adduced by the Proſecutor for proving the ſame, and the Depoſitions " of the Witneſſes adduced for the Pannels in Exculpation, they, by a great " Plurality of Voices, find the Pannels *guilty* of INCEST, as libelled, " during the Life of the now deceaſed *Thomas Ogilvie* of *Eaſtmiln*: And " they further find, by a great Plurality of Voices, the ſaid Pannel KA- " THARINE NAIRN *guilty* of MURDER, by poiſoning the ſaid *Thomas* " *Ogilvie* her Huſband; and the ſaid Lieutenant PATRICK OGILVIE " Pannel *guilty Art and Part thereof.* In Witneſs whereof the ſaid Chan- " cellor and Clerk have ſubſcribed theſe Preſents upon this and the pre- " ceding Page, Place and Date foreſaid, in their Name and by their " Appointment.

(Signed) GEO. SUTTIE, Chan.
ALEX. SHERIFF, Clk."

Immediately upon the reading of the above Verdict, his Majeſty's Advocate judicially appeared in Court, and craved that the Lords might proceed to pronounce a Sentence *Condemnator* upon the ſaid Verdict.

Mr. ALEXANDER LOCKHART, as Procurator for both Pannels, *repreſented*, That, during the ſhort Space of Time that he and the other Counſel for the Pannels have had to recollect the Proceedings in the Courſe of this Trial, and upon hearing the Verdict itſelf, as now read in Court, ſundry Particulars have occurred to the Counſel for the Pannels, which they are humbly to inſiſt upon as jointly and ſeverally relevant why no Judgment can paſs againſt them upon this Verdict; and as, in Support of ſome of theſe, there will be Occaſion to refer to the Records of the Proceedings themſelves, which till now have been in the Hands of the Jury; and as it is their earneſt Deſire to ſtate theſe in the moſt proper and becoming Manner, he therefore moved the Court, in Behalf of both Pannels, That they be allowed a reaſonable Time to prepare, ſtate, and ſupport the Particulars, of the Heads of which they ſhall furniſh a Note to his Majeſty's Advocate this very Night.

ADVOCATUS *anſwered*, That the Record of the Trial has been open, and ſubject to the Conſideration of the Counſel for the Pannels, during the whole Courſe of the Trial: That, if any Objection is to be taken againſt the Courſe of Procedure during the Trial, it is neceſſary that ſuch Objection ſhould be taken and tried before the Jury is diſcharged: But as the Counſel for the Pannels have moved no Objection or Plea in Arreſt of Judgment, and have only moved for a Delay, in order that they may have further Time to find out and move ſuch Plea, he inſiſted, That this is no Plea; and therefore craved Judgment upon the Verdict, unleſs the Counſel for the Priſoners ſhall ſtate a ſpecial and legal Plea, why ſuch Judgment ſhould not paſs.

" The Lord Juſtice-Clerk and Commiſſioners of Juſticiary, having " conſidered the foregoing Debate, declare, That they will proceed to " give Judgment upon the Verdict, unleſs the Procurators for the Pan- " nels will forthwith ſtate ſpecial Reaſons in Arreſt of Judgment.

(Signed) GILB. ELLIOT, I. P. D."

" The Lord Juſtice-Clerk and Commiſſioners of Juſticiary, having " heard the Procurators for both Parties, upon the Reaſons for Arreſt " of Judgment, they appoint a Minute of Debate to be made up and " ingroſſed in the Record of Court; and ſuperſede adviſing the ſaid " Verdict and Debate till To-morrow at Eleven o'Clock before Noon; " and continue the Diet till that Time; and ordain the Pannels to be " carried back to Priſon."

Curia Juſticiaria S. D. N. Regis, tenta in Nova Seſſionis Domo de Edinburgh, decimo quinto die menſis Auguſti, anno milleſimo ſeptingenteſimo ſexageſimo quinto, per Honorabiles Viros Dominum Gilbertum Elliot de Minto, Baronetum, Dominum Juſticiarium Clericum, Alexandrum Boſwell de Auchinleck, Andream Pringle de Alemoor, Jacobum Ferguſon de Pitfour, et Georgium Brown de Coalſton, Commiſſionarios Juſticiariæ dict. S. D. N. Regis. Curia legitimè affirmata.

Intran.

KATHARINE NAIRN
AND
PATRICK OGILVIE,
Preſent Priſoners in the *Tolbooth* of *Edinburgh*;
PANNELS:

Indicted and *accuſed* as in the preceding *Sederunts.*

LOCKHART, RAE, CROSBIE, and DUNDAS, for the Pannels, by this Minute, *repreſented*, That no Judgment ought to paſs on this Verdict, in reſpect that, ſo far as any Thing is found againſt the Pannels, the ſame is void and null; the Proceedings in the Courſe of this Trial having been moſt informal and irregular. Particularly, between the Hours of Three and Four of the Afternoon of *Monday* the 12th Inſtant, the Jury aroſe from their Seats, and diſperſed into different Corners of the Houſe; ſome of them, on that Occaſion, even going out of the Room where the Court ſat; and continued ſo diſperſed, eating and drinking, and converſing in private with different Perſons, and particularly, with the Counſel for the Proſecutor, for the Space of half an Hour and better, a Witneſs being then under Examination, and a Part of her Depoſition reduced into Writing before they had *ſo* diſperſed; till at laſt the Clerk, at the Deſire of one of the Judges, called over the Liſt of Aſſize, when they again aſſembled and took their Seats, one or more Perſons having converſed in private with the Witneſs then under Examination, during the Time the Jury had been diſperſed; the ſaid Witneſs being *Anne Clark*, againſt whom Objections had been proponed by the Pannels, but overruled, and a Proteſt for Remeid of Law taken thereon. This, it is apprehended, was an actual Adjournment of the Trial; at leaſt, it had all the bad Effects of an Adjournment, an Opportunity being given to converſe with the Jurymen in private, to ſollicit them, and to offer Evidence, which the Pannels and their Counſel had no Opportunity to ſee or hear; an Event which the Law of this Country has been particularly careful to avoid; and has conſidered the preventing ſuch Things, and giving abſolute Security againſt them, to be a fundamental Point in a Trial by Jury, as appears by the Act 1587. chap. 91. whereby, " Our " Soveraine Lord, conſidering the Wranges alledged ſuſtained by diverſe " Noblemen and others, Lieges of this Realme, being accuſed of Treaſon, " be ſolleſiting, boaſting, and menacing of the Aſſize, after they were " incloſed, the Accuſers and others Perſones, their Favourers, having " Liberty to paſs to the ſaid Aſſize, and to produce to them ſick Writs " and Witneſſes, and uther Probation, as they pleaſed, to verify the " Crime outwith the Preſence of the Partys accuſed; quhairby the juſt " Defence of their Lives, Lands, and Honours, was taken away; there- " fore our ſaid Sovereign Lord, with Advice and Conſent of the Eſtates " of this preſent Parliament, has ſtatuted, declared, and ordained, That " in all Times coming, the haill Accuſation, Reaſoning, Writes, Wit- " neſſes, and uther Probation, and Inſtruction whatſomever of the Crime, " ſall be alledged, reaſoned, and deduced to the Aſſize in Preſence of " the Party accuſed, in Face of Judgment, and no otherways."

From which Statute it is plain, the Legiſlature meant effectually to guard againſt every Opportunity of making any Impreſſion upon the Minds of Jurymen, excepting by what was ſaid and done in open Court, and in Preſence of the Pannels; and all the ſalutary Effects of this Statute muſt be eluded, if Opportunity is given for the Counſel for the Proſecutors, or others, to ſollicite, practiſe upon, or argue with the Jurymen, during the Courſe of the Trial, in private, by permitting them to leave their Seats, diſperſe through the Houſe, and converſe privately with whatever Perſon they think proper: That, in like Manner, about Four of the Clock in the Morning of *Tueſday* the 13th of *Auguſt*, at leaſt, between the Hours of Three and Five of the Morning of that Day, the Jury diſperſed again in the ſame Manner; and, in their Abſence, Part of the Depoſition of *Elizabeth Sturrock*, one of the Witneſſes, was taken down: That, about that Time, the Court likewiſe broke up, no *Quorum* of the Judges continuing on the Bench, the Lord *Kaims* only remaining there, the reſt retiring and converſing in private with ſundry of the Jury and others; and, upon that Occaſion likewiſe, the Jury eat, drank, and converſed in private with different Perſons, and in particular, with the Counſel for the Proſecutor; whereby the Trial was again interrupted: That no Roll was called; nor was it any ways aſcertained that they re-aſſembled, the Lord *Kaims* only calling out, *Gentlemen of the Jury, Are you all there?* and the Depute Clerk of Juſticiary anſwering, *I ſee fifteen*; but no Anſwer was returned by the Jurymen themſelves. That, in this Caſe, the Court was moſt unqueſtionably adjourned, as no *Quorum* of the Judges remained ſitting on the Bench; and, though no Act of Adjournment appears in the Record, yet, it is humbly apprehended, That *that*, inſtead of mending Matters, renders them worſe; for an Adjournment *vim facti*, is unqueſtionably as much an Adjournment as one made by an Order of Court, having all the bad Conſequences of it, and many more. That it is an adjudged Point, that, after a Jury is charged with a Pannel, the Court cannot be adjourned till the Jury is incloſed. This was ſolemnly determined in the Caſe of *Janet Ronald*, who was tried, in *May* 1763, at the Circuit-Court of *Perth*, for the Crime of giving Poiſon to her Siſter; in which Caſe, after the Proof was concluded, and while his Majeſty's Advocate was addreſſing the Jury, one of the Jurymen happened ſuddenly to be taken ill, and appeared incapable of doing his Duty at that Time; for which Reaſon the Court was adjourned till next Morning, when that Juryman being recovered, the Jury again re-aſſembled, were incloſed, and returned a Verdict againſt the Priſoner, finding her *guilty* Art and Part of the Crime libelled. It was moved in Arreſt of Judgment, That the Court having been adjourned before incloſing the Jury, and the Jurymen diſperſed, and an Opportunity given to ſollicite and practiſe on them in private, the Verdict was void and null, and no Sentence could follow in Conſequence thereof. The Matter, on Account of its Importance, was referred to the Court of Juſticiary at *Edinburgh*, where it was ſolemnly debated in Preſence of the whole Judges; and, after Informations had been given in on this Point, and recorded in the Books of Adjournal, the Court being of Opinion, that this Adjournment vitiated the whole Proceedings, did not pronounce any Sentence on this Verdict, but abſoilzied the Pannel, and diſmiſſed her from the Bar: That the Adjournment of the Court in the preſent Caſe ought to have the ſame Effect to vitiate all the ſubſequent Proceedings, and to procure an *Abſolvitor* to the Pannels; ſince every bad Conſequence that can be figured or imagined to reſult from an Adjournment by Act of the Court, muſt reſult alſo from an Adjournment, *via facti*. That about Three o'Clock of the Afternoon of *Tueſday* the 13th of *Auguſt*, at leaſt, ſome Time between the Hours of Two and Four of the Afternoon of that Day, the Jury again diſperſed, and converſed in private

private with ſundry Perſons in different Parts of the Houſe, and continued diſperſed for the Space of Half an Hour or upwards; after which they again returned to their Seats: That all theſe various Adjournments and Diſperſing of the Jury, it was out of the Power of the Pannels, or their Counſel, to prevent; the Jury being actually diſperſed, on all theſe ſeveral Occaſions, before they were aware, no Motion having been made publickly for Leave of the Court to diſperſe, and the Pannels and their Counſel being intent upon the Buſineſs that was going on, and that Attention firſt interrupted by the Noiſe the Jurymen made when actually diſperſing: That it is in vain, in the preſent Caſe, for his Majeſty's Advocate to plead the Neceſſity of the Jury being refreſhed in ſuch a Caſe; for they were refreſhed on ſeveral other Occaſions beſides thoſe above-mentioned, at which Times the Refreſhments were always given them in their Seats; and it is apprehended that ought always to be the Caſe, as it is a material Point, that the Quality and Quantity of the Refreſhments they take, particularly the Wine, and other ſtrong Liquors, ſhould be regulate by the Court, under whoſe immediate Inſpection every Thing of that Nature ſhould be given them; but by Jurymen diſperſing, and drinking Liquors, in what Quantity and of what Quality they pleaſe, in private, and while removed from the Inſpection of the Court, there is a Hazard of their becoming intoxicated with the Liquors they drink, which may be of the moſt dangerous Conſequences to the Security of thoſe who are tried, and conſequently to the Lives and Liberties of the Subjects in this Country in general. That the bad Effects of all theſe ſeveral Adjournments were ſeverely felt by the Pannels in this Caſe; they ſerved to protract the Trial, and what Impreſſions were communicated to the Jurymen, when diſperſed, or what Quantities of Liquors they ſwallowed, are Circumſtances which cannot be known to the Pannels or their Counſel: But after the laſt Time the Jurymen were diſperſed, and when the Evidence on the Part of the Pannels began to be adduced, ſeveral of the Jury ſhewed a very great Impatience, and inſiſted, that that Evidence which the Pannels thought material for them ſhould be cut ſhort. And ſome of them particularly diſputed the Relevancy and Propriety of the Queſtions put by the Counſel for the Pannels with great Heat, inſomuch that ſome of the Judges, and other Juryinen, were obliged to interpoſe, in order that the exculpatory Proof might go on; and the Counſel for the Pannels were obliged to paſs from many Witneſſes, in order to procure Attention from thoſe Aſſizers. Hence, though thirty-three Hours were ſpent in hearing calmly the Proof adduced for the Proſecutors; yet the Proof for the Pannels, after being heard by thoſe Jurymen with great Impatience, was put an End to in about three Hours. By this means the whole Proof relative to the Conduct of *Alexander Ogilvie*, which the Pannels had inſiſted much upon in their Defences, was prevented; ſome of the Jurymen ſaying, that they had nothing to do with *Alexander*. That at one Period of the Trial, one of the Jury retired from his Place, and continued abſent a conſiderable Time; yet the Proof went on in the mean Time, the Witneſſes were examined, and their Depoſitions taken down in Writing in the mean Time, he paying no Attention thereto, nor was he capable of doing ſo at the Time; ſo that he could no more judge of what was ſaid or done at that Time, than if he had been twenty Miles abſent: That on ſundry Occaſions Jurymen did retire without Leave aſked or given, and went out of the Room where the Court was ſitting: That it is in vain for his Majeſty's Advocate to plead the Neceſſities of Nature as an Excuſe in ſuch Caſes; for there is a Remedy known and commonly practiſed, when thoſe Neceſſities oblige the Jurymen to withdraw, *viz.* Leave is aſked of the Court, which orders a Macer to attend the Juryman, that no Perſon may have any private Intercourſe with him during the Time he withdraws, and the Trial is ſtopt till he returns.

That, by the Act concerning the Regulation of the Judicatories, paſſed in the third Seſſion of the ſecond Parliament of King *Charles* the Second, in the 10th Article concerning the Juſtice-Court, it is enacted, "That, "in all Criminal Purſuits, the Defender, or his Advocates, be always "the laſt Speaker, except in Caſe of Treaſon and Rebellion againſt the "King." Which Act, though altered as to Proſecutions not extending to the Loſs of Life, or to Demembration, before the Court of Juſticiary, or in Circuit-Courts, and where the Evidence is not taken down in Writing, by the Act 21*mo Geo.* II. *chap.* 19. §. 18. yet remains in full Force as to all other Criminal Courts, and as to all Trials brought in this Court, which may extend to the Loſs of Life or Limb, and when the Evidence is taken down in Writing. That this Statute notwithſtanding, after the Advocates for the Pannels had concluded their Speeches to the Jury, and nothing remained, by the Forms of Court, but to incloſe that Jury for the Purpoſe of returning their Verdict, one of the Judges did addreſs himſelf to the Jury, in a Speech concerning this Trial, and the Credibility of particular Witneſſes, whereby the Pannels were deprived of a legal and moſt material Privilege, *viz.* The Impreſſion that muſt be left by the laſt Pleader upon the Minds of the Jury in their Behalf.

That, beſides all theſe Informalities committed during the Courſe of Procedure, the Record is very defective, though the Defects cannot at preſent be ſo particularly pointed out, as the Counſel for the Pannels have not yet had an Opportunity of inſpecting it. However, they do condeſcend on the following Defects: That ſundry Admiſſions made by his Majeſty's Advocate, in Point of Evidence, favourable for the Pannels, are not taken down; ſo that the Record paſſed to the Knowledge of the Aſſize, without bearing theſe Admiſſions. One of theſe Admiſſions was, paſſing from the Crime of Inceſt during a Part of the Time libelled; another was relative to the Conduct of *Alexander Ogilvie*: That the Proteſts for Remeid of Law taken for the Pannels at different Parts of the Trial are not engroſſed in the Record, though that was ſpecially inſiſted for at the Time they were taken, and Precedents pleaded on and produced; neither is the Condeſcendence relative to the Malice of *Anne Clark*, which was made for the Pannels, but found not relevant by the Court, mentioned in the Record; and this is the more material, that the Omiſſion of this Condeſcendence was uſed as an Argument with the Jury for the Credit of *Anne Clark*'s Teſtimony, by the Judge who was he laſt Speaker on this Trial; though it will be remembered, that when the Counſel for the Proſecutor had concluded the reſt of his Proof, he gave Notice to the Court, That as the Counſel for the Pannels had charged Malice againſt *Anne Clark*, one of the moſt material Witneſſes for the Proſecutor, and meant to adduce Witneſſes for proving that Malice, he judged it neceſſary, on his Part, to adduce ſome Witneſſes in order to obviate that Objection, and to ſhew that this Witneſs was ſo far from bearing Malice againſt the Pannels, that, after ſhe had been once precognoſced, ſhe had withdrawn and ſecreted her Perſon, when a Warrant by this Court was out againſt her, in order to avoid her being brought as a Witneſs in this Cauſe.

That the Verdict appears to be informal; and the Counſel for the Pannels apprehend it will be found a ſpecial one, when applied to the Interlocutor of Relevancy: That it does not bear that the Jury conſidered the Writs produced, but only the Depoſitions of the Witneſſes, though Writings were produced both by Proſecutor and Pannel; particularly, the Declarations of the Pannels when examined; the Queſtions put to them by the Sheriff of *Edinburgh*, which they are ſaid to have refuſed to anſwer; *Anne Clark*'s Letter to the Lord Advocate; the alledged Letters from one of the Pannels; a Letter from Lord *George Beauclerk*; a Letter from Colonel *Morris*, in whoſe Regiment the Pannel *Patrick Ogilvie* ſerved, atteſting his good Character. Therefore the Verdict has proceeded on a partial Conſideration of the Evidence. And the Inattention of the Jury to the whole Evidence, appears from another Particular, *viz.* in their finding the Pannels guilty of the Inceſt as libelled, which includes the whole Month of *January*; though it is in Proof, that the late *Thomas Ogilvie* was not married till the 30th Day of that Month. That if Time were allowed to the Counſel for the Pannels, to conſider the Verdict, and inſpect the Records, and prepare Arguments in Support of the Poſitions they have now laid down, they apprehend there is a good Cauſe why Judgment ſhould not paſs on this Verdict. They have ſet forth theſe Objections in Obedience to the Court's deſiring them to condeſcend, and craved, that more Time may be allowed them to ſtate theſe Objections more fully, or any other which may occur, and Liberty given them to inſpect the Record, and have Copies of the Verdict; which has been refuſed them by the Clerk. And this Demand, they apprehend, is the more reaſonable, that they have only had a Receſs of fourteen Hours, from the Time that the Jury were incloſed, after enduring the Fatigues of a Trial which laſted for forty-three Hours; ſo that they are not in a Condition at preſent to argue their Objections ſo properly, as they will be when more Time is allowed them. All and each of the Facts ſet forth they offer to prove, and they crave that a Proof may be allowed accordingly.

His Majesty's Advocate and Solicitor General *anſwered*, That the Conduct of the Defence for the Pannels in this Trial has been extraordinary from firſt to laſt, as appears from the Defences compared with the Proof in Exculpation. That after a Trial of forty-three Hours Continuance, before a Jury of the moſt reſpectable Character, and after a Verdict returned finding the Pannels guilty, an Attempt is now made to diſappoint publick Juſtice, by a Plea in Arreſt of Judgment, unknown in the Law, unſupported by any Precedent, and in itſelf irrelevant and frivolous. That this Plea has been introduced with a Declamation upon the Liberty of the Subject, and of the Importance of preſerving a Jury Trial; and yet the Plea itſelf tends, if it has any Meaning, to prove, that no Trial of a Capital Crime in this Country can be taken by a Jury; becauſe the Length of ſuch Trials muſt, in moſt Caſes, make it neceſſary for Jurymen to refreſh themſelves, and to retire for anſwering the Neceſſities of Nature; and if theſe Things cannot be permitted by the Court, the neceſſary Conſequence is, that no ſuch Trial can proceed by Jury; and in order to bring ſuch Criminals to Juſtice, a new Form of Trial muſt be invented. That when a Plea ſo groundleſs and frivolous is, for the firſt Time, taken up in Behalf of two Pannels, whoſe Rank and Situation in Life enable them to bring many learned Counſel to argue and give Countenance to ſuch a Plea, in Behalf of two Pannels convicted by their Country of the moſt atrocious and dangerous Crimes, it becomes the Dignity of the Court to hear fully, and then to give ſuch a Judgment as will ſhew that the Law knows no Diſtinction of Perſons; and that the Criminal Law in this Country, upon which the Security of the Government, and the Safety of the People depends, muſt have its Courſe with equal Effect againſt the greateſt as well as the meaneſt of the Subjects. That this Trial has been conducted with more Attention and Favour for the Defence of the Pannels, than any Trial that has occurred in the Memory of any of the Members of the Court. That the ſtricteſt Orders were given that no Juryman ſhould retire, even for relieving the Neceſſities of Nature, without Leave of the Court, and being atteneed by a Macer of the Court; which was accordingly punctually executed throughout the whole Courſe of the Trial. That when it became neceſſary for the Jury to refreſh themſelves from Time to Time, for greater Diſpatch, and to prevent Confuſion, they left their Bench, and were refreſhed at a Table immediately below, at, and under the Eye of the Court; and the Inſinuation, that ſome of the Jury may have taken too much Liquor, is falſe and injurious, to the Knowledge of the Court, and was not ſo much as inſinuated in the Debate when the Jury was preſent, and is now, for the firſt Time, thrown into this Minute. One of the Jurymen being indiſpoſed, roſe from his Seat, and walked for ſome Time behind the Seat, but heard the whole Evidence. That no Criminal Trial, where ſuch Refreſhment of the Jury has been neceſſary, was ever carried on in a Manner ſo little exceptionable as the preſent; and the Tendency of the Pannels Plea is to ſhew, that no Criminal has been legally condemned in *Scotland*, in any Caſe, where the Trial has continued for ſuch a Time as to require Refreſhment to the Jury, or the Retiring of any Jurymen, or the Relieving the Neceſſities of Nature. That during the Time the Jury were refreſhing themſelves the firſt Day, *Anne Clark* was under Examination, which laſted eight Hours, and remained in her Place, under the immediate Eye of the Court, till her Examination was reſumed upon the Return of the Jury to their Places; and no Perſon ſpoke to her, except the Macer of Court, when he gave her ſome Bread and Wine. And during the whole Courſe of the Trial, upon Notice given, that any of the Jury had retired to eaſe Nature, the Proceedings ſtopped till his Return; ſo that though, from the Neceſſity of the Thing the Court did, for ſome ſhort Intervals, ſtop Proceeding in the Proof, yet there was no Adjourn-

ment of the Court; and this appears from the Record of the Court, which the Pannels cannot disprove; and the Court remained full, without one Moment's Interval, during the whole Course of the Trial; and as all the Facts stated in the Plea offered for the Pannels passed in Presence of the Court, and as it is not pretended that any Wrong was done, or any Exception taken, in Behalf of the Pannels, to any Part of the Procedure during the whole Trial, far less after the Jury was inclosed, no Proof can be allowed of the Facts upon which the Plea is founded, and the Court must take them upon their own Knowledge. The late Case of *Janet Ronald* has no Relation to the present Case; for there the Court was adjourned, and the Jury dismissed after they were charged with the Pannel, which was found to be contrary to Law: That the Insinuation thrown out against the Jury, That they were impatient to hear the Evidence for the Pannels, is likewise false and injurious to the Knowledge of the Court: That after the Prosecutor concluded his Evidence, which he abridged as much as possible, the Counsel for the Pannels proceeded to open their Defence by a Proof, That, after the Pannels were committed to Prison, the Cattle at the House at *Eastmiln* were sold by *Alexander Ogilvie*; and it appearing clearly from their own Evidence, that this Roup proceeded from an Order of the Pannel *Patrick Ogilvie*, it was observed by one of the Jury, that this Fact did not appear to be material to the Issue; and as they found themselves much exhausted by Fatigue and Want of Rest, they would not be able to attend to such Evidence as might be material for the Pannel's Defence; which was submitted to the Consideration of the Pannels own Counsel: And they did accordingly declare, That they gave up that Article of their Proof.

The Protest taken by the Pannels for Remeid in Law, is extant in Process, and makes a Part of the Record of this Trial. The Objection to the Evidence of *Anne Clark*, founded upon Malice, was clearly disproved before the Jury by Evidence: That she was so far from harbouring Malice against the Pannels, that, on the contrary, after she was precognosced before the Sheriff, she withdrew herself from the Place of her Abode, and concealed herself in different Places about this City under a false Name, in order to prevent her being adduced as an Evidence in this Trial; and although his Majesty's Advocate, perceiving the Danger of protracting this Trial to an unnecessary Length, did not insist to have this Part of the Evidence taken down; yet it appeared so strong to the Pannels own Counsel, that, when they came to state the Grounds of their Allegation of Malice, and to adduce their Witnesses in Support thereof, the Judge Examinator gave his Opinion, that the Condescendence, as stated by them, was not relevant; and they did not insist for the Opinion of the Court; which was plainly giving up and passing from this Objection of Malice, or any Proof thereof.

That the Verdict is accurate and formal in all Respects.----There is no Necessity that the Verdict should mention the Evidence upon which the Jury proceeded: That all the written Evidence adduced before the Jury was in Behalf of the Prosecutor, and no written Evidence whatever was proved or adduced before the Jury in Behalf of the Pannels; and if it can be supposed, that the Jury did not take under their Consideration this Part of the Prosecutor's Evidence, it was so far favourable for the Pannels; and he appeals to their Lordships Knowledge, that, in most Trials before this Court, the Declarations of the Pannels, and other written Evidence, are referred to in the Libel, and produced before the Jury; and many Verdicts have been returned, upon which Execution passed, wherein no Mention is made of their having considered such written Evidence; for it is in their Power to take that Evidence under their Consideration, as a Ground of their Verdict or not, as they please.

That it is the undoubted Right of the Counsel for the Pannel to be the last Speaker upon the Import of the Evidence, and the Prosecutor has no Reply; but it is the inherent Right of the Court, and essential to public Justice, to correct Mistakes in Law or in Fact, by which false Impressions upon the Jury may be made by the Counsel on either Side: That the Verdict, with respect to the Incest, is unexceptionable, and properly applies to the Charge in the Libel.

That no Admission was made by his Majesty's Advocate, that is not properly entered upon the Record: That he passed from the Incest charged to have been committed after the sixth of *June*, in Presence of the Court and Jury, and the Verdict properly applies to the Libel as so restricted: That the Counsel for the Prisoners had Access to the Record during the whole Course of the Trial, and since that Time; and it is improper to move the Court for an Arrest of Judgment till they have further Time to consider the Record, in order to discover what Objections they can there find in Support of their Plea. In respect of all which, Judgment ought to be pronounced.

After reading over the foregoing Minutes judicially, in Presence of the Pannels and Court, the Lords proceeded to advise the same, and pronounced the following Interlocutor:

" The Lord Justice-Clerk and Commissioners of Justiciary, having " considered the foregoing Debate, and knowing that the Whole of this " Trial, from first to last, was carried on under the Eye, and in Pre- " sence of the Court; and that the Whole of it was conducted with as " much Regularity and Accuracy as ever was done in any Trial before " the Court, they find the Reasons pleaded in Arrest of Judgment not " relevant, and repell the same; and they also repell the Objections " made to the Form or Substance of the Verdict.

(Signed) Gilb. Elliot, I. P. D."

On pronouncing of which Interlocutor, Mr. Alexander Lockhart, Advocate, Procurator for the Pannels, protested for Remeid of Law; and thereupon took Instruments in the Hands of the Clerk of Court.

Then there was a Petition given in and presented to the Court by the said *Katharine Nairn* Pannel, signed by Mr. *Alexander Lockhart*, and Mr. *Henry Dundas*, her Lawyers, bearing, That the Petitioner has the Misfortune, in the criminal Prosecution now depending against her in this Court at the Instance of his Majesty's Advocate, to have a Verdict returned against her by a Plurality of Voices, finding her guilty of the Crimes of which she was charged: Whereupon his Majesty's Advocate having moved for Judgment, sundry Objections were stated upon her Part, why no Judgment can pass against her upon that Verdict: That, abstracting from these, she now begs to represent to the Court, That she is pregnant; and though she cannot take upon her, from her Inexperience in these Matters, positively to say how far she is advanced in her Pregnancy, according to her best Opinion, she judges she may be about three Months gone with Child.

Therefore praying, it might please their Lordships, to direct the proper Inquiry to be made into her present State and Condition as to her alledged Pregnancy: and upon the same being properly certified, to supersede Judgment against her, if any Judgment can pass upon the Verdict, till after Delivery.

Which Petition being read in Court, and judicially adhered to by her,

" The Lord Justice-Clerk and Commissioners of Justiciary, having " heard this Petition, they grant Warrant for Letters of Diligence, at " the Instance of his Majesty's Advocate, for citing three or more skilful " Midwives to compear before their Lordships against To-morrow, being " *Friday* the sixteenth Day of *August* current, at Nine o'Clock in the " Forenoon, to inspect the Petitioner *Katharine Nairn* Pannel, and make " Trial whether or not she the Petitioner be pregnant or with Child; " and accordingly to give their Opinion or Judgment to the Court therein; " and continue the Diet against the Petitioner until the said Time; and " appoint her in the mean Time to be carried back to Prison; and, for " the Purpose aforesaid, the said Lords appoint the Persons following, to " wit, Mrs. *Johnston*, Mrs. *Hamilton*, Mrs. *Duncan*, and Mrs. *Hill*, " known Midwives, to be cited as above.

(Signed) Gilb. Elliot, I. P. D.

" *The Lord Justice Clerk and Commissioners of Justiciary having considered* " *the foregoing Verdict of Assize, dated and returned the fourteenth Day of* " August *current, against* Katharine Nairn, *Widow of the deceased* Tho- " mas Ogilvie *of* Eastmiln *in the County of* Forfar, *and* Patrick Ogilvie, " *Lieutenant of the eighty-ninth Regiment of Foot, Brother-german to the* " *said deceased* Thomas Ogilvie; *whereby, by a great Plurality of Voices,* " *the said* Katharine Nairn *and* Patrick Ogilvie *are found guilty of* Incest " *as libelled, during the Life of the now deceased* Thomas Ogilvie *of* East- " miln; *and the said* Katharine Nairn, *guilty of* Murder, *by poisoning the* " *said* Thomas Ogilvie *her Husband; and the said Lieutenant* Patrick " Ogilvie *Pannel, guilty Art and Part thereof: In respect of the said Ver-* " *dict, they, by the Mouth of* Isaac Gibbs, *Dempster of Court, decern and* " *adjudge the said* Patrick Ogilvie *Pannel, to be carried from the Bar back* " *to the* Tolbooth *of* Edinburgh, *therein to remain, to be fed upon Bread and* " *Water only, in Terms of the Act of Parliament in the twenty-fifth Year of* " *the Reign of his late Majesty King* George *the Second, intituled,* An Act " for preventing the horrid Crime of Murder, *until* Wednesday *the* " *twenty-fifth Day of* September *next to come; and upon that Day to be taken* " *forth of the said* Tolbooth, *and carried to the common Place of Execution* " *in the* Grass-market *of* Edinburgh, *and then and there, betwixt the Hours* " *of Two and Four of the Clock after Noon of the said Day, to be hanged by* " *the Neck by the Hands of the common Hangman, upon a Gibbet, until he* " *be dead; and his Body thereafter to be delivered to Dr.* Alexander Munro, " *Professor of Anatomy in* Edinburgh, *to be by him publickly dissected and* " *anatomized, in Terms of the said Act; and ordain all his moveable Goods* " *and Gear to be escheat and inbrought to his Majesty's Use; which is pro-* " *nounced for Doom* *.

(Signed) Gilb. Elliot.
Alex. Boswell.
And. Pringle.
James Ferguson.
Geo. Brown."

Curia

* The Proceedings in this Trial being transmitted to *London*, for the Consideration of his Majesty and his Privy-Council, the following signed Opinion of Mr. *M'Carty*, an eminent *English* Counsellor, was presented with them:

" I have read a great deal of the Proceedings in the Affair of the unhappy Prisoners, *Katharine Nairn* and Lieutenant *Patrick Ogilvie*, under Sentence of Death, for the " heinous Crimes of Incest and Murder. Crimes of so black a Dye, charged on Persons who, until that Time, had preserved unblemished Characters, should be attended " with the most evident Proofs to gain Credit in the Opinion of Mankind, at least of the most judicious Part of it. Among the Vulgar, it is much to be lamented, every " Calumny, however ill-supported, finds an easy Admittance.

" It seems to me extremely hard on the Prisoners, that they should be tried at the same Time for Crimes of very different Natures. The Indictment charges, *That they* " *have presumed to commit, and are guilty Art and Part of both, or one or other of the said Crimes of Incest and Murder*, &c. Adding the two Crimes in one Indictment, " makes the Prisoners be exposed to a greater Odium, and creates a stronger Prejudice against them. I think, in the Law of *England*, a Charge, that the Prisoner at the " Bar was guilty of one or other of two Crimes, would have vitiated the Indictment. It is laid down as a Rule in *Co. Entr.* 278. that the Fact is never laid in the disjunc- " tive. And in 5 *Mod.* 137. *Rex* against *Stocker*, it was ruled, that an Indictment, setting forth, that the Defendant *murderavit, vel murderari causavit*, is not good; for " these are different Crimes.

" In the present Case there is a further Disadvantage; for, as I am informed, the Trial for Incest, and the Trial for Murder, are to be had in a quite different Manner. " In the first, the Trial is *Januis clausis*; and in the other it is *Januis apertis*; the last Method being more public, is less exceptionable. In the Case of these unfortunate " Prisoners, the whole was carried on *Januis clausis*; every Allegation and Deposition in Support of one Branch of the Indictment had an Effect on both; but this, I " think, was rather Prejudice than real Conviction.

" I am of Opinion, that, if the Crimes charged are considered severally, and the Evidence produced to support one Crime is taken singly, without the Assistance of the " other, no Jury in *England* would have found the Prisoners guilty.

" If the Facts alledged as a Proof of the Incest were given as a Proof of the carnal Knowledge on an Indictment for a Rape, it is impossible a Jury could find the Defen- " dant guilty. I think they would not be admitted as a Proof of criminal Conversation, to intitle a Husband to Damage on an Action of Trespass. There is not one Fact " attempted to be proved, that may not be literally true; and yet the Defendants be innocent of the Crime of carnal Knowledge. The Conjectures of Women of very " indifferent Characters, and of very malicious Dispositions, may naturally lead to the worst Things; but these Conjectures are not Evidence, when there is a Possibility " that the Parties may be innocent. I do not know that in our Law any Presumption of a criminal Conversation operates in any Circumstance, but that of being *soli* " *cum sola, et nudus cum nuda*; in all other Circumstances a positive Proof is required. It often happens, that a Man is indicted for a Rape, and acquitted; and yet the

Curia Juſticiaria S. D. N. Regis, tenta in Nova Seſſionis Domo de Edinburgh, decimo ſexto die menſis Auguſti, anno milleſimo ſeptingenteſimo ſexageſimo quinto, per Honorabiles Viros Dominum Gilbertum Elliot de Minto, Baronetum, Dominum Juſticiarium Clericum, Alexandrum Boſwell de Auchinleck, Andream Pringle de Alemoor, Jacobum Ferguſon de Pitſcur, et Georgium Brown de Coalſton, Commiſſionarios Juſticiariæ dict. S. D. N. Regis. Curia legitimè affirmata.

Intran.

KATHARINE NAIRN,

Priſoner in the *Tolbooth* of *Edinburgh*; PANNEL:

Indicted and *accuſed* as in the former *Sederunts*.

" The Lord Juſtice-Clerk and Commiſſioners of Juſticiary, in reſpect " that *Grizel M'Queen*, Relict of Dr. *Hamilton*, and *Agnes Ker*, Wife of *William Hill*, late one of the Letter-Carriers in *Edinburgh*, two of the four " Midwives named Yeſterday, and cited in Conſequence of the Warrant " then granted for to have appeared this Day, do only compear; and " that Excuſes are offered and ſuſtained for the other two; therefore " they grant Warrant for citing *Mary Crawford*, Wife of *William Richardſon*, Baker in *Edinburgh*; *Mary Angus*, Widow of *Hugh Sheills*, " Wig-Maker there; and *Margaret Watſon*, Widow of *William Petrie*, " Merchant there; all known Midwives, to compear inſtantly before " this Court, in order to the Effect that they, or ſuch of them as the " Court ſhall appoint, may, upon Oath, inſpect the Pannel *Katharine* " *Nairn*, and make Trial, whether or not ſhe be with Child, and ac- " cordingly to give their Opinion and Judgment thereupon.

(Signed) " GILB. ELLIOT, I. P. D."

Conform to Warrant granted Yeſterday and this Day, by the Lord Juſtice-Clerk and Commiſſioners of Juſticiary, for citing of Midwives to inſpect the Pannel, *Compeared*, in Preſence of the ſaid Lords, *Agnes Ker*, Wife of *William Hill*, late one of the Letter-Carriers in *Edinburgh*; *Margaret Watſon*, Widow of *William Petrie*, Merchant there; *Grizel M'Queen*, Widow of Dr. *Hamilton*; *Mary Crawford*, Wife of *William Richardſon*, Baker in *Edinburgh*; and *Mary Angus*, Widow of *Hugh Sheills*, Wig-Maker in *Edinburgh*; being all ſolemnly ſwore, depone, That they ſhall faithfully try, and true Report make to this Court, of their Opinion and Judgment, whether the Pannel, *Katharine Nairn*, is with Child, or not, as they ſhall anſwer to God.

(Signed) AGNES HILL, MARY RICHARDSON,
MARG. PETRIE, MARY SHEILLS,
GRIZEL M'QUEEN, GILB. ELLIOT.

The ſaid five Midwives above-named, having removed out of Court with the Pannel to another Room, and re-entered into the ſame after ſome ſhort Space of Time, depone unanimouſly, From what they have obſerved, they cannot give a poſitive Opinion, whether the Pannel is pregnant or not; and that they cannot depone that the Pannel is with Child; nor can they depone that ſhe is not with Child.

(Signed) AGNES HILL, MARY RICHARDSON,
MARGARET PETRIE, GRIZEL M'QUEEN,
MARY SHEILLS, GILB. ELLIOT.

" The Lord Juſtice-Clerk and Commiſſioners of Juſticiary, in reſpect " of the foregoing Report, delay pronouncing of Sentence againſt the ſaid " *Katharine Nairn* Pannel, till the third *Monday* of *November* * next to " come at 12 o'Clock before Noon, in this Place, and continue the Diet " till that Time; and grant Warrant to the five Midwives before-named, " along with Mrs. *Johnſton*, another known Midwife, and already cited " for that Purpoſe, and who, upon Report, will alſo be put upon Oath, " That they by Turns may viſit and inſpect the Perſon of the ſaid *Katharine Nairn* Pannel; and ordain the ſaid Midwives to report their " Opinion and Judgment to the Court the ſaid Day, anent the ſaid *Katharine Nairn* her Pregnancy, or being with Child; and appoint the " Pannel in the mean time to be carried back to Priſon.

(Signed) " GILB. ELLIOT, I. P. D."

COPIES *of the* LETTERS *mentioned in the Minute of Debate in Arreſt of Judgment, p.* 516, *which were produced in the Courſe of the Trial, but were not proved, and did not enter the Record.*

LETTER *by* Anne Clarke *to his Majeſty's Advocate.*

Lord Advocate,

UPON my coming to Town, I am informed, that you heave been ſearching for me. It would never bread in my Breeſt to keept out of the Way, had it not been for Terror of Impriſonment; but houping you will be more favourable to me, I ſhall weat upon you to-morrow Morning at Eight of the Clock.

Sunday Evening, Eight of the Clock. ANNE CLARK.

To the Right Honourable Lord Advocate.

LETTER *from Lord* George Beauclerk, *Commander in Chief of his Majeſty's Forces in* North-Britain, *to Lord Juſtice-Clerk.*

My Lord,

BY a Letter I have juſt received from the Lord Advocate, I find Notice has been taken in Court, that notwithſtanding of the Order of the Court for confining of *Anne Clark* in a ſeparate Room in the Caſtle; yet, after being ſeparated, ſhe was again remanded back to the ſame Confinement: It is very true; and I have the Honour to acquaint your Lordſhip, that it was done by my Orders; as it was repreſented to me, that the Room in the Gunner's Houſe ſhe was by Deſire put into, was by no means a Place to keep a Priſoner in Safety; and I am determined, that all Priſoners intruſted to the Care of the Military under my Command, ſhall always be put in Places of Security. I have the Honour to be, my Lord, *Your Lordſhip's moſt obedient humble Servant,*

Holyrood-Houſe, Aug. 12, 1765. G. BEAUCLERK.

To the Right Honourable the Lord Juſtice-Clerk.

LETTER *from* Staats Long Morris, *Eſq. to Mr.* James Smith, *Writer to the Signet.*

SIR, *Huntley-Lodge, Aug.* 3, 1765.

THIS Day I received your Letter of the 31ſt of *July*, requeſting an Atteſtation of Lieutenant *Ogilvie*'s Behaviour while he was under my Command. His Conduct as an Officer was unexceptionable; and he was always thought by myſelf, and the other Officers of the Regiment, to be an inoffenſive, harmleſs Man. I am, Sir,

Your moſt obedient, and very humble Servant,

STAATS L. MORRIS.

To Mr. *James Smith*, Writer to the Signet, *Edinburgh.*

" Court directs a Proſecution for an Aſſault with an Intent to commit a Rape. In Caſes of that Nature, I doubt not but the Witneſſes in the preſent Caſe would have " boldly aſſerted, that a Rape had been actually committed: The Mind of the principal Witneſs was ſtrangely prepoſſeſſed; ſhe could hear diſtinctly what the good " Lady *Eaſtmiln* could neither hear nor ſee.

" If they were to be tried on the Murder ſingly, the Proof there will appear as defective. There is not one poſitive Proof, that *Thomas Ogilvie* died of Poiſon. The " Surgeons who attended, declare, that the Symptoms might ariſe from natural Cauſes, a violent bilious Colick. It was proved, that *Thomas Ogilvie*, the Day before his " Death, and ſome Days before that, had complained of Pains in his Bowels, and had called for, and taken Drams in ſeveral Places, to procure Eaſe. Theſe moſt " certainly were not the Effects of Poiſon taken on the Morning of the Day on which he died. Why might not theſe Pains have increaſed the Day on which he died, with- " out the Interpoſition of any Poiſon? The Matter might have been cleared up by opening the Body. Surgeons were preſent, and ready to perform the Operation, but " were prevented by the Perſon who has ſpirited up the Proſecution, and who is to be the only Gainer by the Death of the Priſoners.

" The great Rule of Evidence is, to have the beſt Proof the Nature of the Caſe can admit: That certainly has not been produced in this Caſe: It was not oppoſed by " the Priſoners, but it was oppoſed by the Man who wiſhes their Deſtruction. The Inceſt is ſuppoſed to be certain, becauſe the Huſband is ſuppoſed to have been poiſon- " ed; and, on the other Hand, the Man is believed to be poiſoned, becauſe there is a ſuppoſed Proof of Inceſt.

" Under theſe Circumſtances, it is difficult to find any Means to prove the Innocence of the Priſoners, after a Verdict and Judgment. The 19th Article of the Union " confirms the Juriſdiction of the Court of Seſſion; and in the ſame Terms it confirms the Juriſdiction of the Court of Juſticiary. It mentions nothing of an Appeal from " the Court of Seſſion to the Houſe of Lords, yet thoſe Appeals are frequent. It mentions nothing for or againſt Appeals from the Courts of Juſticiary: It certainly does " not exclude them. There lies an Appeal from the Court of Exchequer in *Scotland* to the Houſe of Lords. To admit an Appeal from the Two Supreme Courts in " *Scotland*, where Property only is concerned, and not to admit an Appeal from the third Supreme Court, where Life, Honour, Property, and Poſterity are concerned, " appears ſomewhat extraordinary. By the ſame Article of the Union, it is enacted, that no Cauſes in *Scotland* be cognoſcible, or any Judgment from thence be recog- " noſced, received, or altered, by the Court of Chancery, Queen's-Bench, or Common-Pleas, or any other Court in *Weſtminſter-Hall*. This negative Clauſe as to *Weſt-* " *minſter-Hall*, and the Courts there, ſeems to imply a Power of recognoſcing and altering Cauſes and Judgments in the Houſe of Lords. I think it is the common Rule " of Conſtruction.

" I believe there are few Inſtances of Appeals from the Court of Juſticiary; but that is not a Proof that ſuch Appeals cannot lie. I remember a Petition of Appeal was " ſent from *Scotland* in the Affair of *Barriſdale*: There was ſome Difficulty made about preſenting the Appeal. Lord *Bath* was applied to; but he ſaid, it was a Branch of " Buſineſs he never meddled in, nor was he diſpoſed to meddle for the future in any public Affair, unleſs it was ſuch as was of the higheſt Importance to the Nation; " however, he would go to the Houſe, and mention it to the Chancellor: And in ſome Days after, being called upon, he ſaid, he mentioned the Affair to the Chancellor, " but that it was unneceſſary to ſtruggle as to the Petition, as the King, out of his gracious Diſpoſition, would give the ſame Relief that was aimed at by the Petition.

" If there is no Way open from the Court of Juſticiary to the Houſe of Lords, it is the only Court in *Great-Britain* which is not ſubject to that Juriſdiction; for Writs " of Error go from the *King's-Bench* to the Houſe of Lords, even in Caſes of High-Treaſon. It is not a common Practice, I confeſs; but yet it has been done. I ſee nei- " ther Reaſon nor Law why the Proceedings of the Court of Juſticiary might not fall under the Review of the Supreme Court, as well as thoſe of the Court of Seſſion.

Sept. 14, 1765. (Signed) " A. M'CARTY."

In Conſequence of this, Lieutenant *Ogilvie* was reſpited from Time to Time till the 13th of *November*, 1765, when (his Majeſty's fourth Reprieve being expired) he was carried from the *Tolbooth* in *Edinburgh*, and was executed in the *Graſs-Market*, amidſt an innumerable Concourſe of People. The Day before his Execution he ſigned and delivered a Paper, in order to be made public, of which the following is an authentic Copy:

" I Lieutenant *Patrick Ogilvie*, Brother-German to the Deceaſed *Thomas Ogilvie* of *Eaſtmiln*, conſidering myſelf upon the Brink of this mortal Life into Eternity; and as " I have but few Hours to live, would chuſe to employ them in the Way that would moſt conduce to my eternal Happineſs: And though my Years be few, and my Sins " many, yet I hope, through God's Grace, and the Interpoſition of my bleſſed Redeemer, that the Gates of Heaven will not be ſhut upon me, in whatever View I, as a " Criminal, may be looked on by the Generality of Mankind; and I hope, thoſe who beſt knew me, will do me Juſtice when I am gone. As to the Crimes I am accuſed of, " the Trial itſelf will ſhew the Propenſity of the Witneſſes, where Civility, and poſſibly Folly, are explained into actual Guilt; and which poſſibly had the greater Effect in " making them believed; and of both Crimes for which I am now doomed to ſuffer, I declare my Innocence; and that no Perſuaſion could ever have made me conde- " ſcend to them.

" I freely forgive every Perſon concerned in this melancholy Affair; and wherein any of them have been faulty to me, I pray God to forgive them.

" My Counſel and Doers have done their Duty for me, for which I thank them ſincerely, conſidering the Care they have taken of me, and am ſorry it is not in my Power " to give them a better Reward.

" The Miniſters of this City have been at great Trouble about my eternal State, which I have always gratefully acknowledged, and will do to my laſt Breath, for the " Care they have been pleaſed to take of me: I am ſorry, Time being ſo precious now, I have it not in my power to expreſs my Gratitude more ſo, for their Goodneſs " and Attendance towards me; and I hope their Labours in my Behalf will not be in vain.

" Captain *James Robb*, and the other Keepers of the Priſon under him, have alſo ſhewn me great Kindneſs ſince my Confinement, for which I thank them, and thought " it my Duty to declare the ſame.

" I deſire to die in Peace with all Men, even my greateſt Enemies, begging Forgiveneſs to them, as I hope for it from that God, in whoſe Preſence I am ſoon to ap- " pear; hoping for the Pardon of my Sins, and Entrance into eternal Bliſs, through the Merits and Interceſſion of my Redeemer, to whom I recommend my Spirit: Come, " ſweet Jeſus, come quickly, and receive it! (Signed) PATRICK OGILVIE.

" P. S. Mean Time I beg Leave to clear Mr. *John Fenton* of an Affair laid to his Charge; ſuch as his being guilty of keeping me from making a Confeſſion to the " World before I died; this, I hope, will be a Warning for the future from ſuch like Miſtakes to the World, and hope they will be ſorry for their falſe Suſpicion now.

Edinburgh, Tolbooth, Nov. 12, 1765. (Signed) " PATRICK OGILVIE."

* On the 18th of *November* 1765, the High Court of Juſticiary met, agreeable to their Adjournment of the 16th of *Auguſt*; when the Conſideration of the Caſe of Mrs. *Ogilvie* was reſumed, and the Midwives appointed by the Court to viſit her, having emitted their Declaration upon Oath, that they adjudged her to be in the ſixth Month of her Pregnancy, the Court, in Conſequence thereof, again ſuperſeded the pronouncing of Sentence until the ſecond *Monday* in *March*.

Mrs. *Ogilvie* was delivered of a Daughter, *February* 27th, 1766, in the *Tolbooth*; from whence ſhe found Means to eſcape on the 15th of *March*; the Court of Juſticiary, who met on the 10th, having, on Account of her being ſo lately brought to Bed, further adjourned to the 17th; on which Day ſhe was to have received Sentence.

AN

A N

A P P E N D I X,

CONTAINING

T R I A L S,

A N D

P A R T S OF T R I A L S,

A R G U M E N T S IN L A W,

S P E E C H E S AND OTHER M A T T E R,

Proper to Complete or Illuſtrate the foregoing

T R I A L S A N D P R O C E E D I N G S.

APPENDIX.

NUMBER I.

The CASE of ROBERT Earl of ESSEX, and the Lady FRANCES HOWARD.

Some MEMORIALS *touching the Nullity between the Earl of* Essex *and his Lady, pronounced* September 25, 1613, *at* Lambeth *(and the Difficulties endured in the same), by* George, *Archbishop of* Canterbury *.

BEING at the Court at *White-Hall*, on the 12th of *May*, 1613, or thereabouts, his Majesty moved me, that I would be a Commissioner in a Controversy to be begun between the Earl of *Essex* and his Lady, for the separating of them; and when his Majesty had ended those few Words with me, my Lord Chamberlain, who was then in the Gallery, spake also unto me to that Purpose. It was unto me a Matter very strange, having heard before of some Discontentments between that Noble Couple; but never imagining that Matters were come to that Head. My Answer was alike to both, "That I did not know the "Ground whereupon they intended to move; but that, if I were to be a "Judge in any such Question, I would pray, that other Bishops, being "near the Town and Court, might be joined with me." The Persons that were named then, were, my Lord of *London*, my Lord of *Ely*, and my Lord of *Litchfield* (for at that Time was my Lord of *Bath* with the Queen's Majesty at *Bath*). Besides, I prayed both the King's Majesty, and my Lord Chamberlain, "That before any such Thing were entered into, I "might speak privately with my Lord of *Essex*, for the satisfying of mine "own Mind;" which by both was permitted unto me. The Day after I sent for the Earl; and having private Speech with him, only about the Ability of his Body, and nothing else, I found him generally much reserved in Talk, but only avowing the Ability of himself for Generation; and that he was resolved never to lay any Blemish upon himself that Way. I knew not well what to make of this; for I did not then understand, that some Lords had met before at *White-Hall* on both Parts, (the Lord Privy-Seal, the Lord Chamberlain, the Earl of *Southampton*, and the Lord *Knowles*, as afterwards I heard) to settle an Order by Consent, how this Prosecution should be; that is to say, That a Separation should be made, and my Lord's Honour every Way preserved.

Within a Day or two, coming to *White-Hall*, I had Speech with the Lord Chamberlain, in the Gallery going towards *St. James's Park*. I might not reveal all Particulars of that which passed in private; but yet I told his Lordship, "That I had spoken with the Earl of *Essex*, and I per-"ceived it was like to be a Matter of great Difficulty, and therefore wish-"ed his Lordship to be well advised, before any thing was brought into "Publick." I told him, "That he must proceed either upon Confession "or Proof: That it was probable, the Earl would not confess his own "Impotency, for then he blemished himself: That my Lady's Oath in "that Case was not sufficient; and how other Proofs might be had, I "could not conceive: That the Earl in open Estimation was to be "thought an able Man: That his Father was not thought in that Kind "unsufficient." The Lord Chamberlain replied, "That, perhaps, the "Father's Sin was punished upon the Son: That it was Truth, that the "Earl had no Ink in his Pen: That himself had confessed, that he could "not know a Woman, and that before divers Noblemen, and some of "them his own Friends, naming, as I remember, the Earls of *Northampton* "and *Worcester*, and the Lord *Knowles*." All this while I never dreamed of *Impotentia versus hanc*, but conceived, that they would charge the Earl simply with Disability. The Lord Chamberlain then seemed unto me fully resolved to proceed, and told me whom he would have in the Commission, *the Bishops of* London, Ely, *and* Litchfield, *the two Chancellors of the* Exchequer *and* Dutchy, *my Judges*; (for so he called them) *Sir* Daniel Dun, *Sir* John Bennet, *Dr.* James, *and Dr.* Edwards. I told his Lordship, "That I liked the Persons very well." The next News I heard was about a Day or two after, "That the Commission was out under the "Great Seal; which I wondered at, by reason that I thought, that my Words to the Lord Chamberlain being well weighed, would have moved some longer Consideration. Well: The Commission is brought; it is accepted, and Proceeding decreed; the Earl of *Essex* is called; the Libel is put in. When we saw it, and that it contained *Impotentia versus hanc*, most of us, who were not acquainted with the Project before, were much amazed at it. I told the Counsel for my Lady, "That they had laid a "very narrow Bridge for themselves to go over:" So said my Lord of *London*, and divers of the rest; only my Lord of *Ely* was still silent. My Lord of *Litchfield*, two several Times, uttered Speeches, as much grieving and repining at this Controversy: "That he was Ordinary to the Earl of "*Essex*, and had been in his House at *Chartley*, which he saw to be well "governed; and the Earl did bear himself most religiously therein, to his "great Comfort: That his Wife had the Honour to be Cousin-German "to the Countess of *Suffolk*; and therefore he had no Reason but to wish "well to the Earl of *Essex* and his Lady both. Yet, if he had been worthy "to be consulted withal, he should have thought that seven Years had "been little enough to have deliberated, whether it were fit to bring such "a Business into Question before the World." Another Time he told us, "That it was very good, that we should proceed with great Wariness "in this Cause; for," saith he, "the World looketh on us what we do; "and there were not more Eyes upon the Earl's Father losing his Head, "than there be upon the Earl now losing his Wife." He told me afterwards, "That he had Ill-will for those Speeches, and complained that "some among us did tell Tales of all that was said and done." (And so it appeared afterwards, that Sir *J. Cæsar* and Sir *Daniel Dun* did.) Sir *Thomas Parry*, in all his Speeches, privately murmured against this Nullity, till he came to *Windsor*; where, the Day that the King heard us, the Lord Chamberlain, in my Presence, spake privately with him and Sir *Julius Cæsar* about this Matter; and from that Time forward, Mr. Chancellor of the *Dutchy* was altered. My Lord of *Ely*, also, for a great while, was in Dislike of the Separation, (as I have credibly heard he opened himself to Sir *Henry Savile*) until such Time as the King spake with him, and then his Judgment was reformed. But Truth it is, that among us he said nothing.

Now the Earl's Answer is taken, which appeareth. In it there were divers Things very observable. He used no ill Speech of his Lady, for which we all much commended him. I gave him so strict a Charge to speak the Truth, requiring him, as he would answer me before God at the last Day, to deliver nothing for Favour or Affection, but to inform us in the Verity, that it wrung from him something which I supposed he intended not to speak so plainly. He gave the Reason of his having no Motions to know his Lady Carnally, and of his thinking that he never should. "When I came out of *France*, I loved her; I do not so now, neither ever "shall I." When he was to answer to the Article, that she was *Virgo incorrupta*; he smiled, and said, "She saith so, and she is so for me." Sir *Daniel Dun* catched these Words, and bid the Register set down then, *Credit articulum esse verum*. These Things gave me no great Encouragement to the Business; but yet being at very little Leisure, I let Matters go on, and in mine own Part resolved nothing. Then the Witnesses were deposed, but not published. The Inspectresses were chosen, who came most unwillingly unto it; and howsoever Sir *Julius Cæsar* and Sir *Daniel Dun* (whom we never suspected to be as Parties in the Cause, as afterwards they appeared to be) made all clear and fair Weather; yet my Lord of *London* told us openly, "That he being with them, found that the Ladies "knew not well what to make of it; that they had no Skill, nor knew not "what was the Truth; but what they said, was upon the Credit of the "Midwives, which were but two, and I knew not how tampered with." Then came the Lady *Frances* to take her Oath, with the seven Compurgators. I noted therein some Things. A Paper was brought, containing, *Verbis præcisis*, what her Ladyship would swear. We saw it, and considered it, and found it too bare and slight to enforce any thing. The Commissioners advised, that it should be more full. Dr. *Steward* accordingly drew it; but he must go forth to the Lady, to know whether she would swear it. At last it was agreed unto. When she came to subscribe it, after the Oath taken, one or two of her Brothers standing at her Back, put her in Mind that she must not write her Name *Frances Essex*, which she most willingly remembered, and subscribed *Frances Howard*. We saw my Lord of *Litchfield*'s Wife to be one of the Seven. We were afterwards informed very credibly, That the Lady *Knevet* had declared her Sorrow, that she was used in such an Action, and said, "That she wept all the "Day about it." These Things pleased me little, that Nobody took Comfort in the Business.

Things go on in a Course till *Midsummer-Day*. Then did the King deal with me privately, as if he had received divers Complaints against me. The first was, "That we delayed the Proceeding, inasmuch as the Meet-"ing was put off, from the 18th of *June*, till the 2d or 3d of *July*." My Answer was, "We had rather gone too fast: We had sat Forenoon "and Afternoon. The Term now grew to an End, and we had many "Businesses to dispatch of the King's: That the Commission-Day for "Causes Ecclesiastical was put off for a Week, by reason of *Midsummer-"Day* falling on a *Thursday*; and consequently, that our Proceeding in "this Cause, which commonly attended the other Commission, was of "Necessity to be deferred." But my principal Answer was, "That we "could not shorten it; for the Counsel on both Parts had agreed upon "that Day in *July*, and so it was upon the Acts: However, therefore, "the Counsel for my Lady moved openly in Court to abbreviate the "Time, yet the Counsel for my Lord would not renounce nor alter their "Term probatory, but kept them close unto it." Another Objection was, "That I acquainted not the King, from Time to Time, how Matters did "go." I answered, "That I knew not myself; for as yet there was no "Publication of Witnesses; when any thing came to my Knowledge, his "Majesty should understand it." It was added, "That divers Persons "repaired unto me, who wished not well to the Business." "Belike," said I, "they mean the Earl of *Southampton*, who came in the other Day, "when we were all sitting together: But his Coming was about *John* "*Cotton*'s Cause; and I never had a Word with him in all my Life, "touching this Business." "No," said the King, and smiled, "it is "Sir *Henry Neville*." "Indeed," quoth I, "he was with me the other "Day, and this very Morning: But your Majesty well knows what was "the Reason. It was touching that Cause, which your Majesty com-"manded me to send for him about. I delivered him your Mind the one "Day, and he gave me an Answer the other." At this Time, his Majesty cast out some Words, as if he wished well to the Nullity; but it was so obscurely, that I did not conceive that earnestly he desired it. After this Day, the Complaints were many which were made to the King against me, and many Threats were used, and divers

* The Proceedings between the Earl of *Essex* and Lady *Frances Howard*, in *State Trials*, Vol. I. p. 317, being but short and very imperfect, wanting the Arguments of the Civilians, &c. this Account, wrote by Dr. *George Abbot*, Archbishop of *Canterbury*, with the Speech he intended to have made, and King *James*'s Letter to him, will give great Light into that Affair, and help greatly to explain it; and should be read with those Proceedings in Vol. I.

Tricks

Tricks were played, to urge me to yield to the Nullity. One was, "That I ſhould ſuffer the Earl of *Eſſex* to go out of Town." I anſwered, "He had made his Anſwer, and had his Proctor, and it was our "Cuſtom then not to ſtay Men." His Majeſty commanded me to inquire, if his Preſence were not neceſſary; and if it were, then I ſhould ſtay him. I ſent to Sir *Daniel Dun*, to Sir *John Bennet*, and to Dr. *Steward*; and they all agreed, that there was no Need of his Lordſhip's being in Town. And of this I ſent Word to the Lord Chamberlain; and my Lord of *Eſſex* was permitted to depart. One while it was given out, that I was moved by the Queen to croſs them; when, in Truth, I had not ſpoke with her thereabout: Another while, that I had ſpoke with the Earl of *Eſſex* at firſt, and hence his Lordſhip grew leſs pliable; when they knew about what it was, and were told of it before. And it was not forgotten, that when I gave Charge to the Earl of *Eſſex*, to anſwer truly to the Poſitions in the Libel, I named the Caſe of my Lord of *Devonſhire* and the Lady *Rich*, as if I had compared this Cauſe unto theirs. When afterwards the Earl's Counſel took Exception to the Libel, it was given out, that they were animated by me to oppoſe; whereas I never ſpake with them, nor knew any thing of their Purpoſe. And ever that was one, that there were Delays uſed. Yea, it was to my Face delivered as a Threat, that Archbiſhop *Grindal* had been overthrown for not giving Conſent to the Divorce of Dr. *Julio*, as implying, that the ſame would be my Caſe.

About this Time, the Lords, and the reſt of the Feoffees, were to meet at Mr. *Sutton*'s Hoſpital, about the ſettling of it. The Day that we were to come thither, my Lord Chamberlain, in the Privy Gallery at *Whitehall*, ſhewed his Anger towards me, that we had not ſent for the Keys to his Lordſhip, and that he might deliver over the Cauſe. But when I came to the *Charter-Houſe*, there was delivered me a Letter, written all with my Lord's own Hand, and directed to the Lord Archbiſhop, the Lord Chancellor, and the Lord Privy-Seal; wherein he did twice take Exception to me by Name, and, in a ſort, braved me, that ſo he might pick a Quarrel to me; whereunto I replied not, but bore it with Patience.

A little before *Whitſuntide*, his Lordſhip was very kind to me, and of his own Accord proffered me a Chamber at *Greenwich*, which my Lord, my Predeceſſor, had; but after twice proffering of it, and my accepting of the ſame, his Lordſhip fell off ſtrangely, and I never ſpake of it more. Theſe Complaints and Threats made me to ſuſpect all was not well; for what needed theſe Things to me, in a Matter of Juſtice?

The Time now grew on, that his Majeſty was to go abroad in Progreſs on a *Sunday*, which was the Day before the Counſel for my Lord were to put in their Anſwers and Exceptions to the Libel. The Lord Privy-Seal ſhewed me a Letter of the King's to his Lordſhip, wherein he was to expoſtulate with me for delaying the Buſineſs. I gave his Lordſhip Anſwer what was done, and his Lordſhip profeſſed that he was ſatisfied, and that no Man could do more than I did. On the *Monday*, the Counſel for my Lord put in their Anſwer, which was round and picquant. The Lord Chamberlain had Notice of it, and complained thereof to the King. I ſent his Majeſty the Copy thereof, and received from the King a Letter, written all with his Majeſty's own Hand, ſhewing Diſlike thereof. At that Time, Sir *William Button* threatened Sir *Daniel*'s Servant hard for that Anſwer, as the ſaid Sir *Daniel* divers Weeks after told me. The Commiſſioners conſidered of the Anſwer, and diſallowed it, giving Order, that no Record ſhould remain of it, but that it ſhould be utterly defaced. This was very well accepted, and now my Lord of *Canterbury* was a very honeſt Man. But till this was done, their Followers gave out, that the King had in two Letters ſo ſchooled the Archbiſhop, as he was never ſchooled in all his Life.

Things now being quiet, I called Sir *William Button* one Commiſſion-Day unto me, and ſpake thus to him: "Sir *William Button*, you have fol-"lowed this Buſineſs from the firſt, and have been preſent at the acting "of all Things. Have you ever ſeen me, in Word or Deed, do any "Matter that doth not become me?" (for indeed hitherto I had no Way declared myſelf, becauſe we were not come to conſider of the Proofs.) "What is then the Cauſe that I am thus complained upon, that I cannot "one Day be quiet?" His Anſwer unto me was, "That the Lord Cham-"berlain was every Way a kind Father to his Children; but in this of "his Daughter, he was ſo paſſionate till it had an End, that he lay as "on a Grid-iron, broiling till the Matter were accompliſhed." Quoth I, "It ſhall not be delayed by me." Now, the Counſel on both Sides drew on to inform us, wherein I noted, that whereas the Libel was laid in Nature of *Maleficium verſus hanc*, my Lady's Counſel, upon the ſhutting up of the Cauſe, would not apply themſelves thereunto, neither would they willingly hear of it; which ſeemed ſtrange, ſince all the Books which they brought, particularly to the Cauſe, did mention that; and Doctor *Steward* had publickly and expreſſively ſaid, "That it was that "which they did mean." This troubled me ſomewhat, becauſe I perceived that they themſelves could not tell what to make of it. But afterwards fell out another Matter, which very much alienated my Judgment from the Cauſe: It appeared, that Sentence could not be given, till the Time that the King entering his Progreſs, was gone as far as *Windſor*, and then his Majeſty was ſoon to depart to *Farnham*. Sir *Daniel Dun* told us, "That he was to attend the King in Progreſs; that he muſt be "at *Farnham*; that he was old and lame; that it would be too great a "Trouble for him to come back again at the Day of Sentence." He therefore prayed, "That we would hear him deliver his Judgment of "the whole Matter." This Proffer ſeemed wondrous ſtrange to moſt of us; and putting it by handſomely, we reſolved not to trouble him therewith: And in this Opinion we aroſe. But afterwards, my Lord of *Litchfield* cometh to my Study Door, where I and my Lord of *London* were about another Buſineſs, and telleth us, That my Lord of *Ely*, and Mr. Chancellor of the *Exchequer*, were very deſirous to hear Sir *Daniel* ſpeak; and that he, for his Part, was of the Mind that it would do very well, and therefore he importuned us both to give Conſent unto it. We imagining no great Harm could come thereby, aſſented, and the next Day is appointed for that Purpoſe. There Sir *Daniel* cometh with a formal Declaration, divided into ſix Parts; to every one of which he ſpake ſo largely, that with a little replying of ours, it ſpent a whole Afternoon. Matters which I moſt obſerved therein, were theſe: He told us, "That "by our Commiſſion we might hear this Cauſe ſummarily." He brought a Book, "That he who hath Power to hear a Matter ſummarily, is in "Nature of an Arbiter choſen by both Parties, and therefore may judge in "Diſcretion, as he ſhall think fit;" and more to that Purpoſe. I thought with myſelf, that this was ſtrange Doctrine in a Matter of Marriage; that as Arbitrators, we might adjudge a Wife to her Huſband, or not adjudge her, according to our Diſcretion. In his diſcourſing of my Lord's Impotency *verſus hanc*, he beat upon the Matter of *Maleficium*, and yet by no Means he would have it to be that apparently. He inſiſted much, "That "the Sentence was to be given in general Terms, not naming any parti-"cular Impotency." I told him, "In ſuch a Sentence, the World look "that we ſhould yield a Reaſon of that which we did." He replied, "That it was fit to give no Reaſon." "And here," ſaid Mr. Chancellor of the *Exchequer*, "a Judge is not to give a Reaſon of his Sentence, but "only to God. I would give no Reaſon to any Prince in the World." I was once called before Queen *Elizabeth*, about a Sentence which I gave, and ſhe demanded of me the Reaſon thereof; I told her, "A Judge was "bound to give no Reaſon of that which he pronounced, but only to God." I marvelled much at theſe Things, and at laſt replied, "Well, let it be "we acquaint not the World with the Reaſon of that which we do; yet "is it not fit, that I who am the Judge, and muſt pronounce the Sentence, "know the Ground of that which I am to pronounce?" Here, after a little pauſing, one of them ſaid, "Yes, for you may ſee that in the Books "and Depoſitions." Quoth I, "But I cannot ſee that there which may "ſatisfy me. But Mr. Chancellor," ſaid I, "and Sir *Daniel Dun*, Com-"miſſioners, you perhaps be not driven to it, yet I ſhall be forced of Ne-"ceſſity to tell Men the Reaſon of the Sentence: For as ſoon as this "Cauſe is ſentenced, every Man who is diſcontented with his Wife, and "every Woman diſcontented with her Huſband, which can have any rea-"ſonable Pretence, will repair to me for ſuch Nullities. If I yield unto "them, here will be ſtrange Violations of Marriages; if I do not, I muſt "not tell them, that it was fit for my Lord of *Eſſex*, but it is not ſo for "you; for the Law knoweth no Perſons, but is indifferent to all. If I "then repel them, I muſt ſhew a Reaſon: Your Caſe is not like that of "my Lord of *Eſſex*; for his Caſe was thus, yours is thus. And ſo muſt I "deliver the Reaſon, or Men will not be anſwered." In this Time of debating, I aſked Sir *Daniel Dun*, "I pray you, Maſter of the Requeſts, "what Examples have we of any Nullity in *England*, pronounced in this "Kind? Might a Man ſee any Precedent of it? For I would be loath to "do any Thing that never was done before." "Yes," ſaith he, "there be "Precedents thereof. In *Anne* of *Cleve*'s Caſe we have an Example, and "another in one *Bury*, which I have here in my Book;" and thereupon out of a Note-Book of his own, he read now a Line or two, and then two or three other Lines in another Place, and ſo forward. My Anſwer was, "I did not think that King *Henry*'s Separation from *Anne* of *Cleve*, was "for any ſuch Matter, but upon a Precontract." I ſaid, "King *Henry* "the VIIIth was a ſtrange Prince in that Kind: He put himſelf into many "Marriages; and when he began that with *Anne* of *Cleve*, he feared leſt "the Emperor, and King of *France*, ſhould combine with the Pope againſt "him, and therefore he was deſirous to ſtrengthen himſelf with the Pro-"teſtant Princes in *Germany*; and for that he thought this Marriage was "much behoveful. But afterwards growing into Peace with one or both "of thoſe Princes, he grew ſoon weary of the Marriage, becauſe he liked "not the Woman." But then I promiſed to conſider further of theſe two Caſes. This was the End of that Day's Labour, which when at Night I had recounted with myſelf, I thought it was an audacious Part, for ſuch a one as Sir *Daniel* was, to teach us out of ſuch poor Grounds, both what to do, and how to do. I found by my Obſervation, that it was a ſet Match, that thus he ſhould be heard; that he was prepared for the Purpoſe; for no Man upon the ſudden, or one Day's Warning, could deliver ſo much, and ſo digeſted. And now I began to aſſure myſelf, that he did not ſhew himſelf a Judge, but was a Stickler for the Nullity. I much ſuſpected the Conſcience of the Man, knowing him reaſonably well before, both out of mine own Eſtimation of him, and out of the Judgment of my two Predeceſſors, the Lords *Whitgift* and *Bancroft*, who held him for a Man moſt corrupt. Yet the next Day I ſent unto him for his Note-Book, and I cauſed the Record of *Anne* of *Cleve* to be brought unto me. Reading over all the latter, I found not one Word tending to the preſent Caſe. *Good Lord!* thought I, *how doth this Man deceive me!* Peruſing his own Book for that of *Bury*, I found it to be nothing but the Pleadings of Advocates on both Sides, when about the 40th of *Eliz.* there was ſome Queſtion in the Common Law Courts about *Bury*'s Land, *Bury* himſelf being dead many Years before. But, I ſaw more in this Book againſt the Cauſe now in his Hand, than for it; and by ſome other Writings in my Houſe, I diſcovered that *Bury*'s Divorce, *Anno* 1561, was for want of his S—s; which Dr. *Steward* alſo, being now of Counſel for my Lady, and who formerly ſtood for *Bury*'s Brother againſt the ſuppoſed Son, publickly acknowledged. Theſe Things made me in my Heart much diſlike the Cauſe, and procured in me a hard Opinion touching Sir *Daniel Dun*, who ſhould not have wronged me, being my Officer, as Dean of the *Arches*.

Within few Days after, the Meſſage cometh to us, that we were all to attend the King at *Windſor*. This accordingly was done. The Morning before the Hearing, the Lord Chamberlain in my Preſence ſpoke firſt earneſtly with the Chancellor of the *Exchequer*, and afterward with the Chancellor of the *Dutchy*, who that Day fell from us, as appeared by the few Words that he had before the King. Some few Days before that, had Sir *John Bennet*, by Sir *William Button* and Dr. *Edwards* been otherwiſe dealt withal, earneſtly to give Conſent to the Nullity; but that Day we dealt in it more than three Hours. His Majeſty propounding the Matter, aſked, "How Things did ſtand?" Sir *Julius Cæſar* ſaid, "That Sir *Daniel Dun* "was beſt able to ſpeak unto it." And then, *ex compoſito*, Sir *Daniel* begins, and tells a great Tale, and eſpecially inſiſteth upon *Non potuit*. When he had done, I anſwered him, and ſhewed the Want of Ground for that Concluſion, out of other the Earl's evident Anſwers, "That the "*Non potuit* was for Lack of Love, and not for Want of Ability." I challenged Sir *Daniel* for abuſing the King with a falſe Report, and eſpecially for his two Precedents of *Bury*'s Caſe, and that of *Anne* of *Cleve*. Amongſt us, was divers Ways ſhewed the Inſufficiency of the Proofs;

Proofs; that the Libel was laid ſhort to the Cauſe, and the Proofs were ſhort of the Libel; that we had very many Times called upon the Counſel for my Lady, that they ſhould look that they rightly laid their Matter, and made their Proof ſtrong; that, in the End, they complained not of the Judges, when the Fault was in themſelves: (Where my Lord of *Litchfield* added, "That himſelf fearing the worſt, had gone to *Doctors-Commons*, and warned the Counſel for my Lady, that they ſhould look to it.") Among other Things there uttered, Sir *Daniel Dun* ſaid, "What a Diſgrace will this be to my Lord Chamberlain and his Daughter, if it ſhould not now go forward!" My Anſwer was, "They ſhould have looked to that before they did begin it: We were not the Men that ſet the Matter on Foot; if it were a Diſgrace, they put it on themſelves. But," quoth I, "muſt I, to ſave any Man from Diſgrace, ſend my Soul unto Hell, to give a Sentence whereof I ſaw no Ground? I will never do it." My Lord of *London*, Sir *John Bennet*, and Dr. *Edwards*, did carry themſelves well that Day, although Sir *John Bennet* had much Oppoſition from the King himſelf. When we ſaw the King earneſt, I fell down on my Knee, and with Tears in mine Eyes, I ſaid, "I beſeech your Majeſty, if ever I have done you any Service, whom I do ſerve with a faithful Heart, or may do you any S-rvice, rid me of this Buſineſs." I had ſaid before, "That I was the unfitteſt Man that might be, to judge of ſuch a Cauſe; I was no married Man, I was no Lawyer, and I had not had the Time, by reaſon of my infinite Buſineſſes, to read ſo much of that Matter, as other Men had." I obſerved that Day many Things in his Majeſty's Carriage of the Matter: He was earneſt, but gracious and moderate. He found Fault with the Libel, and ſaid, "That Complaints were made that we went too ſlow, but he perçeived we went too faſt." He marvelled that my Lord of *Worceſter*, and the Lord *Knowles*, were not examined as Witneſſes. He conſtantly profeſſed, "That he believed that my Lord of *Eſſex* was impotent for a Woman." He told us, "That ſome of the Earl's Friends had put a Woman to him, and he would not touch her." His Majeſty ſaid, "That the Earl was once purpoſed to have gone to *Poland*, to have tried whether he might be unwitched." To which Things my Reply was, "I would to God we might ſee theſe Things legally proved. That his Majeſty much diſliked that Courſe, and therefore he ſet the Courſe now in Proſecution; and therefore if there were any Error in it, he had done the Lord Chamberlain Wrong, and he muſt take it upon him." In Sum, I found his Majeſty much troubled what to do, as I gathered, eſpecially by theſe Words, "If my Lord of *Canterbury*, and my Lord of *London*, have a Negative Voice, we muſt either begin all again, and have a new Libel, or we muſt have a new Commiſſion, and put other Adjuncts." The Concluſion from his Majeſty was, That we ſhould all meet at *Lambeth* on the Morrow, and if we could unanimouſly conſent, then go to the Sentence; if not, we ſhould put it off unto another Day, and certify him of it, and ſo farther underſtand his Pleaſure. When the King was riſen from his Chair, he fell to inveighing againſt theſe Marryings of young Couples, before they be acquainted one with another. He told us the Inconvenience of it, how he knew in *Scotland* a Father who married his only Child to a Man againſt her Will: That ſhe withſtood it; yet her Father forced her to marry him: That being gone Home with her Huſband, after a very few Days ſhe run away from him: That her Father jerked her, and ſent her Home again: That not long after, ſhe poiſoned her Huſband, and was burnt for it, while the King was in *Scotland*. After his Majeſty's going out, I followed him, and told him, I evidently perceived, that it was in the Earl of *Eſſex*, *Vitium Animi non Corporis*. His Majeſty ſwore he thought ſo. There paſſed ſome other Speech from the King to me, touching his own lying with the Queen the firſt Night that he married her. But at the laſt, I kiſſed his Hand and departed. After I was gone, the Lord Chamberlain ſpeaking ſomewhat againſt me, the King replied, "The Archbiſhop hath ſo adjured me to be rid of this Matter, that I cannot tell what to ſay to him." This did Sir *Julius Cæſar* tell me that Day at Dinner, at *Eaton-College*, letting me know, that the King found no Fault with me. But afterward, the King coming to Dinner, after his Meat had ſtayed for him on the Table more than a Quarter of an Hour, he ſate him down in his Chair, and caſting his Leg over one Side of it, he eat no Meat for a great Space of Time, neither ſaid he any Word, but ſat muſing to himſelf; which every Man obſerved. And it was given out by ſome in the Court, that I was gone away in the King's Diſpleaſure. Within ſome few Days after, it was alſo more Ways than one brought credibly to my Ears, That the Archbiſhop and my Lord of *London* ſhould be hereafter kept to their Spiritualities, and ſhould meddle no more in Temporal Matters: And within a while it came ſo far, as that they ſhould have their Temporalities taken from them. Sir *John Bennet* was at *Windſor* moved by Sir *Thomas Lake* in the Lord *Fenton*'s Name, and afterwards by the Lord *Fenton* himſelf, That he ſhould alter his Opinion, and make his Peace with the King, for his Majeſty was not well pleaſed with him.

As I came Homeward from *Windſor* in my Coach, and all that ſame Night, two Things did run much in my Mind; the one of them was, What a ſtrange and fearful Thing it was, that his Majeſty ſhould be ſo far engaged in that Buſineſs: That he ſhould profeſs, that himſelf had ſet the Matter in that Courſe of Judgment: That the Judges ſhould be dealt withal beforehand, and, in a ſort, directed what they ſhould determine: That the like Example had not been ſeen: That his Majeſty did win himſelf much Honour in the Caſe of *Sutton*'s Hoſpital; that notwithſtanding all Importunity, he had ſuffered the Judges to do their Conſcience. This ſtrange Moving to the contrary, did make me marvellouſly ſuſpect, that it was no direct Matter; and, as a dutiful Servant to my moſt gracious Maſter, I wiſhed in my Heart, that his Majeſty's Hand might be taken off the Buſineſs. The other Point was, that we had all this while, in our Debatings, never, or very little meddled with Points of Divinity. And I thought with myſelf, that much might be ſaid therein againſt *Maleficium*, and the Nullity to be pronounced thereupon *verſus hanc*; for out of this we could never get in all our Talking, though they would never cleave faſt to it. I therefore, having formerly revolved ſome ſuch Things in my Mind, roſe early on the Day that we were to debate Things at large, and ſet down my Mind in Writing out of ſomething in Divinity. The Copy of this appeareth. The Day after we came from *Windſor*, (being *Tueſday*) we met, and all the Forenoon we inſiſted on that which I had briefly written: But to deliver my Conſcience freely before God, I received no Kind or Shew of Satisfaction. My Lord of *Ely* ſat little leſs than dumb, as if he had never dreamed of any ſuch Matter. Divers of the Commiſſioners wondered at him; that he, who had ſpent ſo much Time in reading of the Canoniſts touching this Queſtion, ſhould not think upon Divinity. Briefly up and down by others ſomewhat was ſaid, but nothing to Contentment. After Dinner, Sir *John Bennet* propounded Reaſons out of the Law, but without any Satisfaction. I obſerved two ſpecial Points that Afternoon: The one was, that we all thought my Lord of *Eſſex* his Anſwer to the Libel was neither plain nor ſufficient. And now it was remembered, that my Lord of *Litchfield* had put to him certain Queſtions, that four Things were neceſſary to Generation; *Membrum virile*, Erection, Penetration, and *Ejaculatio Seminis*; which, although they were then ſmiled at, and ſince that Time much Sport had been made at the Court and in *London* about them; yet now our married Men on all Hands wiſhed that punctually his Lordſhip might have been held to give his Anſwer unto them. This inſtructed me, that the Proofs were not full. A ſecond Thing was, that when towards the Evening, I wiſhed that a Reconciliation might be laboured between my Lord and my Lady, that it ſhould beſt become us; my Lord of *Ely*, who from the firſt Beginning of the Proceſs had been always very ſilent, ſpake home about that, much diſliking that any ſuch thing ſhould now be ſought; that it was too late; that it might be the Cauſe of poiſoning and deſtroying one of another, to bring them together again. Well, when we could not agree upon our Concluſion, we were inforced to put all off unto a longer Day; and as the King commanded, I was to certify his Majeſty of it. I wrote a Letter to the King, praying humbly that I might be freed from the Trouble of this Cauſe, or, at leaſt, give no Sentence in it till I were a married Man, and ſo might better underſtand the Buſineſs. I incloſed alſo ſix Reaſons of Sir *John Bennet*'s, taking Exceptions in Law againſt the Nullity. And withal I joined mine own Reaſons in Divinity, of which I ſaid in my Letter, that I knew not where to ſeek an Anſwer to them; meaning, that the Commiſſioners had given me none. Theſe Reaſons afterwards coſt me a great deal of Trouble.

The next Progreſs in this Controverſy was, that I was advertiſed, that it was his Majeſty's Pleaſure that the Cauſe ſhould be put off until the 18th of *September*; and withal there was brought a new Commiſſion of Adjuncts, whereinto my Lords of *Winchеſter* and *Rocheſter* were put. The Day that I perceived this, acquainting the two Chancellors of the *Exchequer* and *Dutchy* therewith, in the Gallery at *Lambeth*, I told them, "That I hoped now, that for my Part, I ſhould be freed from any Trouble therein farther, for I did deſire to be rid of it." They both anſwered me, "That they deſired in like Sort to be quit of the Matter." A good Buſineſs, thought I, that Nobody taketh Comfort of it, unleſs it be Sir *Daniel Dun*; of whom I forgot before to note, that on the Day of meeting, next after our coming from *Windſor*, he, with a great deal of Inſolency, challenged me for my Speech before his Majeſty the Day before. "Do not abuſe the King, Sir *Daniel Dun*." I remembered it was in mine own Houſe, and if I had rattled him according to his Deſerts, my Lord Chamberlain would have ſaid it had been done for his Sake; and in the Progreſs, Sir *Daniel* having the King's Ear, would have made Things worſe than they were; and I therefore forbore him with ſuch Patience, that ſome of the Commiſſioners told me afterwards, that they wondered how I could endure thoſe Behaviours, at the Hands of a Man of his Quality: But yet they commended me for it. Now grew I to conſider what were the Reaſons why theſe two Commiſſioners were joined to us; and therein I had many Advertiſements from divers Friends, divers Ways. We reſolved for my Lord of *Winton*, That it was ſuppoſed, that there was no great Amity between him and me: That when I was Dean there, there was ſome Diſagreement between us, which they ſuppoſed yet continued: That he had an old Grudge to me, for having the Archbiſhoprick, which his Lordſhip ſo much deſired. Beſides, it was ſome Tickling unto him, that his Gravity and Learning ſhould either win in the Archbiſhop, or lay ſome Blemiſh upon him, if he ſtood out. Certain it is, that Sir *William Button* was with him; and, doubtleſs, would tell him how acceptable this Service would be to his Majeſty. I heard of good Credit, and ſecretly, That he was put in Hope to be made a Privy Councillor; and the Fame was general, That for the Father's Labour the Son ſhould be made a Knight. It ſeemeth, at the firſt, that he had no great Fancy unto it; but being wrought upon, he conſented; ſo that he might be required by his Majeſty to be preſent. This was done by a Letter from *Saliſbury*, which, at his being at *Lambeth*, he ſhewed me; that I ſhould take Notice, that he had not come, unleſs he had been commanded. I leave him for the Time, only ſignifying, that in the Vacation, he ſent for divers Books from *London*, and had Dr. *Steward* much with him, to inform him in all Particulars. Yet I may not forget, that while he held off his Conſent, ſome hard Opinions were raiſed of him at Court; as I found by a Letter from my Lord of *Litchfield* to me. For there he was found Fault with, that he attended not the King at *Farnham*, or at *Andover*. And there Blame was laid, that Mr. *Love*, who was ſo great with my Lord of *Winton*, was like to get the Warden's Place at *Winchеſter*, Dr. *Harmer* being reported to be dead. Concerning the Biſhop of *Rocheſter*, it was well known that he had opened himſelf before the King's going in Progreſs, that he liked well of the Nullity. Coming once or twice while we were about it, he, with ſome in my Houſe, diſputed earneſtly for it. He was a great Dependant of my Lord of *Litchfield*. This was a Way to make him well eſteemed, and to ariſe high in Preferment. But, in Truth, he ſhould not have verified the Report which Archbiſhop *Bancroft* on his Death-bed gave of him, together with *Butler* and *Carrier*, to the King by a Meſſage, unleſs he did ſome ſuch Thing. When he was put into the Commiſſion, he in divers Places ſeemed to be much offended that he was made one. His Grief was, that he was ſet in Oppoſition againſt me: He would never give his Voice to it, unleſs I conſented. Theſe, and the like Things he ſpake, as elſewhere, ſo to ſome of my Servants in my Houſe at *Croydon*: For,

under another Colour, he came three Times in the Vacation to me; but I never ſpake a Word with him about that Matter, as knowing it would be an Argument againſt me, that I laboured to draw away the King's Commiſſioners; and the End ſhewed, that I had no great Reaſon to truſt him. Beſides theſe two Adjuncts, the new Commiſſion itſelf ſeemed very ſtrange unto me. There were Eight made of the *Quorum*; and it was ſo laid, that if three of them, with two other, conſented, the Sentence might be given; ſo that, by the Words thereof, if ſeven had denied, five might have pronounced and prevailed. A Matter ſo uncouth, that, as I credibly heard, my Lord of *Winton* himſelf found much Fault therewith. Again, there was a Clauſe, *Legibus, Statutis, Ordinationibus, Conſtitutionibus quibuſcunque non obſtantibus*; ſo reſolved they were to have it diſpatched. Every Thing now ſtood at a Pauſe; and my Lord of *Ely* (who, at firſt, delivered his Judgment againſt it to Sir *Henry Savile*, as I heard it avowed upon good Credit; but afterwards ſaid, he was better inſtructed by the King) began to hearken what Men ſaid of the Matter, as appeared by Speech which he had with Sir *John Peyton*; to whom, notwithſtanding, he told ſome Things of the Inſufficiency of my Lord of *Eſſex*. The Weather grew fair; he hoped the Overflowing of the Iſle of *Ely* would ceaſe; he would go down in his Viſitation; he came and took his Leave of me, but not one Word of the Nullity.

Now was his Majeſty abroad, and I had more Leiſure to conſider of this Queſtion. I read what I could; I conferred with many Men about divers Circumſtances, ſo to inform myſelf the better. I prayed frequently to God to direct me aright. I often peruſed the Depoſitions, but I found little Satisfaction. I perceived moſt of the Lords had a great Diſlike of this Proceeding; that the better Sort of Men had generally a Deteſtation of it; that the Judges and Lawyers much condemned it. I heard many ſtrange Stories of the Lady's Carriage. Something was freely ſpoken of a Woman arraigned at *Bury*; and how to ſhut that up, and ſo to free the Earl, this Courſe was conſented upon.

These Things, though out of Charity I entertained not as abſolutely true, yet the Concurrence of them from ſo many, made me that I could not contemn them. Beſides, now grew the Rumour ſtrong, that a new Huſband was readily provided for her: Whereof I called to Mind the Opinion of Sir *Henry Nevile*, delivered to me at *Windſor*; and I did not forget a Speech of *Overbury*'s, once to me in that Kind. I underſtood, that at *Chriſtmas* laſt, there was a Reconciliation wrought between the Earl and his Lady, howſoever it fell out. Yea, that when the Lords met at *Whitehall* about the Matter of Separation, there was three Times that Day a Likelihood to make them Friends; which we thought implied no Diſability of my Lord of *Eſſex*, even in their own Opinion. I farther underſtood, that whereas it was whiſpered among us, the Commiſſioners, That at *Chriſtmas* laſt, my Lord of *Eſſex* being in Bed with his Lady, ſhould labour a Quarter of an Hour carnally to know her, and in the End ſhould ſay, "*Frankey*, it will not be," and ſo kiſſed her, and bid her good Night; That this was not true; but that the Earl, the Night before his going from *London*, at the End of *Trinity* Term, ſaid, with Tears in his Eyes, "That when he went to Bed to her at *Chriſtmas* laſt, he had for-"given all Things as clearly as he wiſhed that God ſhould forgive him "his Sins; but when they were alone, ſhe reviled him, and miſcalled "him, terming him Cow, and Coward, and Beaſt:" And he added, "That ſhe was as bitter a Woman as any was in the World: Which "Things ſo cooled his Courage, that he was far from knowing, or "endeavouring to know her." These Matters, together with the ſmall Joy which the Commiſſioners had to deal in the Buſineſs, made me have no great Fancy unto it. On the other Side, I heard that my Lord Chamberlain, or his Followers, gave out, that what was done, was performed by the King's Direction, otherwiſe it had not been begun; and therefore, they expected that his Majeſty ſhould ſee it effected; that they reſted themſelves on him. I was much grieved that they had this Advantage on my Maſter, who being ſo engaged, as I thought, could not well go backward or forward: And, to increaſe my Sorrow, I was privately adverтiſed from Court, that his Majeſty did mean himſelf to give an Anſwer to my Reaſons above-mentioned. I heard another Way, that his Majeſty in the Progreſs wrote much with his own Hands. From another Friend I was told, That the King, with his Anſwer to the Reaſons, had written to me a ſharp Letter. Yea, by another I learned the Contents of the Letter, which was full of Sharpneſs.

These Things in the Summer kept me full of Expectation of ſome great Diſcontentment. Yet my Heart ſtill aſſured me, that I was guilty of no Wickedneſs. I found all Perſons with whom I ſpake, of my Mind, for the Diſlike of the Nullity. In many Buſineſſes to and from the King by Letters, I found nothing but well. His Majeſty ſent me Warrants for three Bucks, as formerly he had done, and with ſome Kindneſs joined.

Thus I was toſſed in my Thoughts; and in all my Troubles I had Recourſe to God in Prayer.

By this Time, the 18th of *September* draweth nigh, and I am informed, That my Lord of *Wincheſter*, the *Tueſday* before, was come to Town; and that beſides my Lady's Counſel, Sir *Julius Cæſar*, and Sir *Daniel Dun*, did, at *St. Mary Overy*'s Houſe, daily attend his Lordſhip. I expected no great Good of this; only from the King I heard nothing but well. For ſome few Days before, his Majeſty had been at *Whitehall*, where I kiſſed his Hand, and he did not only look merrily upon me, but he gave me Promiſe of the Biſhoprick of *Lincoln* for my Brother, as I underſtood it. Some other Matters alſo paſſed quietly in Speech, and I found no Diſturbance. But on the 17th of *September*, the Day before our new Meeting at *Lambeth*, my Lord of *Litchfield* being ſent from the King, bringeth divers Papers unto me ſealed up. I opened them, and found there my Reaſons firſt; ſecondly, an Anſwer to them *; and, thirdly, a Letter, all written with the King's Hand unto me. I read them all preſently, without any Abatement, whereunto I was helped by my Foreknowledge, that ſuch Things would come. I ſaid little unto it; only I aſked my Lord of *Litchfield*, "Whether he knew what thoſe Papers con-"tained?" He told me, "That the King had read unto him the An-"ſwers to the Reaſons, and had given him the Letter to ſeal up into a "Paper; but in Reverence to his Majeſty, he held it not his Duty to "look into it." Growing afterward in ſome Speech of our next Day's Buſineſs, I told him plainly, "That having ſpent much Time in this "Vacation, in peruſing the Books, I could not find any where, but "eſpecially in the Anſwer of my Lord of *Eſſex*, that which would give "me Contentment." I read the Places, and my Lord confeſſed with me, "That there was not enough." He told me alſo, "That unleſs I "gave my Conſent to the Separation, that he would never give his." So much Reverence in him did I find both then, and divers Times before, againſt this Divorcement. At laſt he mentioned one Thing which pleaſed me wondrous well, and that was, That he ſhould call for my Lord of *Eſſex* again, and new examine him, upon ſome Points to be farther declared, *ad informandum animum Judicis*. For hence, either we ſhould know ſo much as might perſuade us to decree a Separation, or the World might be ſatisfied that we had no Reaſon for it. These Things thus ſettled, his Lordſhip ſeparateth. Then I withdrew myſelf to my Study, and read over again and again the Papers from the King. I found them very ſharp, and perceived by the Time that they arrived unto me, that they were detained till that Day, that I might be overwhelmed with them on the ſudden, and have no Time to deliberate, before we were to come the ſecond Time to ſit in Judgment. These Things did much trouble me, ſo that I did ſleep but a little that Night. I revolved many Things, and much Tumbling I had in my Mind. It grieved me infinitely, that the King ſhould make himſelf a Party therein; that ſome Unthankfulneſs, and other Matters, were little leſs than Reproaches unto me: Methought, my faithful Heart to my Maſter deſerved no ſuch Sharpneſs. I deviſed how I might give the King Contentment, and it was ſome Comfort to me, that we thought upon a Courſe of new examining my Lord of *Eſſex*. But as Things ſtood, I could not force my Conſcience, which cried upon me, "That it was an odious Thing to GOD and Men, to give ſuch a "Sentence, without better Warrant." I here caſt what might befal to the Church in my Diſgrace; how *Papiſts* would ſcorn at it; how it might be my own Ruin, and that divers Ways; a Hazard to my Friends, and to the Commiſſioners which were of my Mind; how my Lord of *London* had a Wife and Children, which might all be overthrown at one Blow. But after Midnight Sleeping, towards the Morning, I conſidered on the other Side, That my Conſcience was more to me than all the World; that it was a fearful Thing, in Place of Judgment, to give a Sentence againſt mine own Heart; that *Olivarius*, the Chancellor of *France*, upon ſuch an Occaſion, grew mad, and died in it; that the Manner of our Sentence muſt be, *Solum Deum præ oculis habentes, à rei veritate inſpecta*: All which, and the like Meditations, did much preponderate with me. Then I ſlept again, and now riſing, I found my Heart much ſettled, to perſiſt in that which I held to be Truth. I poured out earneſtly my Prayers to God, and was now ſtrongly reſolved to leave all to God, remembering, That he had preſerved me from my Mother's Womb; that he had from Time to Time rid me out of all my Troubles; that his Power was the ſame ſtill; that he would never forſake me, if I turned not from him. I forgot not, "That the Hearts of Kings were "in the Hand of the Lord;" that I had Experience of the Graciouſneſs, both of GOD and the King, the Year before; when ſtanding earneſtly in a good Cauſe, that Prince *Henry* ſhould not marry a *Papiſt*, I received ſome ſharp Words from the King for my Labour; but the next Day his Majeſty uſed me very kindly again. To this I added, That Poverty, Impriſonment, Death itſelf, were Things contemptible to a reſolved Mind: That ſome of my Predeceſſors, as Archbiſhop *Cranmer*, and my Lord *Grindal*, had given good Examples of theſe Sufferings, and they were recorded in the Catalogue of the Righteous. These Thoughts thus revolved, I read again the Letter from the King, and drawing out into a Paper all the ſharp Words, I conſidered them again and again, and methought they were not altogether ſo bitter as I apprehended them; that they were wrung from his Majeſty by my Lord Chamberlain's Importunity; that my Maſter had deſerved at my Hands, that I ſhould bear patiently twenty Times more, and that all was nothing, ſo the Cleanneſs of my Conſcience might be preſerved. With theſe Reſolutions on the *Saturday* I came to *Lambeth*, where I met with the News of *Overbury*'s Death, and the Sound of ſome fearful Apprehenſions thereupon bruited about the City. I made Trial of my Lord of *London*'s Conſtancy, telling him *ante tidendum, ante tadendum*. I found him moſt reſolved, avowing unto me, "That if he ſhould pronounce for the Diſſolution of the Marriage, he "thought the Devil would that Night fetch away his Soul." Yea, he was earneſt on me to perſiſt where I began, telling me, "That the Eyes "of the whole Church of *England* were upon me, and expected of me, "that I ſhould ſhew myſelf a worthy Man." At laſt we came to ſit, where my Lords of *Wincheſter* and *Rocheſter* took their Places. The Commiſſion was read, the Fact, and Manner of the Proceſs was opened; and nothing notable done, ſaving that my Lord of *London* propoſing, that it was fit that my Lord of *Eſſex* ſhould be called to explain himſelf farther, for the fiſhing out of the Truth. All the Commiſſioners moſt willingly aſſented thereunto (yea, my Lords of *Wincheſter* and *Rocheſter* expreſsly); ſaving Sir *Julius Cæſar*, who ſoftly declared his Diſlike thereof, in my Hearing. When the Court was riſen, I ſpake with my Lord of *Litchfield*, and not thinking fit to return any thing to the King in Writing, I prayed him to acquaint his Majeſty how Things ſtood; and to tell him, that upon this Courſe of new calling my Lord of *Eſſex*, I hoped in the End, we ſhould give his Majeſty Satisfaction. The *Sunday* I ſpent at *Croydon*, and preached on that Text of Chriſt's raiſing the Widow's Son of *Naim*, to the great Comfort of my own Heart. That Day I conferred with a Friend, and ſettled ſome Courſes, if any Trouble ſhould befal unto me. I was alſo by a good Friend informed, that my Lord of *Eſſex*, on that *Sunday* Morning, having five or ſix Captains and Gentlemen of Worth in his Chamber, and Speech being made of his Inability, roſe out of his Bed, and taking up his Shirt,

* See *State Trials*, Vol. I. p. 319, 331, for the Archbiſhop's *Reaſons*, and the King's *Anſwer* to them: But the King's Letter to the Archbiſhop is there omitted; but here inſerted, after the Archbiſhop's intended Speech, at the End of this Caſe.

Shirt, did shew to them all so able and extraordinarily sufficient Matter, that they all cried out Shame of his Lady, and said, That if the Ladies of the Court knew as much as they knew, they would tread her to Death.

On the *Monday* we met at *Lambeth* again, and Information was given on the Part of my Lady. These Things passed quietly. When the Court was risen, my Lord of *Litchfield* told me, That he had made his Majesty acquainted with our Proposition on *Saturday*; but that his Majesty was strongly against it, my Lord of *Essex* should any more be called, and that by no Means he would endure it, for that peradventure the said Earl, either being provoked by the late Challenge between him and Mr. *Henry Howard*, or otherwise instigated by the Earl of *Southampton*, might speak somewhat which might marr the Business. This made me still suspect that all was not right; and I replied to my Lord, "If that be denied us, and we have no "farther Proof, I shall never give Sentence for the Nullity: As good de- "clare my Mind at first, as at last, and I pray you so acquaint his Majesty." When I went homeward, I much revolved this in my Heart, thinking, Good Lord! What a Case is this? Shall any Truth be kept from us? Are they afraid to have all out? Do they only look to attain their own Ends, and care not how our Consciences be entangled and ensnared? On the *Wednesday* we met again, and now Dr. *James* is come to us, and by and bye cometh in my Lord of *Ely*, who, as it seemed, had meant to have kept him away, but the King sent an express Messenger for him, requiring him, by Letter, to be there on the *Tuesday* Night. Now are we *plena Curia*. Before we sate down, Sir *Thomas Lake* delivereth a Message unto me from the King, that his Majesty desired a speedy End of this Business; that it had hung long, and the World was in Expectation of it; that the Term grew on, which would be full of Businesses: That his Majesty on *Monday* was to go to *Windsor* to meet the Queen, and my Lord Chamberlain with him; that therefore he would have us to fall close to our Work, not to trouble ourselves on the Morrow to come see the King, who would come late to *Whitehall*, because some Ceremonies were to be performed, as upon the last Day of Hunting; that we should not attend his Majesty till *Friday*, but that the Sentence must be given on *Saturday*. My Answer was publickly, "That there should be no Stay in me, and that therefore on the Morrow "we would sit Forenoon and Afternoon, if the Commissioners so pleased; "and if they thought good, I would not refuse to sit until Midnight." But in mine own Heart I perceived, that all the Care was, that the Matter might be dispatched before the Queen spake with the King, whom they supposed not to wish well to the Business. We go to our Court, and Sir *Thomas Lake* stayed to hear the Information on my Lord's Part. It was strange to see how my Lord of *Winchester* carried himself that Day, partly to play his Prizes before Sir *Thomas Lake*, who might make Report of it to his Fame, and partly to shew his Ludimagisterial Disposition. He snapped up my Lord's Counsel, that they could not speak a Word, but he catched it before it was out. "I know what "you will say," when indeed he knew not, neither was it any such Matter as he imagined. God Almighty will tell you a Tale for that; "I tell you, Doctor *Bennet*; I have as much Law as you, I "am as good a Lawyer as you are." He fell divers Times on my Lord of *London* personally, and would needs know of him openly, "How many "Times in a Year a Man was bound carnally to know his Wife?" In a Word, with Scoffs, and imperious Behaviour, he played the Advocate all that Day, to the great Offence of the Standers-by, so that it was publickly spoke of in *London*, which, I think, came to his Ears; so that ever afterward he carried himself more tractable. I was forced to bear it, because of avoiding new Complaints.

The Point most observable that Day, was, that both my Lord of *Winchester*, and my Lord of *Ely*, did deny Maleficiation, so that by no Means they would have this Question to proceed in that Nature, which I openly did thank them for, and bound it upon them, before all the Commissioners and Standers-by, telling them, "That the same was my Opinion." But I asked my Lord of *Winchester*, who sat by me, "What he then held it to be?" He told me privately, "That he held it to be a natural Impotency, which "was before the Marriage." I asked him, "What that might be, and "whence he gathered it?" He answered, "I have heard divers Parti- "culars, which are enough to persuade me, if they be true." "Yea, my "Lord," said I, "if they be true, I have heard as many to the contrary. "I wish that we might examine whether they be true or no; that were fair "Proceeding. It is my Grief that it is not permitted unto us, to try "whether all these Matters be so or not. This might satisfy a Man's "Conscience." So we parted that Night.

On the *Thursday* at Ten of the Clock, we met in *Lambeth-Hall*, where my Lady's Counsel took on them to answer some Scruples objected by Dr. *Ferrand*. But Dr. *Martin*, when Nobody spake of it, fell to wipe away that Objection, that my Lord had not sworn, *cum septima manu*. Upon his Speech, the Commissioners took hold of it, and it then being urged strongly, my Lady's Counsel stood at first, as if they had been blasted with Lightning. Afterward they grew extreme angry with Dr. *Martin*, that he had proposed it; but the Issue was, there could no Answer be given unto it; but in the Sight of all the Standers-by, this was broke off with Shame and Confusion of Faces. We dined not that Day; but about One or Two of the Clock we withdrew ourselves privately into the Parlour, I had thought there to have had Dr. *Edwards*, and the rest who liked not of the Nullity, to propound their Doubts, and so in Order; and last of all, I would have spoken. But there I found a contrary Course resolved, which my Lord of *Winchester* seemed much to dislike. But my Lord of *Litchfield*, Sir *Julius Cæsar*, and Sir *Daniel Dun*, had set the Clock, and they must have their Will. The six Reasons are produced, which Sir *John Bennet* had delivered the Day after we came from *Windsor*, and the Copy whereof was by me sent to the King. All these must in their Order be debated. One was about the Unperfectness of the Libel, in which we all received Satisfaction, that the Libel was well to so much Purpose as now they declared they would have it. The other five, my Lord of *London*, Sir *John Bennet*, Dr. *James*, and Dr. *Edwards*, maintained: I allowed of three of them absolutely; and the other two, that was Inspection of my Lord's Body, and a Time to be assigned by the Judge, to try whether they might carnally know one another, I held to be fit, when those Reasons were proposed; but now such Flames and Quarrels were arisen, I thought not amiss now to be forborne. My Lord of *Litchfield*, with a Pen, did note what every Man resolved, but principally my Words, with a Purpose to shew them to the King, as I conceived, and afterwards I found it to be so. I was desirous therefore, that his Majesty might see I was not obstinate, but settled to yield to Reason. And again, I supposed that this Candour of mine would make some of them yield to us, where they saw there was unevitable Truth. But I found it far otherwise; for our Afternoon's Work was, that they gave shuffling and shifting Answers to the Objections, such as themselves had studied all the Vacation; but no Care was, whether they were true and satisfactory, or not. And to what Sir *Daniel* proposed, all seven of them consented, without Sticking or Scruple, so that I might imagine it was a set Play. Upon the first Scruple debating, Sir *Julius Cæsar* finding the Difference of Opinions, and that our Lawyers stuck strongly unto it, "Let us," saith he, "put it to the Question, and let the major Part of "Voices determine it." When I saw this to be the Proceeding, the Lord, thought I, deliver me from such Judges! But yet, observing their Manner, I possessed my Soul in Patience. When it grew to be dark, that the King might understand that I was willing to allow Time to all that might be said, I remembered Sir *John Bennet* to read the Sentence of the *Rota Romana*, where, in the Pope's own Consistory, about the Year 1585, a Judgment was reversed which an Archbishop in *Spain* had given for a Nullity, in a Case being ours altogether, because, after the triennial Cohabitation, he had not assigned a Time for the married Couple to make Trial again, and to use Fasting and Prayer. This Repeal was read at large, and so was another of the *Rota*, in the same Kind. But both these were slighted, as Matters of nothing, and so I think had St. *Paul* been, if he had been there. I urged that of *Alexander* III. That even in *France* itself, no Nullity had been allowed; but that it was *Consuetudo generalis Ecclesiæ Gallicanæ*; and that *Ecclesia Romana* did know or practise no such Thing. This was slighted like the former, and I perceived it was but in vain to speak to them, for they were resolved, and be it good, or be it bad, the Matter should be done.

On the *Friday* Morning I went to *Whitehall*, and looking somewhat heavily, the King cometh to me, and to my Lord Chancellor, and offereth us both his Hand to kiss. He might perceive by my Countenance that I was not a little troubled, and that was perceived by divers of the Lords, who privately let me know their Minds, that we had a foul and strange Matter in Hand at *Lambeth*. At last, the King takes me aside, and after propounding three or four Businesses, walking, he took me to the Window, and asked me, "How that great Cause did go forward?" I told his Majesty, "That I had no Liking of it; that I had received a Letter and Writ- "ing from him which very much troubled me, for I knew myself to be "his dutiful Servant, and had not deserved ill of him; that it was nothing "to me whether she remained Wife to the Earl of *Essex*, or were married "to another Man; but that I might not give Sentence where I saw no "Proof; that I had lived fifty-one Years, almost, and had my Conscience "uncorrupted in Judgment; that I knew not how soon I was to be call- "ed before God, and I was loath, against that Time, to give a Wound "to mine own Soul; that all my Grief was, that his Majesty's Hand was "in it; that for other Men I cared not; that I chose rather to die an ho- "nest Man than a wise Man; that he must never afterward expect true "Service of me, for how could I be true to him, who was false unto God? "That if he marked it well, this was no Time to disgrace his good Ser- "vants:" I told him, "That if his Majesty pleased to let the Matter "alone, as he did all other Causes, I would make good my Part against "all *England*, on the Peril of my Head." The King answered, "That I "would have no Lawyers." I replied, "Yes, enough, there is not an "honest Lawyer in *England* that would not be on my Side." His Majesty asked me, "Whether the rest of the Commissioners, Yesterday, did not "persuade me?" I told him, "No; but their Dealing rather drove me "the contrary Way. For (said I) I came thither ingenuously to yield to "any Truth that should be shewed me; but they, on the contrary Part, "in a factious Course went wholly together, and what one said, another "said, be it well, or be it ill, without any Scruple." To my Speech, "That it was an Example that never had been in *England*;" the King said, "Yes, *Bury*'s Case." I beseeched his Majesty, "That he would not "believe that Cause to be any such Matter; for if he would pardon me, it "should not be long before that I would shew, that his Separation was "for lack of his S---s." In this debating, the King was very desirous to know, what should be the Reasons whereupon I stood, that I might have Satisfaction. My Answer was, "That when I was in Place of Judg- "ment, I would not conceal the Reasons of my Sentence, but it was to "no Purpose to speak them now; it would but put his Majesty to a new "Trouble to hear them, and then some Man must answer them, who "looked to his own End, and to make a plausible Answer, which would "not content me, without Ground of Truth." A great Part of the Time, that I had this Speech with the King, my Eyes were full of Tears, which I saw much moved my gracious Master, and especially my earnest Desire, "That I might do my Conscience." I perceived the King was much overcome by this my honest Dealing: And then, whilst his Majesty went to speak with my Lord Privy-Seal, and my Lord Chamberlain, who stood all this while at the farther End of the Gallery; and to whom, I conceived, the King told much of that which I had spoken; I went my ways to *Lambeth*, to Dinner. Now grew I confident to do my Conscience right, whatsoever came of it. That Day I dined privately; but yet my Lord Bishop of *Bath* was with me, whom when I had acquainted with so much of the Cause as I thought fit, I received no Discouragement from him. My Heart was much eased, and now I thought I should no more be troubled. Yet between Three and Four o'Clock, after Dinner, my Lord of *Litchfield* cometh to me from the King, and bringeth a written Treatise upon the present Argument, which was the Work of a *Scotchman*, I know not who. I received it, and promised that Night to read it; as indeed I did, riding in my Coach to *Croydon*; for thither I thought fit to withdraw myself, though it were late, for avoiding of more Perturbation. This Treatise no way pleased me; but I thought it the Work of some hungry Fellow, who lacked twenty Shillings to buy Food to his Belly. Here, finding it the Day of the End of my Quarter, I settled much of my domestic Business. I forgot not to commend myself, and the whole Cause, to

God,

God by Prayer. I meditated many Things in my Bed: In the Morning I roſe early, and before Day, in my Study, I ſet down ſome Heads, what I would ſpeak unto. Then went I early to *Lambeth*, and there ſupplied my brief Notes, digeſting my Matter of Sentence into Order; being reſolved to ſpeak large, and Home to the Cauſe, without Touch of any Perſon more than I muſt needs. By this Time moſt of the Commiſſioners were come. I ſent for my Lord of *London*, Sir *John Bennet*, Dr. *James*, and Dr. *Edwards*, ſingly and ſeverally into my Study: I required them, before God, not to ſpeak any Thing for Reſpect to me, but to do that, which in their Learning and Conſcience they thought to be juſt, and to ſpeak that *intrepid*, without Blemiſh to any Man, but ſoundly to the Matter. I found them all avowing, That in their Souls, they found no Warrant for the Nullity. I then wiſhed ſeverally, Dr. *James* and Dr. *Edwards*, to deliver their Sentence, with ſome Reaſons adjoined, not many, but of the ſtrongeſt. I told Sir *John Bennet*, that this Day I expected he ſhould ſhew himſelf a worthy Man, that he ſhould deliver his Judgment *per extenſum*; that they had laboured to blemiſh his Skill, and to ſlight his Learning eſpecially; therefore, both for his Conſcience and his Credit, he ſhould ſhew what was in him, to maintain an honeſt Cauſe. If Sir *Daniel Dun*, and Sir *Julius Cæſar*, who came after him, ſhould beſpatter him in their Choler, or lay any Imputation upon him, he ſhould find that ſome of us would take it off him. To my Lord of *London*, I ſaid, "We have three that ſpeak firſt, who, I truſt, will lay ſuch a Foundation in the Hearts of the Hearers, as ſhall not be removed. But the other Side have this Advantage over us, they are ſeven of them, Lawyers and Biſhops, to anſwer what our three have ſaid; and, perhaps, with weak Men, ſuch a Stream of ſuch Perſons may much prevail: But let not that diſmay you, my Lord, only take this Courſe: Deliver, firſt, your own Meditations; and then, having taken with your Pen ſome of the Abſurdities, which, in the Sentence, ſome of them will deliver, blaſt thoſe, and let the Auditors ſee, that by you the Stream is turned. Then leave it to me, and I doubt not, in Almighty God, but to batter their Nullity to Duſt: That though they have it by the major Part of Voices, yet the World ſhall ſee what the Cauſe is, and they ſhall have little Comfort by it. I am very well provided; I am no way afraid; and you ſhall ſee I will not be Tongue-tied." So confident was I in the Honeſty of the Cauſe, and in the Helps of Almighty God, that I was not now afraid of ten thouſands of People; but did long to be at the Buſineſs, as the Lord truly knoweth.

When now I was alone, revolving my Meditations, Sir *Julius Cæſar* cometh into my Study to me, telleth me, "That he wondered that my Lord of *Wincheſter* was not come; that it was even Ten o'Clock; that therefore it was fit, that the Hour ſhould be continued from Ten to Twelve." I aſſented thereto; and by ſome of the Commiſſioners the Time was prorogued. Then cometh in Sir *Thomas Lake*, with a Meſſage from the King, which he muſt not deliver till all the Commiſſioners were come together. So he was forced to ſtay. Between Ten and Eleven cometh in my Lord of *Wincheſter*; who, as afterwards found, had been all the Morning at the Court. I told him, "We had ſtayed for him two Hours and a Half." His Lordſhip ſlightly excuſed it. Then, in the Gallery, Sir *Thomas Lake* told us, "That his Majeſty had ſent him unto us, to deliver two Things." The one was, "That in our Sentence we ſhould take heed of gauling of any Perſon." My Anſwer was, "That from the Beginning of this Proceſs, we had ever been wary not to offend in that Kind; and that he ſhould be much to blame, who, in the Concluſion, would tranſgreſs that Way." And ſo ſaid the reſt. The other was, "That we ſhould not in any long Manner, but compendiouſly, deliver what we had to ſay." I prayed Sir *Thomas Lake* to explain that farther, whether we were only to ſay Yea or No, and no more: For I would obey the King's Commandment.

Tu, Regina, jube, mihi juſſa capeſſere fas eſt.

He anſwered, "That he could not ſay ſo, but that we were to ſpeak briefly." "Yea, but ſaid Sir *Julius Cæſar*, I know the King's Mind; for I was Yeſterday with him, and he told me, that he expected we ſhould go no farther than Yea or Nay, for of Reaſons there would be no End. Yea, ſaith he, the King told me he was promiſed ſo much." "By whom?" ſaid I. "I think, quoth he, by your Grace." "Not ſo," ſaid I: But I ſaid, indeed, "Let every Man deliver his own Conſcience, I will not perturb the Sentence. No more indeed will I." Then he replied, "I know the King expecteth we ſhould ſay no more, than I do like this Sentence, or, I do not like it. And that you know, Sir *Daniel Dun*, is the Manner of the Delegates, and not to go farther." "It is ſo," ſaith Sir *Daniel*. Upon this the Biſhops all ſaid, "We were beſt to proceed in that Faſhion." To which I replied, "I will not be wilful; but if it be agreed upon, and it be the King's Pleaſure, I will obey. But look you to it; for if any Man give a Reaſon, I am no more bound than he, but that I will return the Reaſon of my Opinion and Judgment." They all ſaid, they would be obſervant of it. Thus Sir *Thomas Lake* was diſmiſſed. Then we called for the Sentences on both Sides, which the Counſel had ready. They diſliked that which was abſolutory of the Earl of *Eſſex*, and we approved it. We found Fault with the other Sentence, Annullatory, both for the whole, and becauſe ſome Parts in it, in our Judgment, were apparently falſe. But they perſiſted in their Intention. So we went into the Hall, where myſelf, my Lord of *London*, Sir *John Bennet*, Dr. *James*, and Dr. *Edwards*, freed my Lord of *Eſſex*. The Biſhops of *Winton*, *Ely*, *Litchfield*, and *Rocheſter*, together with the two Chancellors, and Sir *Daniel Dun*, pronounced for the Nullity, and ſubſcribed the Sentence, my Lord of *Winton* pronouncing it. We perceived that they were afraid we ſhould at large ſpeak our Reaſons openly, being the laſt who were to ſpeak.

The three Biſhops of *Winton*, *Ely*, and *Litchfield*, went immediately to the Court, hoping to receive great Thanks for their Service, but they waited a full Hour ere they could ſpeak with the King; however, they ſped afterward. And we were glad that we were freed of the Trouble. And now, I, who would not have given the Sentence for all the Gold in *India*, do expect God's Pleaſure, what will become of this Buſineſs hereafter, and ſubmit myſelf to God's Providence, who ever preſerveth thoſe that truſt in him.

"THIS Narration is wholly written with mine own Hand, and was finiſhed the ſecond of *October*, 1613, being the eighth Day after the giving of the Sentence. And I proteſt before Almighty God, that I have not willingly written any Untruth therein: But have delivered all Things fairly, to the beſt of my Underſtanding; helping myſelf with ſuch Memorials and Notes as I took from Time to Time, that if there were Occaſion, I might thus at large ſet down the Truth to Poſterity, when this Caſe ſhall be rung from *Rome* Gates, or the Fact hereafter be queſtioned."

GEORGE *Canterbury*.

Some obſervable Things, ſince September 25, 1613, *when the Sentence was given in the Cauſe of the* EARL *of* ESSEX, *continued unto the Day of the Marriage*, December 26, 1613.

THE Sentence being given for the Nullity, the Minds of Men in their ſeveral Places were wonderfully diſtracted, and every one ſpake according to their Fancies. But for the moſt Part there was a Deteſtation of the Thing, and a great Diſlike of thoſe that gave the Sentence, which was expreſſed by all Courſes that Men durſt adventure upon. On the other Side, there was a ſtrange Applauding and Commending of thoſe who withſtood the Separation; and from all Parts a Teſtimony came unto them, that they had done like honeſt Men, albeit the only Scope which they aimed at, was the Diſcharge of their Conſcience, and not vain popular Applauſe. The Archbiſhop, the Day after the Sentence, went to the Court, to *Whitehall*, and waited on the King to Chapel, ſtanding alſo by him in the Cloſet, where he was ſtrangely looked on by the King, as he was alſo by ſome of the Lords; but nothing being ſaid unto him, he took no Notice of it, but bore all patiently. This Strangeneſs of the King held on at *Hampton Court*, and elſewhere; and it came to the Archbiſhop's Ear, that the King ſpake divers Times hardly of him, but much magnified them of the Affirmative Part, and eſpecially my Lord of *Wincheſter*, as the worthieſt Man in the Kingdom. Some Things were done alſo in Recompence to divers of them; as Sir *Julius Cæſar*'s Son was made a Knight, my Lord of *Winton*'s Son alſo had the ſame Reward, which ſome merry Fellow blighted with the Name of Sir *Nullity Bilſon*; and the Biſhop of *Litchfield* muſt remove to *Lincoln*; and as for *Litchfield*, it muſt be beſtowed on Mr. Dean of *St. Paul*'s, that ſo Doctor *Cary* might be preferred to the Deanery of *Paul*'s, for which it was generally ſuppoſed he ſhould pay well. But now it run current, that the Archbiſhop muſt no more have to do with naming any to Church-Livings, but ſome Lords in Court ſhould diſpoſe of all; and principally it muſt be provided, that Dr. *Abbot* muſt never be preferred, no, not ſo much as to *Litchfield*, ſo far was he from *Lincoln*, which was formerly promiſed unto him. Theſe Things grew deteſtable to the People, who feared that even Religion would ſmart for it; but the Parties moſt maligned were ſilent and patient, expecting God's Leiſure, and Malice enough from ſome other Men. The firſt Thing of Bitterneſs that appeared, was a Letter from *Royſton*, under the King's Hand and Signet, directed to the Commiſſioners in the former Sentence, but brought to the Archbiſhop about three Weeks after the Sentence. This was a moſt ſharp Letter, complaining that they of the Negative Part, for ſo they were ſtiled, had hindered the Act to be made upon the Sentence; had ſolemnly proteſted againſt that which was done; had given unto themſelves other Titles than were in the King's Commiſſion; had glorified themſelves in that which was done; by which they laid an Imputation upon the King's Conſcience, who had declared himſelf for the Divorce, and other Things of the like Nature. This Letter being read to the Commiſſioners, the Archbiſhop ſaid, That he knew not what it meant; for he underſtood of no Man that proteſted, nor knew nothing of any Man's arrogating of Titles to him, or glorifying himſelf: And as for the Act, he ſuppoſed it to be made up in common Form, and never heard aught to the contrary, neither meddled with any Thing therein, but left it to the Regiſter, and what he had done with it, he could not tell. Furthermore, he aſked all the Commiſſioners particularly, if they knew what this meant, or if any of them were able to charge thoſe of the Negative with the Points quarrelled at; who all, with one Conſent, denied that they could, and expreſsly averred, that there was no ſuch Thing done at the Time of the Sentence as had been complained upon. When ſtanding thus in Admiration, Sir *Daniel Dun* took upon him to underſtand the Matter, and ſaid, That if the Regiſter were called, it would appear there was ſomething in it. *Barker*, the Regiſter, is ſent for, and being demanded whether he had made up the Act, he ſaid, that he had drawn it up in a Form that he liked, but ſome other of the Commiſſioners did diſlike it. And thereupon he ſhewed two Forms, the one more large, the other more brief; but both of them having in it, that the Archbiſhop, and the reſt of the Negative Party, proteſted againſt the Sentence. Here every Man wondered at him, out of what Ground he ſhould do this; and all the Commiſſioners, with one Conſent, very much rebuked him, profeſſing that there was no ſuch Proteſtation uſed. For the reſt of the Charge in the King's Letter, *Barker* freed all in all Things, ſave only Dr. *Edwards*, who was abſent by reaſon of his ſore Eyes. The Archbiſhop, upon this, deſired the Commiſſioners to ſuſpend their Judgment touching Dr. *Edwards*, till he might anſwer for himſelf; ſaying, That Honour, Juſtice, and Charity, required ſo much in his Behalf; and adding withal, That he doubted not but it would prove ſome miſtaking of the Regiſter's Part, to whom it was apparent that ſmall Credit was to be given, ſince he had ſo groſsly ſet down of them, that they proteſted, when all the Commiſſioners could witneſs the contrary. Moreover, he deſired Mr. Chancellor of the *Exchequer*, and Sir *Daniel Dun*, to certify the Lord Chamberlain, how free and innocent from thoſe Aſperſions the reſt were found, and that from Top to Toe it was nothing but Miſpriſion. Before this Truth was diſcovered, it was known that a Gentleman of the Earl of *Northampton*'s had ſaid to Sir *John Leviſon*, and that, as from his Lordſhip, "That there was ſomething deſcried, which would break the Archbiſhop's Back:" Such Account was made of this Buſineſs.

Thus Things paſſed ſilently until the next Week, when, upon the *Thurſday*, being High Commiſſion Day, Dr. *Edwards* being amended, repaired to *Lambeth*. His Coming was watched; and then was delivered to the Archbiſhop a ſecond Letter from the King, commending the Concur-

rence

rence of all to the Act, to be made up in common Form; but requiring the Commiſſioners to convene Dr. *Edwards* and the Regiſter before them, and to charge them with all the fore-remembered Matters, and to learn where the Fault did lie. It was alſo commanded, that they ſhould require the ſaid Doctor and Regiſter, to ſet down in Writing what had paſſed between them; and if it were found that Dr. *Edwards* were to blame, he ſhould be ſuſpended till the King's Pleaſure were farther known.

Theſe Things are fallen upon; and Dr. *Edwards* ſhewed that the Regiſter had wronged him, and that no Part of the Accuſation was true, *in modo et forma*, appealing to the Commiſſioners, what Faith might be given to *Barker* conteſting againſt him; when it had been manifeſtly proved, that he had forged the Matter of Proteſtation againſt my Lord of *Canterbury*, my Lord of *London*, and the reſt. Time is aſſigned to them to deliver in their Writings; and accordingly, about two Days after, Dr. *Edwards* bringeth to the Archbiſhop his Anſwer, denying the Points whereon he was accuſed. But *Barker* brought nothing till a Fortnight after; and then, by Candle-light, when the High Commiſſion was riſen, and the Commiſſioners were departed, he delivereth a long Writing to the Archbiſhop, who could not read it that Night; but reproved him for detaining it ſo long.

On the Morrow, my Lord of *Canterbury* peruſed this Declaration; and as he found it to be uncertainly and diffidently ſet down for ſome other Circumſtances, ſo he diſcovered there one Thing much to be obſerved, and that was, that *Barker* delivered, That ſome few Days after the Sentence, the Lord Chamberlain ſent for him, finding Fault that the Act was not made up. And there Speech was, That ſome deſired to have their Titles put in, as well as the Titles of others; and for that, *Barker* named Sir *John Bennet*. Whereunto the Lord Chamberlain ſaid, "I know no "Title that he hath:" "Yes, ſaid *Barker*, he is Judge of the Prerogative Court of *Canterbury*." But *Barker* concludeth the Narration, That himſelf finding that he had named Sir *John Bennet* unjuſtly, therefore was in Mind to excuſe him, and was about to ſay, that he had done him Wrong; but the Lord Chamberlain was ſo angry, that he could not bring it forth; but went his Way, leaving the Lord in that Opinion.

By this it was deſcried, that in the firſt Letter Sir *John Bennet* was aimed at, as well as Dr. *Edwards*, to put ſome Diſgrace upon him, which made Men wondrouſly marvel at the vindicative Mind of ſome Men, who ſought for an Occaſion to do other Men Diſgrace. The End of the Matter was, That no Man could be touched; and therefore the Archbiſhop, taking Sir *Julius Cæſar* with him, acquainted the King (who was now returned from *Royſton*) with the State of the whole Matter; informing his Majeſty, that Fault fell on no Man ſave the Regiſter; and therefore, if his Highneſs were pleaſed to have him puniſhed, it might be ſo: But for the Thing itſelf, ſince the Report was more than there was Cauſe, Mr. Chancellor of the *Exchequer* ſaid, It was better to let it die, and ſtir in it no further. To this the King aſſented, being not willing that any Puniſhment ſhould be laid on the Regiſter; whereby it appeared, that the Intendment was, in the ſtirring of theſe Coals, to have burnt ſome greater Perſons than *Barker*, the Regiſter.

All this while it was confidently given out, That becauſe the Sentence had been oppoſed, there ſhould a Book be written in the Defence of it; and one while it ſhould be by a Divine, and that ſometimes was my Lord of *Winton*, and ſometimes my Lord of *Ely*; and it was ſaid, they were earneſtly about it: Another while, it ſhould be by a Civilian, and then Sir *Daniel Dun* muſt do it: But at other Times it muſt be by a *Scotchman*, who had written ſomewhat of that Argument before the Sentence; and other while, two *Scotchmen* muſt join together about it: And to make the Thing the more probable, the Lord *Felton* ſent to the Archbiſhop for the Copy of the *Scotchman*'s Writing, which was ſent unto him; and after copying of it out, it was returned to my Lord of *Canterbury* again. This Speech of a Book continued about nine Weeks in all; but at laſt Dr. *Stuart*, and Dr. *Bird*, were ſent for to the Lord Chamberlain, and their Judgment was aſked concerning that Point. Their Advice was, That it ſhould by no means be meddled withal, but that Things ſhould die of themſelves: But no Queſtioning by Writing; for ſo it might go on to the World's End: For one Book might breed another; and ſo, they whom it concerned ſhould never be in reſt. This was reſolved on; and afterwards there was no more Speech of Writing, ſaving only faintingly and whiſperingly, but nothing to the Purpoſe. It ſeemed that the Commiſſioners who were for the Nullity had enough of it, and deſired no more to bring themſelves on the Stage, being ſo by all Men exclaimed upon for that which they had done.

The Biſhop of *Winton*, after the Sentence, went down with great Jollity, full of Hope and Glory; but within a while after, he grew much daunted, as ſome about him, and namely his own Daughter, reported; for he heard many Ways of the ſtrange Deteſtation which the World had of the Deed; and the Nick-naming of his Son much affected him: But his Advertiſements from Sir *Richard Norton*, his Son-in-Law, did much trouble him: For Sir *Richard* wrote divers Times from *London* to his Wife, That he could come in no Place, but his Father-in-Law was railed upon: That Men told him, that he thought he had a Wife, but it was no longer than my Lord of *Winton* pleaſed; for whenſoever he offended him, he could make a Nullity between them. Beſides, the ſaid Sir *Richard* told Mr. *John More*, of *Lincoln's-Inn*, divers Times, "That "it was ſuch a Diſgrace unto him to hear how the World talked of "that Sentence, that although my Lord of *Winton* promiſed to give him, "his Wife, and Family, their Diet and Entertainment ſo long as he "lived, yet he would get him to his own Houſe, and live there, where "he had Means ſufficient, and not be ſubject to that perpetual Scorn, "which would follow him ſo long as he remained in his Father-in-Law's "Company."

By theſe, and the like Paſſages, it was gueſſed, that the reſt of the Commiſſioners, who were for the Sentence, had little Comfort in themſelves of that which they had done. On the other Part, the Archbiſhop, and thoſe who ſtood with him, had their Honeſty and Juſtice founded out every Day more and more; and many Meſſages were brought them, and divers Letters written unto them, or ſhewed them by ſome Friends, from ſundry of the Biſhops in the Land, from the Univerſities, from many godly Preachers out of all Parts, which was an exceeding Conſolation unto them, among the many Frowns which they did bear, That there was an univerſal Concurrence of all honeſt Men to approve that which they had done. And the Archbiſhop had privately, from many great Ones in Court, and Nobles, and worthy Perſonages elſewhere, ſuch Significations of their good Acceptance which he did, that it cheered him much inwardly, and he was nothing diſmayed.

Now, about the Middle of *November*, the Wheel was turned about: For ſince nothing could be gained by ſpeaking hardly of the Negative Part, they thought they would make Uſe of them another Way, and that ſhould be by making the World believe, that they had now given Approbation of the Fact. And thereupon it was, in Court and *London*, aſſeverantly given out, and the Fame of it went far and near, That the Archbiſhop, and the reſt, after more mature Deliberation, had teſtified their Concurrence with the reſt of the Commiſſioners, and all now were of one Mind. Men did not haſtily believe this; but yet divers of good Rank came and ſent to the Archbiſhop and the reſt, to know whether thoſe Things were ſo or no. And when it was found to be but a Jargon, it gave a great deal of Contentment, and removed away much Scandal which formerly was taken. Yet again afterward it was bruited, the ſecond Time, That my Lord of *Canterbury* had given the King Satisfaction in the Matter; and my Lord of *London*, on ſuch a *Sunday*, had come and ſubmitted himſelf to my Lord Chamberlain, and the reſt had relented. Nay, it went ſo far, that *Yelverton*, the King's Sollicitor, and a great Dependent upon the Houſe of *Suffolk*, told Mr. *Pye*, the Counſellor, and Mr. *Cholmely*, the Earl of *Eſſex*'s Sollicitor, coming unto him about Books to be drawn up, for paſſing back the Jointure of the Lady *Frances*'s Part, and the Portion of the Earl of *Eſſex*'s Part, "That the "gainſaying Commiſſioners were now conſenting, and the Great Man "beyond the Water was come over; which he knew ſo aſſuredly, that "he had ſeen it ratified by the Subſcription of the Archbiſhop and the "reſt." Yea, farther, he added, "That there was great Reaſon, at "the firſt, wherefore my Lord of *Canterbury*, and the others, ſhould "ſtand againſt the Separation; for they had juſt Cauſe, at the firſt, to "fear that this Fact might be drawn into Example, and ſo Marriages "ordinarily be violated; but now it was reſolved that no more ſuch "ſhould be permitted, and thereupon they aſſented." Theſe Things were inforced to be endured with Silence, for the avoiding of Clamour, and making of Trouble.

But now behold an admirable Device of the Biſhop of *Litchfield*, which ſheweth what his own Opinion was of the Validity of the Sentence. I will ſet it down as it came to be acted.

On the 26th of *November*, *Searle* the Proctor cometh to my Lord of *Canterbury* at *Lambeth*, and bringeth with him a Writ of *Certiorari* out of the Chancery, directed to the Commiſſioners in the Cauſe between the Lady *Frances* and the Earl of *Eſſex*. The Archbiſhop was prayed to open it; and ſo he did, and there found that four of them, *ſub ſigillis veſtris*, were required to certify *Recordum Sententiæ* into the Chancery. The Archbiſhop aſked *Searle*, "If this were an uſual Thing?" Who anſwered, "No, he had not known any ſuch Thing before:" It is replied, "What "then ſhould be the Reaſon thereof?" Anſwer was made, "That ſince "the Matter was controverted in the Sentence, leſt there ſhould be "Queſtion of the Marriage afterwards, the Earl of *Somerſet* would have "the Sentence lying by him under the Great Seal of *England* ratified." The Archbiſhop thought that to be but a weak Hold, yet charged *Searle* to ſee ſuch an Inſtrument drawn, and a Certificate ſhould accordingly be made. On the *Wedneſday* after, *Barker*, the Regiſter, cometh to *Lambeth*, and ſheweth a Form of a Draught in Paper, how the Certificate ſhould be returned in the Names of all the Commiſſioners ſpecially put down. The Archbiſhop, in the reading of it, found five or ſix Lines having a black Line drawn under them; and thereupon the more marking the Words contained in them, found that which he liked not. Thereupon he aſked *Barker*, "Who lined thoſe Words?" *Barker* ſaid, "He himſelf did." The other aſked, "What was the Reaſon of it?" And it was anſwered, "Becauſe Sir *John Bennet*, and ſome other of the Doctors with him, had "diſliked that Sentence." Quoth the Archbiſhop, "And they had "Reaſon for it: Who put them firſt in?" *Barker* ſaid, "None but "himſelf." Quoth the Archbiſhop then, "May not the Certificate ſtand "as well without thoſe Words as with them?" To which *Barker* anſwered, "Yes." Then ſaid the Archbiſhop, "Let them be ſtricken out." Here the Regiſter, with ſomewhat ado, faintly made Anſwer, "That the Com"miſſioners on the other Side would by no means have them out." The Archbiſhop ſaid, "Then I perceive it is a Device to entangle us: I am "ready to certify the Sentence as the Writ requireth, but I will none of "this. *Barker*, I am firſt in the Commiſſion, and for my Place ſake, I "would have looked, that I ſhould have been conferred withal, what had "been fit to return, and not to have had this Trick put upon me, that "either I muſt certify that which croſſeth my Judgment at the Time of "giving the Sentence, or I muſt be forced not to certify at all." So *Barker* departed, and all was quiet until the *Monday* after; at which Time the Archbiſhop was early at *Whitehall*, the Council ſitting that Morning. There, in the Waiting-Chamber, at the End of the Privy-Gallery, the Biſhop of *Litchfield* cometh to him, and ſaith, "My Lord, "we have received a Writ of *Certiorari* out of the Chancery, to certify "the Sentence for the Nullity." "Yea," ſaith the Archbiſhop, "and "I am ready to certify it." But," ſaith the Biſhop, "He who framed "the Writ hath made it *ſub ſigillis veſtris*, and doth not know that there "is a Seal of Office for the Delegates; it ſhould have been *ſub ſigillo* "*communi*." Before the Archbiſhop could reply, in cometh the Lord Chancellor, and to him cometh out of the next Chamber the Lord Chamberlain; and then thoſe two Lords, together with the Biſhop of *Litchfield*, drew themſelves to a Window, and there had they ſecret Communication about the altering of the Form of the Writ, as the Effect declared; for that Afternoon, a Cauſe being to be heard touching *Alimony*, from Sir *Pexal Brocas* to his Lady; and the Committees in it being the Biſhop of *Litchfield*, and Mr. Chancellor of the *Dutchy*, and my Lord of *Canterbury* being Umpire; before Mr. Chancellor was come, *Bembo*, Deputy to the Clerk of the Crown, came into the Parlour at *Lambeth*, and had private Speech with the Biſhop of *Litchfield*. The Archbiſhop going out into the Garden, *Litchfield* followed him, and told him, "That Mr. *Bembo* had brought another Form "of a Writ;" and thereupon ſhewed him the Words *ſub communi ſigillo*. The Archbiſhop bid him do as he thought good, and withdrew himſelf into

into the low Stone Gallery, whither *Litchfield* followed him, and used these Words: "My Lord, here is a Form of a Certificate, which hath "been thought fit to use in the Business of my Lord Chamberlain; and "I hear your Grace taketh Exception to some Things in it." Then he pulled out the very Paper which *Barker* formerly had shewed. The Archbishop answered, "My Lord, have I not Reason to take Exception "to these Words, that *post omnimodam veritatis disquisitionem, post probationes idoneas et de jure requisitas*, we gave such a Sentence? For to "subscribe this, were to proclaim myself a dishonest Man upon Record: "For if these Things be true, why did I deny to join in the Sentence?" Quoth *Litchfield*, "This here is true; for it cannot be denied, but some "*probationes idoneæ et de jure requisitæ* were used; and we do not say that "all were." The Archbishop answered, "You shall do well, there- "fore, to certify *post probationes aliquas*, and I will join with you; but "as it standeth now indefinitely, it will be taken as if all had been used; "I pray you therefore to alter the Certificate, and make Things plain." "My Lord, quoth *Litchfield*, I will deal plainly with you: Because the "Words were in, and Doubt was made, whether they should pass or no; "the King's Majesty hath been acquainted with the Business; and he, "by a Letter from Sir *Thomas Lake*, hath sent Word expressly that he "will have them in." The Archbishop said, "Let them then certify, "who will avow those Words, for I cannot condescend unto them. "And hath not that Person done a good Office, who hath informed the "King hereof; that Distraction may still be among the Commissioners, "and there may never be an End of Difference?" The Bishop said, "My Lord, I could wish that you would yield unto the King, and so "give him Satisfaction." The Archbishop answered, "What would you "have me do? I gave the Sentence as I was persuaded in Conscience, "and since that Time I have been silent, and meddle no way in the "Matter: I did what I did upon long Deliberation; and I may not in "Private, upon no Ground since appearing to me, cross that which I "have done in Publick." It was farther added, "That there was Reason "to suspect that they did ill Offices who held those Things still on Foot: "That there never was any Man, who sought to grace himself by dis- "gracing others, but it met him at the Lane's End, at one Time or "another." These Things passed then; and after the Cause heard between Sir *Pexal Brocas* and his Wife, the Bishop of *Litchfield* said to the Archbishop at his Parting, "My Lord, you will give us Leave to cer- "tify then as we purpose?" To which the Archbishop answered, "Yea, with all my Heart."

The next Morning the Archbishop remembered, that by the Carriage of Things in such Fashion as was pretended, he might be tricked: For if the Names of all the Commissioners were put into the Certificate, and four of them might certify under a Common Seal, it should not be known hereafter, but that he and his Fellows concurred therein, and that, with the Words which were excepted against: He therefore sent for *Barker*, and in the Presence of Sir *John Bennet*, and two Servants, being Publick Notaries, he expostulated with *Barker*, as serving Men's Turns, rather than caring for Peace; and then punctually he delivered these Things.

First, "The Writ requireth me to certify the Sentence, and I am ready "to do it."

Secondly, "If the whole Process be desired, I am willing to certify "that also."

Thirdly, "For the Words in Question, because they were put in "without my Privity, and they may as well be left out as put in, by "your own Saying, I pray to be forborn for returning of them."

Fourthly, "I require you to conceal these Things as much as you "may, that the World take no new Alarm of any Difference between "the Commissioners."

The Archbishop spake of returning the whole Process, because he had heard, that at the first it was meant it should be so; but Dr. *Stuart*, and perhaps some other of the Civilians, dissuaded that by all Means; lest, if the whole were on Record in the Chancery, every Man that list, hereafter might censure that Sentence, and sift the Grounds whereon the Commissioners proceeded; it was good, therefore, to take away that Occasion.

When Matters were thus resolved, the Bishop of *Litchfield*, who meant to play his Prizes in this Service, speaketh to *Bembo*, to draw some Preface or Conclusion to add to the Certificate; that it might not only be signed with the Great Seal, as after the Form of an *Inspeximus*; but that his Majesty might add a Confirmation to it: And when Mr. *Bembo*, as unacquainted with this Fashion, did not fit the Bishop's Humour, his Lordship took on him to do it himself. He drew up, therefore, a strange Writing, as was informed by a credible Person that saw it, containing barbarous *Latin*, and no good Congruity of Sense. But the Matter of it was, that his Majesty having the Authority of the Pope now in himself, and *in scrinio pectoris*, having Power to ratify, did, *ex plenitudine potestatis*, confirm that Divorce to all Intents and Purposes. In an Evening Dr. *Martin* was sent for to the Lord Chamberlain, and there was the Bishop with his Papers. The Doctor, as it hath been credibly delivered, being shewed that Writing, and his Opinion thereupon being asked, did utterly dislike it, and said, "That the King claimed nothing of the "Pope's Power; but took that as his own, which the Pope had usurped: "That the King had spoke before by his Judges Delegate, and had no- "thing more to do: That if the Sentence were not good already, no "Confirmation could make it good." And when the Bishop was earnest in Defence of his Device, there was a little Heat stricken between the Doctor and him, so that these Words passed from the said Doctor: "You do, as much as in you lieth, spit in the Face of the King our Master "by laying on him all the Matter; whereas the Scandal that hath al- "ready been is this, that his Majesty is said to deal so much in the "Matter. My Lord, you are to blame to enter into these Things "without Advice of Men skilful in the Law: Hath Dr. *Stuart* or Dr. "*Bird* been acquainted herewithal?" The Bishop said, "No; but "for this Matter, I know as much Law as the best of you all." Dr. *Martin* replied, "No: Your Lordship thinketh, that because you have "read two or three Chapters of the Canon Law about this late Busi- "ness, you know as much as we do, who have spent all our Lives in "that Profession: I tell your Lordship, I have studied the Law these "two-and-thirty Years; and therefore, you shall give me Leave to be- "lieve, that I know more therein than you can. I am the King's "Advocate; and therefore may suffer nothing with my Consent to pass "dishonourable to my Master."

Upon these Contestations, the Lord Chamberlain was much troubled, saying, "What a Matter is this, that Men should be of such contrary "Opinions! What shall we do?" When the Bishop murmured much that his Counsel was not followed, Dr. *Martin* said thus: "My Lord, "in a Business of this Importance, I will not wish your Lordship to "follow my single Advice, but let this be done; To-morrow let Sir "*William Button*, in your Lordship's Name, come to *Doctor's-Commons*; "and let him get together Sir *Daniel Dun*, Dr. *Stuart*, and Dr. *Bird*, "and I will attend them; and then we will consult jointly what is fit "to be done."

This Advice was much liked; and on the Morrow, being *Friday*, they all assembled, and for two Hours all Points were debated; but the Conclusion was, "That there should be no farther Confirmation: For this "was to proclaim, that the Sentence was defective in itself, which would "make a great Buzz in the World:" And therefore, the Counsel was in general, "That too much had been done, and for the Time to come, "the Care must be, how to lay it asleep fairly."

This Resolution being taken, the next Knack was, that so many of the Commissioners as were for the Sentence, should be called together; and they should be made acquainted with this, that the Bishop might be fairly put off. On the *Saturday* Night, therefore, in the Dark, at Sir *Julius Cæsar*'s House in the *Strand*, met the Bishops of *Ely*, *Litchfield*, *Rochester*, the two Chancellors of the *Exchequer* and *Dutchy*, and Sir *Daniel Dun*, and well near for an Hour, they privately debated what they thought fit; but, as it seemeth, resolved as before, and so departed.

A Friend being the next Day with the Lady *Cæsar*, and knowing of the Meeting, asked her, "What about it was?" She answered, "It is "something about the late Nullity; but what it is, I do not know. It "seemeth, that they who were the Doers in it, think somewhat is amiss. "They suppose all is not well about it, and I for my Part think so also."

A Man would have supposed, that all these Things should have contented the Bishop of *Litchfield*; but he was so far in Love with his own Invention, that yet he would not be beat off; and therefore, to merit the more, he once again moveth the Lord Chamberlain to send to Sir *Francis Bacon*, and to Mr. *Yelverton*, being of the King's learned Counsel, to know their Opinion: Which being done; and they two, for the Reasons above-named, concurring with the Civilians, the Bishop, as it hath been credibly related, said of them, together with the rest, "They are all "Fools." And so ended this Stratagem; but the Worker thereof was not yet for an End.

From the Beginning of this whole Question of the Nullity, the Bishop of *Litchfield* had carried himself variously, sometimes being vehement in Words, publickly against the Separation, and other Times in Deed, giving Furtherance to it. Many Speeches he had privately with the Archbishop, making Shew of much Honesty and Respect to him, which the Archbishop ever warily observed; thinking, notwithstanding that these had been Testimonies of the Working of his Conscience, conflicting in itself, but not resolved what to do. In the mean time, from the Court, from *London*, and out of the Country, the Archbishop was still called upon by divers worthy Friends, "That he should take heed of "that Bishop: That he was ever, and in all Things naught: That he "did all the worst Offices that possibly he could, and was still stirring "the Coals, to procure to himself a Reputation; that he was zealous "of the House of *Suffolk*." The Archbishop forgot not those many Warnings, but carried himself very warily towards him: Yet out of Charity it still came in his Mind, "He is a Bishop, I know no Evil of "him; I ought not to condemn a Man upon a Generality; I have no "particular Proof of his Misbehaviour in this Behalf: Although he "dealt ill with the late Lord Treasurer, and most falsely with the Arch- "bishop *Bancroft* in his Life-time, and after his Death; and for that "Cause was detested by both of them; yet an honest Man may think, that "Experience hath reformed him, and now he is amended." Yet it much affected the Archbishop, that all Men spake so ill of him; and one Speech of an old Courtier, a very honest Knight, entered far with him. For about a Fortnight before the Marriage, the said Courtier speaking privately with the Archbishop, among other Words, he used this: "I know "not what the Bishop of *Litchfield* doth among you; but he hath made "a Shift to be taken for a Knave generally with us in the Court." Now, whether the next Prank will verify so much or no, let the Reader judge. Eight Days before the Marriage, on a *Saturday* Morning, that Bishop cometh to *Lambeth*, and in private Conference with the Archbishop, he telleth him, "That out of his Love and Respect to his "Grace, he was come voluntarily, as of himself, to know his Mind "about one Matter, and it was this. On *St. Stephen*'s Day, said he, "the Lord Chamberlain meaneth to have this great Marriage go for- "ward: Now, it may, perhaps, be desired, that a Licence should be "given by you, that the Banes may not be asked; which if you like not "to grant, I may be the Means to free you from being moved to it." The Archbishop said, "What have I to do with granting of a Licence? "It belongeth not to me: But wherefore should there be any Need of a "Licence? The Marriage is intended to be publick; Masks and Shews "are made for the same; all *England* taketh Notice of it, and therefore "it were good that the Banes were openly asked, as the Manner is of "such Marriages as are made in the King's Chapel. Yea, the Lady "*Elizabeth* herself had her Banes asked." "My Lord, saith *Litchfield*, "there is some Cause why it should be done without publishing the "Banes: For, peradventure, Somebody may step up, and make a Disturbance. You know what a mad, naked Fellow came into *St. James*'s, "after the Death of the Prince; if such a one should come in now, what "a Work would it make?" The Archbishop wondered within himself, to hear such a Reply, and thought surely, that it was no mad Body that they should need to stand in fear of, but they suspected somewhat else. But his Answer was, "My Lord, there come no such into the King's "Chapel; there be Doors and Officers to keep such out. But if it "should be suspected that any would oppose, it is best the Banes be "asked, for then there will be some Warning of the Gain-saying; where- "as, otherwise, if at the Time of the Marriage one should suddenly start "up, it would make a greater Trouble." Notwithstanding the Bishop went on, "That a Licence would cut off all the Doubt." The Archbishop answered, "But what have I to do with granting a Licence "in the King's Chapel? It belongeth to the Ordinary of the Place, and "that is my Lord of *Bath*, as Dean of the Chapel." *Litchfield* replied, "He

"He never granted any, and he hath no Seal for that Office." It was answered, "He never granted any, because Nobody ever desired it; but "the Manner was, that the Banes were published. But as for the Seal "of the Office, who doth not know that any Seal will serve? And none "better than his Bishop's Seal, it being said, *Datum sub sigillo nostro Episcopali, quo in hoc casu*, or *hoc tempore, utimur*. King *James*, at the first, "did use the Seal of Queen *Elizabeth*, till a new one was made." The Bishop proceedeth, "Yet it would be fit that you granted the Licence, if "it be requested." To this the Archbishop said, "I shall do that which "never any of my Predecessors did." "Yes," quoth *Litchfield*, "if you "would seek your Records, you should find some so granted." The Archbishop answered, "I have inquired of my Officers, and they tell me, "That no such Thing was heard of, *in omni Hominum Memoria*. But, "my Lord, I know that my Lord of *Bath* hath it under the Great Seal "of *England* exclusively to the Archbishop; so that in direct Words "there is a Restraint, that he may not meddle there." "Yea, but," quoth *Litchfield*, "you have an Act of Parliament, enabling you to grant "Dispensations to the King and his Children; and therefore it belongeth to you." Said the Archbishop, "Do not you think that I understand the Act of Parliament as well as you? My Lord, Do you think "that that Statute was made for these ordinary Graces and Dispensations? Why, is not your Lordship able, within your Diocese, to "grant a Licence, that a Marriage may be solemnized, and not the Banes "asked?" "Yes," saith he, "I may: Nay, every Archdeacon may do "it within his Jurisdiction." "Then, my Lord," quoth the Archbishop, "must an Act of Parliament be made to grant the Archbishop "Power to do that which every Archdeacon may do within his Precinct? "There is surely some other Matter in it. But I marvel, my Lord, "that you are now so earnest for the Archbishop's Licences, when, as I "have heard, in the Days of my Predecessor, when you were Bishop of "*Rochester*, you would not suffer the Archbishop's Licences to pass within your Diocese." "No," saith he, "it was for *Westminster* that I did "strive, not for the Diocese of *Rochester*. And it is true, that there be Records in that Church, that the Monks did contend with the King about "divers Questions. I had reason, therefore, to stand for the Privileges "of my Church." It was answered, "So hath my Lord of *Bath* to "stand for the Right of the King's Chapel." The Archbishop seeing how earnest the Man was, in so unreasonable a Thing, said farther, "My Lord, you have mine Answer; but let me now tell you one Thing, "It is six Weeks agone, that I heard from the Court, and many Times "since I have had it reiterated, that such a Trick should be put upon me: "That although it needed not, yet I should be moved for granting this "Licence, because thereby I should be constrained, either to grant it, "and so cross my former Sentence, and involvedly give my Consent to "the Nullity, or I should deny it, and so grate once again upon the "King's Displeasure. You see now I have given you a fair Answer, "which may free me from both. But, my Lord, I pray God you do "good Offices in this Business. I fear you put yourself into many Things, "which may be better forborn. But let me tell you, there was never "any Man, who sought to raise himself by wronging another, but at "one Time or other he had enough of it. It is now almost three Months "since this Sentence was given, and since that Time, I have not meddled with the Matter, for offending the King. I am silent, and no "way oppose, and Men have their End; yet cannot I be quiet. I would "have you know, that God beholdeth these Things, and remembereth "them. And for my Part, I am not blind, I see well what is done; "and I shall not always be silent. The Time will come, that I must "speak; and it shall appear I am not Tongue-tied." This made the Bishop not so forward as before; but Occasion of a farther Speech being offered, the Archbishop went on, and said, "The Sentence which I "gave, was in the Fear of God, and according to my Conscience; And "if that had been done, which was convenient, and we called for, there "needed not to have been any Division in Judgment. For, my Lord, "you may remember when you came to me at *Croydon*, and brought these "Papers from the King, after the reading whereof I slept little that "Night, how desirous I was to give his Majesty Satisfaction; and therefore prayed you, fetching out the Process unto you, to tell me whereupon I should ground my Sentence. You shewed me one Article, "*That he had not known her, nor he thought that he never should.* I told you "then, Yea, that was for Want of Love, for he said, *When I came out "of* France, *I loved her; I do not so now, neither ever shall I.* It is want "of Love." To this the Bishop said, "Yea, and the Earl added, That "he had done his best oftentimes, carnally to know her, but he found "an Imperfection in himself." The Archbishop replied to this, "Oh, "my Lord! never say so; for his Lordship's Answers, upon his Oath, "are to the contrary: *He found no Defect, or Impediment in himself.* And "if I shall speak my private Opinion, although I would not have you "believe it, I think the Earl as able a Man for a Woman, as any is in "*England.*" "And I think to the contrary," quoth *Litchfield*. The Archbishop went on: "But, my Lord, when your Lordship and I had "these Difficulties in our Mind at *Croydon*, you told me of one Thing, "which I embraced as an Oracle from Heaven. And that was, that "to rid ourselves of these Distractions, we had no other Way but to call "the Earl of *Essex* again upon his Oath, that so giving us a fuller Answer, we might either have good Ground to pronounce for the Nullity, "or Matter to give Reason why we might not condescend unto it. I "approved this; and you know how the next Day, in publick Court, it "was moved, and my Lords of *Winchester*, *Ely*, *Rochester*, and yourself, "gave very good Liking to it; and no Man said any thing against it, except Mr. Chancellor of the *Exchequer*, who softly spake, *I know not "whether that will be permitted.* But you may remember, you were intreated to deliver this to the King at *Theobalds*, from whom you brought "Word, That it should not be granted, because the Earl of *Essex*, being partly provoked by his falling out with Mr. *Henry Howard*, and "partly being counselled by the Earl of *Southampton*, would speak all "Things to hinder the Nullity. My Answer then was, That he was "to speak upon his Oath, and we would most strictly examine him. When "that was denied, which should have led us to the Truth, I must confess I had never any Mind to pronounce for the Separation." The Bishop seemed to take no great Pleasure to hear these Things thus repeated, but fared, as if he could have wished, that they all had been forgotten. The Conclusion of all was, that the Bishop seemed to be well satisfied that no Licence was given, and promised the Archbishop to take care that he should no farther be troubled with it; assuring him, "That he "did ever good Offices to him, whereof the King could give Witness, "and would; and he would ever make the best of Things." To which the Archbishop said, "If he did, he would take it for a Kindness at his "Hands;" and so he departed.

Accordingly, the next Day the Banes were asked in the Chapel, and there was nothing but fair Weather; the Archbishop attended the King in the Closet. On the *Monday* the King went to *Hampton-Court*; and that Day the Bishop of *Bath* and *Wells* came to *Lambeth*; He told the Archbishop, that he had a direct Message unto him from the King, and that was, That his Majesty did much marvel, that he spake not with him about the Sentence: That the King expected Satisfaction and Submission. His Lordship added, That he perceived that the King had some Scruple in his Mind, which he wished should be removed before his going to the Communion on *Christmas-Day*. The Archbishop knew not that the Bishop of *Litchfield* had dealt any way treacherously with him, and therefore was constrained to answer, in general, That he knew not what to say to his Highness. He persuaded himself, that in giving of the Sentence he had done his Duty, and therefore could not tell how to make a Submission where he conceived no Fault. If in any Circumstance he had erred, he was ready to testify his Sorrow for it; but he knew no such Thing; yet if his Majesty was displeased at him, to signify his Obedience to his King and Sovereign, to whom he was so much bound, he would not refuse, if the King were pleased to restrain him of his Liberty, and lay him in the *Tower* all the Days of his Life, to submit himself unto it patiently, without murmuring.

Furthermore, he prayed the Bishop of *Bath* (who, on the Morrow, was to go to *Hampton-Court*) to signify humbly to his Majesty, That he had nothing in this World more precious than his Life; and that he wished, that he had given that Life as a Redemption, that the King's Hand had never been in that Business. And withal he said, that at the coming of the King, he would attend his Majesty.

On *Wednesday* Night, the King came to *Whitehall*; and on the *Thursday*, after Dinner, my Lord of *Canterbury* went to the Court, where they were all busy about Plate and Jewels against the Marriage. Notwithstanding, he had hastily Speech of divers Matters with the King; and in the End, he said privately unto his Highness, "May it please your "Majesty, I understand by my Lord of *Bath* and *Wells*, That your Ma"jesty expects that I should give you an Account about the Matter of "the Lord of *Essex* and the Lady *Frances*: I can say nothing more than "this, That I was put into the Commission as a Judge, and at the Time "of Sentence I did my Conscience; and since I have not meddled with "the Matter." "Yes," saith the King, "I hear you denied a Licence "to be granted, for not asking of the Banes; which I wonder you would "do, since the Sentence was passed." No," said the Archbishop, "I denied no Licence; but I advised, that the best Course was, that "the Banes should be asked, according to the Custom used in the "Chapel."

Secondly, I said, "That if any Licence should be granted, it be"longed not to me to give it, but to the Ordinary of the Place, the "Dean of the Chapel, who hath it under your Majesty's Great Seal, ex"clusive to the Archbishoprick." "Yea," said the King, "My Lord "of *Bath* said so; but I am told it is otherwise." The Archbishop replied, "Nay, it is so indeed."

And Thirdly, said he, "My Answer was, That never any of my Pre"decessors granted a Licence for any thing done in the King's Chapel; "I have received Information so, from my Officers. It had then been "Presumption in me to attempt that which belonged not unto me." "This is another Matter," saith the King. "Were these your Answers? "I was told otherwise. But I will take some other Time to speak with "you." The Archbishop, after this, attended half an Hour, and nothing being said, he departed.

The same Night, a Friend coming to *Lambeth*, told my Lord, "That "he had been that Day with the Lord *Knowles*, where he found, that the "Bishop of *Litchfield* had exceedingly wronged my Lord of *Canterbury*: "For he had reported all the Speech about the Licence, in a spiteful "Manner; said, it was absolutely denied; That the Archbishop gave "out, That the Earl of *Essex* was very potent for a Woman; and that he "intended to question this new Marriage, at one Time or other, that it "should never take Effect."

This, said the Gentleman, made a great Stir among them; and the Archbishop was much blamed, that he would never make an End: But they were much troubled at it, as fearing themselves, that all was not sure. "But," quoth he, "when I had told them, that this was some ill "Office of the Bishop of *Litchfield*, who had every Day new Inventions "to puzzle them, that he might so much the more indear himself unto "them, by signifying his Zeal for them; and that I knew how fairly my "Lord of *Canterbury* had answered him, (for so indeed he did) and that "he was so far from disturbing the Marriage, that he intended to be present at it; they were not only appeased, but seemed much content that "his Grace would be there: And this I assure you to be true."

When the Archbishop heard this, he was now satisfied, that the Man who had done him all the Wrong, was the Bishop of *Litchfield*; from whom he resolved afterward to be very wary how he trusted him. Yet, professing that he forgave him with all his Heart, on the *Christmas-Day* he attended the King, and received the Communion with his Majesty; and so, coming Home to Dinner, Sir *Charles Cornwallis* came along with him. This Gentleman is one, to whom, for his Love, the Archbishop was much beholden; and after Dinner they grew privately into Speech of all these fore-remembered Stirs; where the Knight found much Fault that so many Tricks were put upon the Archbishop; blamed infinitely the Bishop of *Litchfield*; promised to acquaint some of his great Friends with his Qualities, and assured to make Things be rightly understood; and took away with him that Report, wherein he seemed much to joy, that the Archbishop would be at the Marriage.

On the Morrow, being *St. Stephen*'s Day, the Archbishop went to the Court, attended the King to Chapel, went down to the Marriage, (where, not the King, but the Lord Chamberlain gave the Bride) had a Pair of Wedding-Gloves, and so came Home to Dinner; where he sat with much Comfort, as being glad, that since Things must be so, they were come to an End: And so prayed God to bless his Church, the King and Kingdom, and himself; that he might be free from so many Vexations, as for a long Space undeservedly had followed him.

The SPEECH *intended to be ſpoken* at Lambeth, September 25, 1613, *by* George, *Archbiſhop of* Canterbury, *when it came to his Turn to declare his Mind concerning the Nullity of Marriage between the Earl of* Eſſex *and the Lady* Frances Howard.

[Seven of the Commiſſioners having before declared themſelves that they would give Sentence for a Nullity, and great Reaſon being to think, that the Biſhop of *London*, Sir *John Bennet*, Dr. *James*, and Dr. *Edwards*, would give Voices againſt the Nullity.]

MY Lords, and you the reſt of the Commiſſioners, I have had a great Contention and Deliberation within myſelf, in what Manner I ſhould utter my Judgment in this preſent Cauſe, ſince, after the Speech of thoſe three who firſt began, ſo great a Stream and Concurrence together of the reſt, (my Lord excepted, who ſpoke laſt) have given their Opinions for the annulling of the Marriage. But yet I hold not myſelf concluded thereby, but that I may declare my Judgment, having learned that *Suffragia* among wiſe Men are as well *appendenda* and *ponderanda*, as *numeranda*: And it was no Shame for *Phocion* in *Athens*, upon good Ground, to contradict the whole City; neither was *Paphnuſius* in the Council of *Nice* the leſs reſpected, when he ſtood againſt the whole Synod; nay, it was his Honour, that by delivering of his Sentence, he altered the Reſolution which that whole Aſſembly had intended to take, which I freely acknowledge I have no Hope to effect at this Time. And yet, though I have not that Hope, but might very well ſpare this Labour, yet my Conſcience telleth me, that it becometh me to ſpeak in a Matter of this Importance, becauſe, not only, *Deum timeo*, I fear God, which I doubt not but all of this Company doth; but I am afraid of God, leſt he ſhould be angry with me, if in this Caſe I be ſilent. And I think it is expected of me, ſince I am here preſent, that I ſhould not ſit as an Idol, and only fill a Room; for that were to lay an Imputation on myſelf, that I had undertaken a Cauſe, which in publick I durſt not offer to maintain.

I muſt acknowledge, that in delivering of my Mind in this Buſineſs of ſo great Weight, I do find two Defects, that I cannot ſo pertinently ſpeak unto the Purpoſe as divers of the Judges here: The one is, That I am no Lawyer; and the other is, That I am no married Man; by both which I am diſabled, that I cannot ſpeak with that Confidence concerning ſome Particulars, as moſt of you, the Commiſſioners, are able to do; but in lieu thereof, I have endeavoured to furniſh myſelf ſome other Way concurrent to this Purpoſe: As by reading, by conferring with ſome whom I do truſt, with pondering thereupon, ſo that it hath loſt me much Sleep at ſeveral Times, with frequent Prayer unto God, that he would direct me aright; which I have more begged of God in this Cauſe, than ever in any that was before me in Judgment. And beſides, I bring with me *animum candidum*, a Mind devoid of Paſſion, or any Perturbation, which inclineth to no Part for Fear or for Favour, for Spleen or for Hatred: From which, I thank God, in pronouncing of Sentence, I ever have been free, remembering that Judges are in the Place of God; and as *Jehoſaphat* ſaid, 2 *Chron.* XIX. *Non hominis judicia exercetis ſed Domini, et quicquid judicaveritis in vos redundavit.* He then who ſitteth in the Place of God, and in pronouncing of Sentence will vary from Juſtice, he leaveth God, and ſheweth himſelf worthy to lie in the Flames of Hell, for abuſing of the Truſt which is committed unto him, which I hope I ſhall not do. And *cui bono?* To what End ſhould I tranſgreſs in Judgment for either Side, when I have no Reaſon to be partial for either, ſince it is indifferent to me, in any Particular, whether this Queſtion receive one or other Determination?

Where, leſt I ſhould be miſtaken, I think it not amiſs, as publickly I have done divers Times before, to let the World know what my Judgment is concerning the Impotency of a Huſband towards his Wife: That ſince Marriage in young Couples is for carnal Copulation and Procreation thereupon, and that it is the Intendment of thoſe which contract Matrimony to receive Satisfaction in that Kind, that if this Nobleman be not able to perform thoſe marital Rights unto his Lady, he doth unto her a very great Injuſtice to retain her as his Wife; and we ſhall perform a great Part of Injury and Cruelty towards her, if we do not free her from this Burthen and Yoke. We are bound in Conſcience to do it, ſince it is in Truth no Marriage, but a pretended Matrimony, that Conſummation being wanting, which was one of the firſt Things in Intention when they two came together: For *impoſſibilitas officii*, by a received Maxim, *ſolvit vinculum Conjugii*. But the Point is, that before the Separation be pronounced, it muſt appear unto the Church, that there is good Cauſe for the ſame; which muſt not be upon light Surmiſes, or queſtionable Suggeſtions, but upon evident Declarations and Proofs, which may give full Contentment to the Conſcience of the Judge. The Marriage was overt and in the Face of the Church, whereby they were joined into one; let the Reaſon of Separation be as clear as that was, if it poſſibly may be; or let it be ſo apparent, that the Church may well know, that there is Ground to ſtand upon for pronouncing of a Nullity. Now this is it which I doubt will not fall out in this Caſe of my Lord of *Eſſex*; there is not Proof ſufficient to inform the Minds of the Judges that this Knot ſhould be diſſolved, and themſelves ſet at Liberty the one from the other. And then you underſtand what the general Rule is, *Quod dubitas, ne feceris.* And in this Controverſy there ſeem in my Judgment many Reaſons of doubting, that the Separation deſired ought not to be granted. You ſhall hear ſome few of them.

1. The firſt Scruple which ariſeth in my Mind, is from the Uncertainty of that Proceeding, which we have had in this Buſineſs. For in the handling of it formerly, we had it propounded, that there muſt be a Nullity *propter maleficium verſus hanc*. That was it which we debated, and for the which we turned our Books; that the Counſel for my Lady did ſtill inſiſt upon, not naming the Words indeed, but by a Periphraſis, or Circumlocution, deſcribing the ſame. And it cannot be forgotten, how Dr. *Stuart*, being told by one or more of the Commiſſioners ſitting then in Court, that his whole Speech did ſtill point out *maleficium*; he anſwered, It is true, that is it which we intend. The Authorities always brought out of the Canoniſts were in direct Terms upon *maleficium*, the Proofs intended nothing elſe. And we all underſtand, that to have an Impotency unto a Man's own Wife, and an Ability unto other, and that incurably, and that for ſome latent Reaſon, which cannot be known, is the Caſe of *maleficium*; and that is the Matter alledged in the Libel, and whereupon my Lord is examined. And yet, now ſince we ſit upon the ſecond Commiſſion, *maleficium* is diſclaimed. One of my Lords (my Lord of *Winchester*) hath avowed it, that he diſlikes that *maleficium*; that he hath read *Del-Rio*, the Jeſuit, writing upon that Argument, and doth hold him an idle and fabulous Fellow; that he rather ſuppoſeth it to be God's own Handy-Work, than any thing from the Devil. Another of my Lords (my Lord of *Ely*) hath aſſented thereunto, and *maleficium* muſt be gone. Now I for my Part will not abſolutely deny, that Witches by God's Permiſſion may have a Power over Men, to hurt all, or Part in them, as by God they ſhall be limited; but how ſhall it appear that this is ſuch a Thing in the Perſon of a Man? The Queſtion is, *An factum ſit*, and how it ſhall be diſcovered? But to make it a Thing ordinary, as the *Romiſh* Writers do beyond the Seas, I take it to be a Fable, acknowledging that for Truth, which a Biſhop well verſed in that Argument did lately write, that Maleficiation is the very Garbage of Popery; a Thing ſo baſe, that we who have learnt *Chriſt* aright, ſhould deſpiſe and contemn, allowing it no Place amongſt us. Which Courſe it were a Shame if we ſhould not obſerve, ſince the Papiſts themſelves grow very weary of it; and that even in *France*, where there hath been more ado with this Maleficiation than in any other Country; for there the common Sort, at the Time of their Marriages, were wont to be afraid to have the Words of Conjunction in Matrimony to be ſpoken aloud, *Quos Deus conjunxit, nemo ſeparet*; or the Benediction to be publickly given, leſt ſome Witch or Sorcerer in the ſame Inſtant ſhould tie a Knot upon a Point, or play ſome other ſorcering Trick, whereby the new Bridegroom, ſo long as that Knot laſted, ſhould be diſabled from actual Copulation with her whom he had married. And for avoiding of that Hazard, they had therefore their Matrimonies celebrated in the Night-time, and in ſome private Place, where none came but ſuch Friends as they dared to truſt. This Superſtition grew ſo common, and Men were ſo abuſed by the Fright that came thereof, that the Prelates of *France*, about thirty Years ſince, in a Council at *Rheims*, made this Decree againſt it. * *Peccare graviter admonemus eos, qui noctu vel clanculum benedictionem nuptialem ſibi dari procurant propter metum maleficii: Maleficium enim ſe vitare poſſe, credere debent, ſi eo pietatis affectu ad conjugium accedant, qui præſcribitur in ſacris literis, videlicet, ut cum timore Domini, et amore filiorum, magis quam libidine impulſi copulentur, devotè ſuſceptis pœnitentiæ et Euchariſtiæ Sacramentis.* And the Year after that, another Council in that Kingdom doth ſpeak yet more plainly. † *Et quia Chriſtiano nomine indignus error noſtro ſeculo inolevit, ut ſignationibus, conſignationibus, vinculis et nexibus Matrimonia impediantur:—Hæc Synodus communione Eccleſiæ interdicit omnes eos, qui hujuſmodi ſuperſtitionibus utuntur: monetque fideles, ne hujuſmodi commentis fidem habeant, ſed in Deo fiduciam certam conſtituant, nec idcirco matrimonia noctu fiant, ſed in luce et frequentia hominum.* If it be rotten ripe in *France*; if it be *Error indignus Chriſtiano nomine*; if Men muſt not *fidem habere hujuſmodi commentis*; what do we with it here in *England?* Let it be caſt away as a rotten Rag of Popery. And yet I do now find, that in the very Sentence which is this Day to be given, it falleth directly upon the Deſcription of *Maleficium verſus hanc*. So that what ſhould I think of this Caſe of my Lord's which is built on ſuch a Foundation as no Man will ſtand to? We are on it, and off it, and avow it we dare not, yet fly from it we will not. This moveth Scruple in me, how I ſhould aſſent to that whereof I can learn no Certainty from the Counſel of my Lady, nor from you that be the Judges, who ſpeak for this Nullity: I dare not reſt my Building on ſuch a ſandy Foundation.

2. Another Matter which troubleth my Mind, is the Novelty of that which is now ſet on foot; a Thing unheard of in our Church, and unknown in our Kingdom. We have many Stories, old and new, of Things done in this Land; we have Regiſters extant in every Dioceſe; we have Acts and Records which ſpecify thoſe Accidents which have fallen out in the Days of our Forefathers. I have cauſed Search in many Places to be made, and ſo I know have ſome of you, the Commiſſioners; and I have called upon you for the ſame, but I can have no Precedent of any ſuch Example that hath paſſed in our Kingdom. No Memory of Man can expreſs unto me the Name of that Perſon, whoſe Marriage was annulled for Impotency towards his Wife, when he found an Ability of carnal Copulation with any other Woman. It is this Year, 1613, that hath ſet abroad this preſent Imagination, for the former Ages knew it not. It is ſafe walking in the Ways which are treaded out unto us. We have great Reaſon for our Doings in theſe human Actions, when we do theſe Deeds which formerly were done by our Predeceſſors. I have had many worthy Men, which have gone before me in the Place which I now hold, Men learned, Men judicious, great Diſcoverers of Impoſtures; Men that have done great Services for the Nation where we live; but of them never any had ſuch a Caſe before them, they never gave Sentence for a Nullity of Marriage upon ſuch an Inability. I know not whether it be a Happineſs or Unhappineſs, that I muſt be the firſt to ſit in a Commiſſion for determining ſuch a Controverſy.

I know, to meet with this Objection, it is whiſpered ſometimes, that there is an Example, and that is *Bury*'s Caſe, which is urged as a Precedent unto this now in Queſtion. But indeed, that is no Pattern of this; the Diſſimilitude is great between the one Caſe and the other; for *Bury* had his S—s ſtricken off with an Horſe, that nothing but a little of one of them remained. I will read you the very Caſe, which if any Man doubt of, ſhall be avowed unto him. Thus then it doth follow.

John Bury, Eſquire, was lawfully ſeized in his Demeſnes as of Fee, of, and in divers Manors, Lands and Tenements within the County of

* *Bochellus* in Decret. Eccleſ. Gallic. *lib.* 3. *tit.* 5. *cap.* 176. *anno* 1583.

† *Idem, lib.* 1. *tit* 14. *cap.* 7. ex Concilio Bituricenſi, *anno* 1584.

Devon. The ſaid *John Bury* did, the 20th Day of *November*, in the firſt Year of Queen *Mary*, marry one *Willimot Gifford*, and they lived together three Years; and the ſaid *Bury* could not *carnaliter cognoſcere dictam* Willimotam.

Afterwards, *viz.* the 17th of *May*, 1561, the ſaid *Willimot* called the ſaid *Bury* before the Eccleſiaſtical Judge, and charged him to be *impotentem ad coeundum cum dicta* Willimota, *propter vitium perpetuum, et incurabile impedimentum ad generationem, et ejus inhabilitatem*, &c. and thereupon deſired to be divorced. In the Proceeding before the Judge, it was proved by divers Witneſſes, of which two were Phyſicians, that the ſaid *Bury* had but one little S---e, and That no bigger than a Bean. It was alſo depoſed by divers Matrons, that the ſaid *Willimot Gifford* remained a Virgin, and incorrupt; and the ſaid *Bury* confeſſed no leſs: Upon which Proof, and Confeſſion of *John Bury*, the Eccleſiaſtical Judge pronounced Sentence of Divorce, and did thereby ſeparate them.

Afterward the ſaid *John Bury* took to Wife one *Philippa Monjoy*, his firſt Wife, *Willimot Gifford*, being then alive; and the ſaid *Philippa* had a Son in the Time of their continuing together, *John Bury*'s firſt Wife being alive.

Afterwards, the ſaid *Willimot* being ſtill living, the ſaid *Monjoy*, of her own Accord, without any Sentence of Divorce, forſook the ſaid *John Bury*, and married one *Langeden*, with whom ſhe continued. The ſaid *John Bury*, and his firſt Wife, *Willimot*, died; the ſaid *Monjoy* and *Langeden* then living, married together.

The Queſtion is, Whether, *John Bury* being divorced from *Willimot Gifford* for Impotency, the ſecond Marriage, ſolemnized between the ſaid *John Bury* and *Monjoy*, during which Time the Iſſue Male was born, be in Law a Marriage or not.

It appeareth by the Proceſs made in the Cauſe, and the Words of the Sentence grounded upon the ſame Proceſs, that the firſt Marriage was pronounced to be void, *propter defectum et vitium teſticulorum*, which made the ſaid *John Bury impotentem et ineptum ad actum generandi, et coitum conjugalem.* And ſo in all Reſpects this ſecond Marriage with *Monjoy* is void, and of no Effect: For either this Cauſe of the Diſſolution of the firſt Matrimony is true, which is always to be preſumed, until the contrary do appear, and then the ſame Cauſe doth make the ſecond Marriage void alſo; or elſe, if it any ways appear, this Cauſe of the Diſſolution of the firſt Marriage to be falſe; *Et Eccleſia erat decepta, quia ſatis potens ad generandum, et quod in ipſa generavit.* And in that Caſe the firſt Marriage is good in Law, *et debet redire ad priora connubia*: And ſo the ſecond Marriage is utterly void.

We are of the Opinion above laid down.

John Loyde, *Edward Crompton*,
Henry Jones, *Robert Fourth*,
John Hone, *William Farrand**,
Nicholas Stuart,

Whether this be true or no, I appeal to Dr. *Stuart*, who is here in Preſence, and of Counſel for my Lady, who, I know, will affirm it, becauſe, not long ſince, being aſked by me of it, he confeſſed the ſame. And here is Dr. *Farrand*, now of Counſel for my Lord, who was uſed for his Advice in this Caſe of *Bury*; and Dr. *Hone* is yet living, who can teſtify the ſame. For I will ſuppoſe, that a Man cannot forget ſuch a famous Caſe as that was wherein himſelf was employed: But if all theſe were dead, I know where Records be, which ſtill will continue. If this then were the Matter in Queſtion touching *Bury defectus teſticulorum*, what is this to the great Controverſy now depending before us? And if this be the only Precedent, that ſhould be the Inducement, that the Sentence to be given in this Cauſe is not new, but the like hath been heard of before; I am where I was: We are now to act a Novelty, a Thing ſtrange, and unheard of in the Church of *England*, whereof let other Men be the Managers, I may have no Hand in it.

But perhaps it will be ſaid, that in ſome other Countries, and eſpecially in *France*, theſe Things are well known; and the Examples of one Kingdom, eſpecially, being ſo near unto us, may be an Inducement for us to do the like, ſince the Reaſon is the ſame. My Anſwer thereunto is, That I that live in *England*, am to frame myſelf to thoſe Things, which I find in the Church of *England*, whereof I ſee no Reaſon but there ſhould be as great Eſteem, as of any Church in the World. In the Days of our Forefathers, as our Nation was held a very noble Nation, ſo was the Church of *England* held a very famous Church. *Eccleſia Anglicana*, as might eaſily be ſhewed out of *Matthew Paris*, and by divers Things in ſome later General Councils, did carry a greater Sway. And why ſhould we at this Time, in any Thing, yield unto any Church in the World, ſince it is a Thing well known, that the Knowledge of Divinity doth abound here beyond all other Nations? And Men of this Land have beat down the Power of the Pope, and made evident divers Queſtions in Matters of Theology, beyond all the Parts of Chriſtendom: But beyond this, I do know, that the Cuſtoms of Churches, even by the Determination of the Pope himſelf, ought to be the Rule of Judgment in this Nature. We have a famous Place interſerted into the Body of the Law, written by Pope *Alexander* the IIId, unto the Biſhop of *Amiens* in *France*. It is worth your hearing: †*Quod ſedem Apoſtolicam conſuluiſti ſuper his, quæ tibi dubia exiſtunt, gratum gerimus et acceptum, et tua exinde fraternitas non parum commendanda videtur. Ex tua ſiquidem parte nobis eſt intimatum, quod quædam mulier tui Epiſcopatus cuidam viro nupſerit, aſſerens quod ob utriuſque inguinis rupturam, genitalia ejus abſciſſa fuiſſent, necdum ab eo cognita fuiſſet, qui utique factus leproſus, ſe pariter et ſua domui reddidit infirmorum. Mulier vero ad domum patris reverſa ſicut aſſeris invenis, alio viro nubere deſiderat, et conjugali affectu conjungi. Unde licet Romana Eccleſia non conſueverit propter talem infirmitatem, vel propter alia maleficia, legitimè conjunctos dividere, ſi tamen conſuetudo generalis Gallicanæ Eccleſiæ habet, ut hujuſmodi matrimonium diſſolvatur; nos patienter toleravimus, ſi ſecundum eandem conſuetudinem, eidem mulieri cui voluerit nubendi in Domino conceſſeris facultatem.* By this we do find, that the Church of *Rome* itſelf doth grant no Separations in Matters of Matrimony, where the Church of *France* doth; and if the Pope permit, in *France* itſelf, that a Divorce ſhould be made, it is but a Toleration, and not this neither, but where it is *conſuetudo generalis Eccleſiæ Gallicanæ*; which if you will apply unto this Cauſe in Queſtion, you muſt ſhew me, that in *England* it hath been a general Cuſtom, that a Nullity in Marriage may be pronounced *propter impotentiam verſus hanc*; which if you cannot ſhew, as indeed you cannot, nor give any true Example that ever hath been of any ſuch Separation within this Church, I may both in Law and Conſcience conclude, that I dare not introduce any Novelty, and ſo conſequently pronounce for the Nullity of this Marriage. Many Things are done in *France*, whereof if we in *England* had the Examination, we ſhould, peradventure, find the Fact different from that which they conceived; or if we agree in the Fact, we ſhould give another Sentence. It is not unknown how, within the Space of one Year, there hath been much ado in *France* about two Women, *Magdalen* and *Louyſe*, pretended to be poſſeſſed with a great many Devils, and how *Verrine*, a principal Spirit in one of them, hath avowed and maintained the Maſs, Invocation of Saints, Adoration of Images, and a great many other Points of the Groſſneſs of Popery; and a Book hereof hath been printed and reprinted in *Paris*, with the Approbation of the State, and Allowance of learned Men; in which the Church of *England* would certainly diſſent, and proclaim the whole Buſineſs to be but an Impoſture; as the very like was in the Days of Queen *Elizabeth*, when the Devils of *Denham* were ſaid to poſſeſs *Sarah Williams* and her Siſter, and ſome other Perſons; and much ado was made of it, and divers fond People believing thoſe Knacks, turned Papiſts thereupon; yet the Iſſue of all was, that it proved no better than a ſhameful Deluſion, and a great abuſing of credulous and light-believing Perſons.

3. But now to proceed farther: If it ſhall be ſaid, It is not the Novelty, nor the Want of Cuſtom here in *England*, which ſhould prejudice the Truth; *valeat veritas*, whereſoever or whenſoever it appears: The Proofs are evident whereupon we do ſtand, and that will enforce the Sentence. My Anſwer thereunto is, Let that be made manifeſt, and clear, and perſpicuous unto the Conſcience of an underſtanding Man, and I ſhall concur with you: But how ſhall I find this in a Matter of this Quality? Becauſe it is nothing elſe but Truth which we do aim at, it were fit that all Probations, if not which are poſſibly, yet at the leaſt which reaſonably may be had, ſhould be got together to enforce a Concluſion of this Conſequence. My Books tell me, *In valore matrimonii inveſtigando quæcunque probationes poſſibiles adhibendæ ſunt, et potius debent eſſe ſuperfluæ quàm diminutæ.* It is *Solomon*'s Saying, *Prov.* xxv. *It is the Honour of a King to find out a Thing.* And wherein can Judges beſtow their Time better in a Point of Difficulty, than to ſearch and ſearch again, by all honeſt and good Means, to know what is the Bottom of that which lieth ſecret, that they may ſatisfy their own Conſcience, and the Conſcience of others, in the Sentence which they give, and leave no Kind of Scruple, which may trouble their own Thoughts? Whether theſe Things have been done in this preſent Caſe, I appeal to your own Conſciences; whether the Writers do not mention divers Things; whether the Counſel for my Lord have not ſpoke of ſundry Matters; whether we that be the Judges, have not thought of divers Courſes convenient to be held; of all which no Piece or Parcel hath been permitted unto us. The Proofs then which we have had, do ariſe only out of the Depoſitions, and if there be not Proof ſufficient, where ſhall we ſeek for it? Let us then conſider them. I will tell you my Opinion of them. I find nothing in them all, which is not in Subſtance contained in the Anſwers of my Lord of *Eſſex*: A Noble Perſonage ſaith, That in the Hearing of divers Things, the Earl hath ſaid, that he was not able to know his Lady carnally; the Earl thinking this to be true. But this is but a Relation of Wonder ſpoken extrajudicially; and therefore, for the underſtanding of the Truth therein, we are to have Recourſe unto that, which by the ſaid Earl is judicially depoſed. Divers Witneſſes do ſpeak, that the Earl and the Lady have lived and lain together for divers Years; my Lord doth acknowledge it in his Anſwer; the Matrons and Midwives do declare, that in their Judgment my Lady is a Virgin, and therefore, that ſhe was never known carnally by the Earl; himſelf confeſſeth that he did never know her. So that now, all in Subſtance depending upon his Lordſhip's Anſwer, it ought to be our Labour to ſcan that

* In the ſhort Caſe of Mrs. *Catharine Weld*, (Daughter to Lord *Aſton*) and *Edward Weld*, Eſq. her Huſband, printed in 1733, the Caſes of *Bury* and *Eſſex* are thus quoted in p. 42, 43: "The famous Caſe of *John Bury*, Eſq. of the County of *Devon*, in the Reign of Queen *Elizabeth*, is a proper Caution in reſpect to ſuch Demands for annulling Contracts of Marriage, ſince ſuch Nullities often occaſion much Noiſe and Confuſion; and inſtead of hurting none, as has been aſſerted on the other Side, almoſt always have ſtirred up implacable Malice in the Party declared incapable, and the Conſequences have not ſeldom brought a Diſreputation on the Court who pronounced it.

"In order to which, let us return a little to the Hiſtory of *Bury*'s Caſe. His firſt Wife *Willimot* libelled him for Inſufficiency as to carnal Encounters, and upon Inſpection it appeared he had but one little Teſticle, of the Size of a ſmall Bean. The Eccleſiaſtical Court, on this and other corroborating Evidence, gave Sentence with the Libel, and, ſo far as they were able, annulled the Marriage.

"*Willimot* quickly took the Advantage of this Sentence, and married again. *Bury* was, it ſeems, not at all ſatisfied with this juridical Sentiment of his Incapacity, but married alſo a ſecond Wife, *Philippa*, by whom he had a Son. This afterwards drew the Succeſſion to *Bury*'s Eſtate into Queſtion, on the Legitimacy of this Son. The Common Lawyers were unanimouſly of Opinion, that the Church Authority exerted in pronouncing the Nullity being plainly deceived in the very Ground upon which it went, that Sentence was in itſelf void, and the firſt Marriage between *Bury* and *Willimot* remained, notwithſtanding it, good.

"It is with ſome Reluctance I mention the Caſe of the Earl of *Eſſex* and Lady *Frances Howard*, the moſt famous Inſtance in our Kingdom of a Sentence of this Kind, which was given by the Majority of a Court of Delegates, compoſed of the greateſt Biſhops and Men who were ſkilled in the Civil Law; yet, notwithſtanding, the Solemnity of Interrogatories, the Earl of *Eſſex*'s direct Anſwer that ſhe was a Virgin for him, the Verdict of Inſpectreſſes, the Pomp of Compurgators, and all the other Colours which could be invented to gloſs their Proceeding; yet ſo ſcandalous was this Deciſion in the Eyes of the World, that it loſt the Characters of all thoſe Judges who concurred in pronouncing Sentence, and faſtened the Nick-name of Sir *Nullity* on one of the Sons of a Biſhop concerned in it, when he was ſoon after knighted."

And *Page* 47. "*Bury*'s Caſe was indeed an odd one, but it had no Effect when quoted to the Biſhops and Doctors in my Lady *Eſſex*'s Caſe; and though ſo many hard Cenſures have fallen on thoſe who decided it againſt the Validity of the Marriage, yet the Event did in ſome Meaſure juſtify their Opinions; ſince the Lord *Eſſex*, though he ventured on a ſecond Marriage, yet had not Iſſue by the Lady."

† De frigidis et maleficiatis, *cap.* 2. in Supplemento.

exactly, and to judge of it circumspectly. Doth not he then say, *in responsione ad quartum*, That though divers Times, in the first Year of their Cohabitation, he did attempt to know her, (which divers Times may be twice or thrice, and no more) yet in the two latter Years he did never attempt it? But doth he not say plainly, *responsione ad tertium*, That since the Time of his Marriage, he had not, nor hath any Sickness or Impediment to hinder him, but that he might have had, and may have carnal Knowledge with a Woman? This is for the general, that he hath no Impediment: But, *in responsione ad quintum*, doth he not descend more particularly unto his own Lady; that it is true that he did never carnally know the said Lady *Frances*? Mark now what followeth; but that to the Act of carnal Copulation he did not find any Defect in himself. Indeed he was not able to penetrate into her Body; but he layeth the Fault of that upon her, as may be seen in his Answer unto the 7th Article. And it may not be forgotten, that in the End of the Answer to the 4th Article, he saith, That sometimes she refused him. These Things are evident, and cannot be denied. The only Matter which maketh Shew against this, is, that he acknowledgeth that he hath lain by her, and hath had no Motion to have carnal Knowledge of her; but especially, that in the End of his Answer unto the 6th Article, "And believeth he never shall." These Words are the Shield and Buckler of the contrary Part; but how easily do they vanish away, or fall to the Ground! For I appeal unto you all, who were present at the Examinations, (and those were ten of us in Number, who now sit here present) whether the Earl did not openly subjoin that to his Answer; "When I came out of *France*, I did love her; but "I do not so now, neither ever shall I." I appeal unto the Conscience of you all, except my Lord of *Winton*, and my Lord of *Rochester*, who were not then Commissioners, whether this be so or no: Here then is the Matter, it is the Want of Love, which restraineth all Motions of carnal Concupiscence, and not any Impotency; it is *defectus voluntatis*, and not *defectus potestatis*. Let Discontentment be removed, and there will be an End of all the Inability: Married Men best know these Things; but out of common Reason, there can be no great Longing, where there is no great Liking; many Things they say fall out between Man and Wife, that for some good Space of Time there is no carnal Conjunction, and yet no Impotency concluded thereby may be. The Case is famous of *Pulcheria*, Sister unto the Emperor *Theodosius* the younger, who having vowed Virginity, was notwithstanding afterward, for great Reason of State, thought fit to be married unto *Martianus*, who thereupon was chosen Emperor; she would not condescend thereunto, till she had Promise from him, that her Virginity should be preserved, and with such a Promise he did marry her; so that they lived together in Shew as Man and Wife, but indeed as a Brother and a Sister. Our Stories do make Mention, that he who was called Saint *Edward* in *England*, I mean King *Edward* the Confessor, did marry a Lady, the Knowledge of whose Body he never had, neither did this wedded Couple ever endeavour to break their Virginity. The Writers do declare no other Reason hereof, but that they had an Opinion, that to live in Virginity, was the more meritorious, according to the Superstition of those Times. Now were it not a strange Argument, to conclude in this Manner, that because *Martianus* had not conjugal Copulation with *Pulcheria*, therefore he was a Man impotent; or, because King *Edward* had not carnal Knowledge of his Wife, therefore he could not know her? I know the Circumstances of this present Question do differ from those, but the Ground of the Argument is the same. Want of Act, upon private Reason, will never enforce a Want of Power. And this is our Case, as I understand it, which maketh me unwilling to consent to this Nullity.

4. There followeth now another Argument, which I shall deliver briefly. We have always agreed, that the Chapter in the Law, which containeth our Case, is the Chapter *Litera de frigidis et maleficiatis*; for if it be not there, it is no where to be found. When we have delivered many Things appertaining to this Cause out of the best Writers of the former Ages, or of our own Time; as that my Lord should be inspected, or that Physicians should use their Art to discern and remove Impotency, if any were to be found, or that Fasting, Prayer, and Alms, should be exercised to overcome this Evil, and divers other Points of like Nature; it hath still been answered to us, So say the Interpreters, but it is not in the Law; or it is in the Decrees which bind not, but it is not in the Decretals; or it is a Counsel and Exhortation, but it is no Mandate or Injunction. I now therefore mention something, which is in the Law, and in the very Body of this Law, and it is the Pope's Mandate; and that is, that my Lord should have given his *juramentum cum septima manu*, as well as my Lady; for Want whereof, the whole Proceeding is annullated. This is the Pope's Commandment, *Quocirca mandamus*; and it requireth the Oath of both, *ipsis cum septima propinquorum manu firmantibus juramenta, se commisceri carnaliter nequivisse*, then *preferatis divortii sententiam inter eos*. This is a Thing so clear, that when on *Thursday* last, by Chance, there fell Mention of it; the Counsel for my Lady (Dr. *Stuart* and Dr. *Bird*) were so far from giving Answer to it, that, to speak plainly, they stood as Men blasted or blighted with Lightning, and knew not which Way to turn them; as was manifest not only unto us, but to all the Standers-by; which I do not utter to do them any Wrong, for they are worthy Men, both learned and faithful to the Cause which they undertake; but the Note is, that this Objection can receive no true Answer. I know, that since that Time there hath been Labour made, to give a Salve to this Sore, but no Man's Wit can do it. I said, and say still, that no Man's Loquence, neither any Man's Eloquence, can persuade me, that *ipsis firmantibus juramento* is of the singular Number. I know there hath been tumbling and turning of Books, to find some Shew to meet with this Objection; but nothing can be found which will hold out this Water. The Proceeding therefore doth appear to be unperfect and defective in that, which is mainly required by the Law, which makes me to conclude in this Fashion against some unperfect Speech touching my Lord of *Essex* his affirming or denying of his own Inability towards my Lady; that either he doth confess it, or deny it: If he do acknowledge it, where is then his Oath *cum septima manu*, which the Law imposeth? If he do deny it, where is then your Proof of his Inability, since you ground the whole Substance of the Nullity upon his Lordship's Answer, "That he could not know her car-"nally?"

I must yet crave Patience to go a little farther. One other Exception which I take unto this Nullity, is the Manner of the Sentence, which by us is to be given, which hath ever been resolved should be in general, not expressing any Reason particular wherefore we do give it. To say that my Lord is *impotens in genere versus hanc*, and not to tell wherein, is to propound a Riddle to the World, which no Man understandeth. It were a strange Thing in Learning to say, that such a Creature is Animal, and not to tell whether it be a Man, or a Horse, or a Fish, or a Bird. And although it hath been said, and strongly maintained (by Sir *Julius Cæsar* and Sir *Daniel Dun*), "That it is enough in a Sentence to pro-"nounce a Thing in general, and that the Judge is bound to give no "Reason of it;" yet I would be glad to know whether, howsoever I will conceal the particular Reason from the Hearers or Standers-by, yet were it not fit, that I who am the Judge, and must give the Sentence, or at least consent unto it, should know the Ground whereupon I do give it? Give me leave to speak my Conscience; I think a Sentence, *propter latens aliquod impedimentum*, which is *perpetuum et incurabile versus hanc*, is nothing but a Device to serve a present Turn, which we must deliver in such obscure Words, to blind Posterity that comes after, and to amuse those which will enquire into it, as if we had known something which we held not fit to utter, when in Truth we know nothing. I find the Texts of the Law do still set down the Reason, and give a Case particular, as Frigidity, or Section, or Unfitness of the generative Part, or some such other Matter; but for an Inability, *propter latens impedimentum*, my Dullness is such, that in the whole Book I cannot discover: And it is a Mystery that cannot enter into me, how a Man should be potent unto other Women, and impotent to his Wife, if it be not in case of Phrensy, which is not *latens impedimentum*, and which also findeth *lucida intervalla*. It was the Assertion of him in the Law, *(Cap. Literæ)* "That he did not know "his Wife, but that he had a Power to know other Women." But what wise Man doth believe him? Or what is there in the Text which doth declare it to be true? I will end this Point with that of our Saviour in the xxixth of *St. Matthew*, That there are three Sorts of Eunuchs, or Men unfit to marry; the one is of God's making, the second is of Men's making, and the third is of their own making. The first are they that are past from their Mother's Belly, who either are *frigidi*, or such as have not Members fit for Generation, or some apparent Debility. The second are those who are castrated by Men, or by some Violence have that hindred in them, whereunto by Nature they are fit in respect of Procreation. I will not here dispute that idle *Maleficium*, because yourselves are flown from it. The third hath no Coherence with this Nobleman. Let me know then, in which of the former two you do place it. Is he past from his Mother's Womb? Why then do you give him Leave to marry again, that he who hath deluded and frustrated one, may also delude another? If he be in the second Rank, why do you not tell us what the Violence is which he hath sustained from Men, or from any other Creature? Let us have, I pray you, some kind of Satisfaction, and let not this Ænigma in general blind us, lest the World should say, that wilfully we shut our Eyes against the Truth.

6. One Reason I have more, why I yield not to this Nullity, and then I have done. It is drawn from the Inconveniencies which will follow thereupon, if we dissolve the Matrimony in such Case as is now desired. I look first on the Detriment and Harm which will follow, if the Marriage do continue in Force and in Vigour, and I do find, that all the Inconvenience doth redound but to one Person. Between a Lady and her Husband there is some Discontentment, which Time and God's Grace may easily remove: There is then an End of that Controversy. Or, if the Disagreement shall never be appeased, it is no more but one Lady doth want that Solace which marital Conjunction would afford unto her; which many a good Woman is inforced to endure, and yet commits no Sin, neither labours to violate the Laws of the Church: For suppose the Husband be sick of some long Disease, or languishing Weakness, must not the Wife sustain it with Patience and Quietness? Suppose the Husband be Captive in some foreign Nation, or Prisoner in his own Country, whereby Occasion of marital Connexion is taken from the Wife, no Divine will pronounce, that a Separation is in this Case to be sought. Let a Woman do that in Modesty, which others are enforced to do out of Necessity; and let her expect God's Leisure, in Fasting and in Prayer, and in other Humiliation. This is all the Inconvenience which ariseth to one Person, if she have not the Performance of conjugal Duty.

But look on the other Side, what are the Incongruities, or other Absurdities, which will easily follow, if such Dissolutions of Marriages be permitted. I will name only two. The first is the Hazard of violating and annulling of Marriage by an ordinary Practice; for if the Gap be open, who will not run in? And the Judge must dispense the Law indifferently to all, if the Proofs be accordingly; for we may not say, that it is for noble Personages, and great Peers in the State, and not for others of inferior Rank. Whatsoever Couple therefore have no Children, and live discontented, come presently to take Part of this general Jubilee: And albeit they know in their Consciences, that it which they attempt is unlawful; yet, to satisfy their Fancy, they will collude the one with the other, and enter a Prosecution secretly agreed upon, howsoever in open Shew they seem to differ the one from the other: And who can doubt, but for Money or Favour, they may procure Witnesses, and others who are to be used by the Formality of the Law, to testify and depose so much as serves the Turn? By which Means we are at a fair Pass, when not only the Marriage-Bed shall be defiled, and Adulteries made frequent, which is against the second Table of the Law, but Perjury shall be committed, and God's Name taken in vain, which is repugnant unto the first Table.

A second Inconvenience is the Danger, lest both Parties which are freed from their Matrimony, should divers Years after be returned to

it again, when perhaps the Husband by a second Wife hath Children, and the Wife by a second Husband hath Store of Issue also; for there is no Doubt in the Law, but if a Man supposed to be *frigidus*, and therefore divorced, shall afterwards marry, and by begetting of Children shew himself not to be impotent, but apt for Generation, this Man is to be taken from his second Woman, and returned to his first Wife; and the Woman for whose Marriage a Nullity was pronounced in respect of the Insufficiency of her Mate, must be now taken from her second Companion, and returned to the first. Of this the Reason is apparent, *quia decepta est Ecclesia*; they adjudged him to be impotent upon wrong Information, whom Experience and Truth hath declared to be potent. And what Man can foretel, how Variety of Times may produce other Judgments? There may be Question of Land or Inheritance, of Legitimation or Illegitimation; and a wise Man would be unwilling to bring it on the Stage when he is dead and gone, and to make it the Fable of the World, whether his Children be born lawfully, or to be reputed in the Rank of Bastards. The World is subject to much Mutability, and Judges of future Times may peradventure be led with the Power of some great Persons, and perhaps may think upon other Considerations, that it is but a Conceit, that a Man should be potent unto another Woman, and impotent to his Wife; or that the Common Law doth not know any *Maleficium*; or that they do not believe, that there may be *latens impedimentum, perpetuum et incurabile versus hanc*, when they see that the Husband is, in Shew of the World, a lusty able Man, and hath well proved his Potency, by begetting three, or five, or seven, or ten Children upon another Woman. These are pretty Things, if a Man do well consider them, and will serve to make Distraction between Kinsman and Kinsman, and make Work for the Lawyers, and keep the Courts at *Westminster* that they shall not be idle; which if we could not learn otherwise, yet *Bury*'s Case before remembered doth teach us, who was divorced from his Wife in the third or fourth Year of Queen *Elizabeth*; and when his Brother had enjoyed his Land until the fortieth Year of the said Queen, then was he thrust out of it, and the questioned Son, or his Heir, was put into Possession of it by Trial of Law; a great deal of Money being spent in that Contention, and both Civilians and Common Lawyers in great Numbers were entertained of both Sides; and yet the Controversy was not so appeased, but that of my certain Knowledge, within these three Years it had been raised again, and a strong Device was laid how to bring this about again; only myself withstood it, and would not give way unto it, when I was divers Times consulted thereabout; conceiving very well that it would not be long before some Prohibition would come out of some of the King's Courts, because the Common Law disliked, that Men's Inheritance, especially after Judgments, should be disturbed, when the Parties whom most of all it concerned, are dead long before, and cannot answer for themselves; whereas, peradventure, if themselves had been living, they could have answered that for themselves which other Men knew not. And there ought to be a settled Course in all Things appertaining to Inheritance.

By this Time, I hope you see, that it is not out of Wilfulness, or prejudicate Conceit, that I have impugned this Nullity, but out of Ground of Reason, and out of Scruple of Conscience, which is it that must accuse me, or excuse me before the ever-living God. I know you have heard what other Men have said, and they have answered for themselves. Upon all which Grounds I make this Conclusion, That howsoever this Matter of Separation with great Earnestness hath been pursued, yet it is the surer and the safer Way to leave it as we find it, and in no Case to dissolve it. I oft remember that Saying, which is frequent among the Canonists, *Tolerabilius est aliquos contra statuta hominum dimittere copulatos, quam conjunctos legitimè contra statuta Domini separare.* That concerneth us who be the Judges; and for the Parties themselves, who perhaps can be content to be severed, and to marry elsewhere, let them know this from me, that they may best expect a Blessing from God when they live in that State where fewest Scruples shall arise in their Mind: From which whether they shall be free in leaving their old Conjunction, and betaking themselves unto a new, I refer to their wiser Thoughts, when in all Probability, if any Cross or Thwart shall arise in their new-intended Matrimony, this Perplexity and Anguish will still follow their Souls, that they have done that whereof in their truest Meditations they have no Ground of Conscience, and therefore that it is the Hand of God upon them, who giveth not a Blessing unto that which was unduly sought.

You have thus at large heard my Opinion against the Annullation of this Marriage. Now, if you ask me, What would you then have done concerning this Couple of Noble Personages? my Answer is, That I would have a Reconciliation by all Means to be laboured; and although that be difficult to bring about, yet it is the more Honour when it is effected. Charity will forgive and forget the highest Offences. It is St. *Augustine*'s Judgment, "That in the greatest Breaches between Man and Wife, Reconciliation is the best; and the worthiest Pains that can be bestowed, "is to bring that about." There wanteth only one or more good Mediators, and then great Things will be compassed. The Disagreement was inconceivable between God and Man, yet Christ, that great Mediator, did take it away. The Breach was very bitter between *England* and *Spain*, yet our most blessed Sovereign, as a gracious Intercessor, did give an End unto it. Let Divines be used now, as much as Lawyers have been used heretofore. Take the godly Counsel of the one, which will be given freely, as you have taken the Advice of the other with much Expence of Money. This I wish for, this I pray for; and if my Counsel had been used, before Things grew to this Height, I would have used my best Means to have wrought an Atonement, But because there is no Hope thereof, and this doth expect a legal Decision, proceed you that please unto this Separation. Give your Sentence *in scriptis*, as you have declared your Opinion *in verbis*. Five might have served the Turn by the Words of the Commission, if seven had dissented; but you have seven Suffrages, and therefore proceed; only this I crave of the Register, that he do make his Act, that this Sentence is given, Joanne *Episcopo* London. *D.* Joanne Bennet *milite*, *D.* Francisco James, *D.* Thoma Edwards, *dissentientibus, potissimum verò* Georgio *Archiepiscopo* Cantaurienſi *renitente.*

This is the Substance of that Matter which the Archbishop of *Canterbury*, out of certain Notes which he had drawn up, was ready to have uttered, and no one material Point is added thereunto, as appeareth unto me, the Writer hereof, comparing it with the Notes at such Time as I ended the writing of this, which was on the 28th of *September*, 1613, three Days after the Time when it should have been spoken.

The KING's *Letter to the Archbishop of* Canterbury.

My Lord,

AFTER I had received, and read your Papers, which the Bishop of *Litchfield* brought me, I found it very necessary that I should make Answer thereunto at my first Leisure: For whereas, before, at my last Meeting with you, ye seemed to me to be only as yet unresolved what Sentence to give in this Business, till you had heard it thoroughly disputed, that by that Means ye might be fully informed of the State of the Cause; it appears now by these Papers, that you have, after your last Day's Consultation, put on a negative Resolution, grounded upon Fundaments of Divinity and Conscience, as you think, which hath moved me to send you herewith my Judgment upon your Arguments, in regard that I did ever hold it necessary, that in a Matter of this Weight all my Commissioners should be as near of one Mind, as might be; and therefore I would be sorry that your private Conceits should so blind your Judgment, as to make you and your Followers draw the Catharrows (*Perplex or Torment*) against your Yoke-fellows; for, that I may now open plainly my Heart unto you, at my first reading of your Papers from the Bishop, I chanced to cast mine Eye first upon the Paper of your Arguments, before I had looked upon your Letter, and lighting upon your first Words, "Inasmuch "as we do firmly believe, &c." I protest I thought it had been some strange Confession of Faith, that you had intercepted amongst some of the Sectaries; but when I had read out the rest of that first Article, God is my Judge, I thought that Paper had been some Pasquil made against this Divorce, which coming to your Hands ye had sent me, and therefore without reading any farther therein, I looked upon your Letter, which resolved me of all these Doubts; but after that I had fully perused, and rightly considered of all your Papers, I found your Principles so strange, and your Doubts so far sought that I thought it necessary, as I have already said, to set down unto you my Observations upon them. But to conclude my Letter with that Plainness that becometh one of my Quality, I must freely confess, that I find the Grounds of your Opposition so weak; as I have Reason to apprehend, that the Prejudice you have of the Persons, is the greatest Motive of breeding these Doubts into you; which Prejudice is the most dangerous Thing that can fall in a Judge for misleading of his Mind. And the Reason moving me to this Apprehension, is partly grounded upon your last Words to me at your parting from *Windsor*, and partly upon a Line scraped out in your Paper of Doubts: for I am sure you think me not so blunt a Secretary, but that I can read a Line so scraped out. In your last Speeches with me, you remember you told me what Assurance you had of the Earl's Ability out of his own Mouth, which you said you could not but trust, because he was so religious a Nobleman. But when I told you of the other Party's contrary Affirmation, you remember how you used the Word of Iniquity; and how far your interlined Line seems to have a Harmony with this Word, yourself can best judge. Now then, if I would ask you what Proof you have of the one's Religion more than the other's, you must answer me, by judging upon the Exterior; and how deceivable that Guess is, daily Experience teaches us—But with a holy Protestation that I never knew any thing but good in the young Earl. Was not this the Ground of Master *Robert Bruse*'s Incredulity, because he knew the Earl of *Gowry* to be truly religious; and did not beg a Register. See *Bothwell* in his Preface of his Book *De viris illustribus*. And as for your Judgment of the other Party, Christ's Precept is the best Answer unto you, *Nolite judicare*. But if the Question were to judge of the Earl's Inclination, whether is it likely that you or I could best judge of it; I, he having been bred with my late Son, and served him so long; or you, that never spoke with him but once or twice in your Life, and never knew either Good or Evil of him but out of his own Mouth? I will conclude, therefore, with inverting the Argument; that if a Judge should have a Prejudice in respect of Persons, it should become you rather to have a kind of Faith implicit in my Judgment, as well in respect of some Skill I have in Divinity, as also that I hope no honest Man doubts of the Uprightness of my Conscience; and the best Thankfulness that you that are so far my Creature, can use towards me, is, to reverence and follow my Judgment, and not to contradict it, except where you may demonstrate unto me that I am mistaken, or wrong informed; and so farewel.

JAMES R.

NUMBER II.

The CASE of a MURDER in HERTFORDSHIRE, found amongſt the Papers of that eminent Lawyer, Sir JOHN MAYNARD, Serjeant at Law, and ſome Time one of the Lords Commiſſioners of the Great Seal of ENGLAND, viz *.

The Caſe, or rather Hiſtory of a Caſe, that happened in the County of *Hertford*, I thought good to report here, though it happened in the fourth Year of King *Charles* the Firſt; that the Memory of it may not be loſt by the Miſcarriage of my Papers or otherwiſe. I wrote the Evidence that was given, which I and many others did hear; and I wrote it exactly according to what was depoſed at the Trial at the Bar of the *King's Bench*.

Jane Norkott, *the Wife of* Arthur Norkott, *being murdered, the Queſtion was, How ſhe came by her Death?*

THE Coroner's Inqueſt, on View of the Body, and Depoſitions of *Mary Norkott*, *John Okeman*, and *Agnes* his Wife, were inclined to find *Jane Norkott* a *Felo de ſe*; for they informed the Coroner and the Jury, "that ſhe was found dead in her Bed; the Knife ſticking "in the Floor, and her Throat cut.---That the Night before ſhe went to "Bed with her Child *(Plaintiff in this Appeal)*, her Huſband being abſent, "and that no other Perſon, after ſuch Time as ſhe was gone to Bed, "came into the Houſe, the Examinants lying in the outer Room, and "they muſt needs have ſeen or known if any Stranger had come in:" Whereupon the Jury gave up to the Coroner a Verdict that ſhe was *Felo de ſe*. But afterwards upon Rumour amongſt the Neighbourhood, and their Obſervation of divers Circumſtances, which manifeſted that ſhe did not, nor could poſſibly (according to thoſe Circumſtances) murder herſelf; thereupon the Jury, whoſe Verdict was not yet drawn into Form by the Coroner, aſſented, and deſired the Coroner, that the Body which was buried might be taken up out of the Grave, which the Coroner aſſented unto; and *thirty Days* after her Death ſhe was taken up, in the Preſence of the Jury and a great Number of People: Whereupon the Jury changed their Verdict; and the Perſons being tried at *Hertford* Aſſizes, were acquitted; but ſo much againſt the Evidence, that Judge *Hervey* let fall his Opinion, that it were better an Appeal were brought, than ſo foul a Murder eſcape unpuniſhed. And, *Paſchæ quarto Caroli*, they were tried on the Appeal, which was brought by the young Child againſt *his Father, Grandmother, and Aunt, and her Huſband* Okeman; and becauſe the Evidence was ſo ſtrange, I took exact and particular Notice. And it was as follows:

After the Matters above-mentioned related, an ancient and grave Perſon, *Miniſter to the Pariſh where the Fact was committed*, being ſworn to give Evidence, according to Cuſtom, depoſed, "That the Body being "taken up out of the Grave, thirty Days after the Party's Death, and "lying on the Graſs, and the four Defendants being preſent, were requir-"ed each of them to touch the dead Body. *Okeman*'s Wife fell upon her "Knees, and prayed God to ſhew Tokens of her Innocency. The Ap-"pellant did touch the dead Body; whereupon the Brow of the Dead, "which before was of a livid and carrion Colour, (in Terminis, *the verbal "Expreſſion of the Witneſs)* began to have a Dew, or gentle Sweat, ariſe "on it, which increaſed by Degrees till the Sweat ran down in Drops on "the Face; the Brow turned to a lively and freſh Colour, and the De-"ceaſed opened one of her Eyes, and ſhut it again; and this opening the "Eye was done three ſeveral Times; ſhe likewiſe thruſt out the Ring or "Marriage Finger three Times, and pulled it in again; and the Finger "dropped Blood from it on the Graſs." Sir *Nicholas Hyde*, Chief Juſtice, ſeeming to doubt the Evidence, aſked the Witneſs, Who ſaw this beſides you?

Witneſs. I cannot ſwear what others ſaw: But, my Lord, (ſaid he) I do believe the whole Company ſaw it; and if it had been thought a Doubt, Proof would have been made of it, and many would have atteſted with me. Then the Witneſs, obſerving ſome Admiration in the Auditors, ſpake farther: "My Lord, I am Miniſter of the Pariſh, and have long "known all the Parties, but never had Occaſion of Diſpleaſure againſt "any of them, nor had to do with them, or they with me; but, as I was "Miniſter, the Thing was wonderful to me: But I have no Intereſt in "the Matter, but as called upon to teſtify the Truth, and that I have "done." (This Witneſs was a very reverend Perſon, as I gueſſed, of about ſeventy Years of Age; his Teſtimony was delivered gravely and temperately, but to the great Admiration of the Auditory.) Whereupon, applying himſelf to the Chief Juſtice, he ſaid, "My Lord, my Bro-"ther here preſent is Miniſter of the next Pariſh adjacent, and I am ſure "ſaw all done that I have affirmed:" Therefore that Perſon was alſo ſworn to give Evidence, and did depoſe in every Point—"the ſweating of "the Brow—the Change of the Colour—thrice opening the Eye—and "the thrice Motion of the Finger, and drawing it in again;" only the firſt Witneſs added, that he himſelf dipped his Finger in the Blood which came from the dead Body to examine it, and he ſwore he believed it was Blood.

I conferred afterwards with Sir *Edward Powell*, Barriſter at Law, and others, who all concurred in the Obſervation: And for myſelf, if I were upon Oath, can depoſe, That theſe Depoſitions (eſpecially the firſt Witneſs) are truly reported in Subſtance.

The other Evidence given againſt the Priſoners, *viz.* the Grandmother of the Plaintiff, and againſt *Okeman* and his Wife, That they confeſſed they lay in the next Room to the dead Body that Night; and that none came into the Houſe till they found her dead the next Morning; therefore if ſhe did not murder herſelf, they muſt be the Murderers. To that End further Proof was made,

Firſt, That ſhe lay in a "compoſed Manner in her Bed, the Bedcloaths "not at all diſturbed, and her Child by her in Bed."

Secondly, "Her Throat cut from Ear to Ear, and her Neck broke." So that if ſhe firſt cut her Throat, ſhe could not poſſibly break her Neck in the Bed. *Non Contra.*

Thirdly, "There was no Blood in the Bed, ſaving a Tincture of Blood "on the Bolſter whereon her Head lay, but no Subſtance of Blood at all."

Fourthly, "From the Bed's Head there was a Stream of Blood on the "Floor, which ran along until it ponded in the Bendings of the Floor to "a very great Quantity; and there was alſo another Stream of Blood on "the Floor at the Bed's Foot, which ponded alſo on the Floor to a very "great Quantity; but no Continuance or Communication of Blood of "either of thoſe two Places, from one to the other, neither upon the Bed," ſo that ſhe bled in two ſeveral Places; and it was depoſed, turning up the Matt of the Bed, "that there were Clots of congealed Blood in the "Straw of the Matt underneath."

Fifthly, "The bloody Knife was found in the Morning ſticking in the "Floor, a good Diſtance from the Bed; but the Point of the Knife, as it "ſtuck, was towards the Bed, and the Haft from the Bed."

Laſtly, "There was the Print of a Thumb and four Fingers of a Left "Hand."

* Communicated (many Years ago) to the Editor, by Dr. *Rawlinſon*, F. R. S.

This Account being from the MS. Notes of ſo great a Man, we here inſert, though rather a Narrative than a Trial. We have received ſeveral Narratives and Hiſtorical Accounts of Murder, which are not proper for this Work; however, one of the moſt remarkable of them we ſhall give an Account of.

The Caſe of JOAN PERRY, *and her two Sons*, JOHN *and* RICHARD PERRY, *for the ſuppoſed Murder of* WILLIAM HARRISON, *Gent.*

William Harriſon, Steward to Lady *Campden*, at *Campden* in *Glouceſterſhire*, about ſeventy Years of Age, went *Auguſt* 16, 1660, to receive my Lady's Rents, which he did, and not returning Home that Night, gave Cauſe to ſuſpect he was murdered. After ſome Time, *John Perry*, his Servant, gave Information before a Juſtice of Peace, That his Brother *Richard* had robbed and murdered him, and his Mother ſtood by whilſt it was done; and that *Richard* had once before broke open his Maſter's Houſe; and robbed him.—At the following Aſſizes, *Joan*, *John* and *Richard Perry* had two Indictments preferred againſt them, one for breaking open the Houſe of Mr. *Harriſon*, and robbing him of 140*l.* in the Year 1659; and the other for robbing and murdering him, *Aug.* 16, 1660. Upon the laſt Indictment, the then Judge of Aſſize, Sir *Chriſtopher Turner*, Knt. would not try them, *becauſe the Body was not found:* On the former Indictment for the Robbery, they pleaded not Guilty; but on People's perſuading them, they retracted their Plea, and pleaded Guilty; begging the Benefit of his Majeſty's moſt gracious Pardon and Act of Oblivion, which was granted them: And tho' they pleaded Guilty to this Indictment, being prompted thereto, yet they all at their Deaths denied it. Yet at this Aſſize, *John Perry* perſiſted in his Story, That his Mother and Brother had murdered his Maſter, and that they had attempted to poiſon him in Gaol for diſcovering it, ſo that he durſt not eat or drink with them. And,

At the next Aſſizes following, *Joan*, *John* and *Richard Perry*, were, by the Judge of Aſſize, Sir *Robert Hyde*, Knt. tried upon the Indictment of Murder, and pleaded Not Guilty; when *John*'s Confeſſion before the Juſtice was proved *vivâ voce*, by ſeveral Witneſſes who heard the ſame. He then told the Court, *He was mad, and did not know what he had ſaid.* The other two, *Richard* and *Joan Perry*, declared they were wholly innocent of what they were accuſed; that they knew nothing of Mr. *Harriſon*'s Death, nor what was become of him; and *Richard* ſaid, his Brother had accuſed others as well as him, to have murdered his Maſter; which the Judge bidding him prove, he ſaid, That moſt of them that had given Evidence againſt him, knew it; but naming nobody, nor any body ſpeaking to it, the Jury found them all Guilty.

Some Days after, being brought to the Place of Execution, which was on *Broadway-Hill*, within Sight of *Campden*, the Mother (being reputed a Witch, and to have ſo bewitched her Sons, they could confeſs nothing while ſhe lived) was firſt executed: *(Strange Ignorance and Superſtition!)* After which, *Richard*, being on the Ladder, profeſſed, as he had done all along, That he was wholly innocent of the Fact for which he was to die, and that he knew nothing of Mr. *Harriſon*'s Death, nor what was become of him; and did, with great Earneſtneſs, beg and beſeech his Brother (for the Satisfaction of the whole World and his own Conſcience) to declare what he knew concerning it. But he, with a dogged and ſurly Carriage, told the People, he was not obliged to confeſs to them; yet, immediately before his Death, ſaid, *He knew nothing of his Maſter's Death, nor what was become of him*, but they might hereafter poſſibly hear.——*It is ſtrange that a Judge would order the Execution of three Perſons, for the ſuppoſed Murder of a Man whoſe Body was not found, or heard of at the Time of Trial, upon the Confeſſion of a Madman or an Enthuſiaſt!*——However, Mr. *Harriſon*, ſome Years after, appeared alive; and in a Letter to Sir *Thomas Overbury*, of *Burton* in *Glouceſterſhire*, gave an Account, how that very Night, *Auguſt* 16, returning Home, after receiving the Rents, he was ſet upon, and forced by ſeveral Stages to the Sea-Side, put on board a Ship, and carried into *Turkey*, where he was ſold for a Slave to a Phyſician, and continued with him for about a Year and three Quarters, when his Maſter died; then he made the beſt of his Way to a Sea-Port, and with great Difficulty got on board a *Hamburgh* Ship bound for *Portugal*, and arrived ſafe at *Liſbon*; from whence, by the Means of an *Engliſh* Merchant, he got on board an *Engliſh* Veſſel, and arrived ſafe at *Dover*, and from thence to his own Home, to the Surprize of all the Country. This Account was ſent with the following Letter from Sir *Thomas Overbury*, to Dr. *Shirley*, who publiſhed it.

"SIR,

"I Herewith ſend you a ſhort Narrative of that no leſs ſtrange than unhappy Buſineſs, which ſome Years ſince happened in my Neighbourhood; the Truth of every Parti-"cular whereof I am able to atteſt: And I think it may very well be reckoned among the moſt remarkable Occurrences of this Age. You may diſpoſe of it as you pleaſe; "and in whatever I can ſerve you, you may freely command me, as

"*Your moſt affectionate Kinſman and humble Servant,*

Burton, Aug. 2, 1676. "THOMAS OVERBURY."

This was licenſed (to be printed) *September* 8, 1676, by Sir *Robert L'Eſtrange*.

Sir,

Sir *Nicholas Hyde*, Chief-Juſtice. How can you know the Print of a left Hand from the Print of a right Hand in ſuch a Caſe?

Witneſs. My Lord, it is hard to deſcribe; but if it pleaſe that Honourable Judge to put his left Hand upon your left Hand, you cannot poſſibly place your right Hand in the ſame Poſture; which being done, and appearing ſo, the Defendants had Time to make their Defence, but gave no Evidence to any Purpoſe. The Jury departed from the Bar; and returning, *acquitted Okeman*, and found the other three Guilty; who being ſeverally demanded, why Judgment ſhould not be pronounced, ſaid nothing, but ſeverally, "I did not do it, I did not do it."——Judgment was given, and the Grandmother and Huſband executed; but the Aunt had the Privilege to be ſpared Execution, being with Child. I inquired if they confeſſed any Thing at their Execution, but they did not, as I was told.

NUMBER III.

The Proceedings againſt Mr. BENJAMIN LEECH, Bricklayer, at the *Old-Bailey*, *October* 14, 1682, for a Contempt, in offering a frivolous Plea to the Court.

THE Poll for Election of Mayor for the Year enſuing being continued by Adjournments from *Michaelmas-Day* to the 2d of *October*, one *Benjamin Leech*, Bricklayer, being a Freeman and Liveryman of the City of *London*, came to *Guildhall* to poll, wherein in Diſcourſe he was charged to have ſaid to this Effect, "That Sir *William Prichard* "ſhould never be Lord-Mayor, unleſs he came in by Stealth, as *North* "and *Rich* were Sheriffs;" for which he was, without any Conſtable or other legal Officer, carried before Sir *John Moor*, Lord-Mayor, before whom he owned the Words, or Words to that Effect; whereupon he was, by the Lord-Mayor, committed immediately to the *Compter*, from whence he was bailed next Day, giving his Recognizance, with Sureties, to appear at the next Seſſions at *Guildhall*; which Seſſions of the Peace being adjourned to the 13th of *October* to the *Old-Bailey*, there was a Bill of Indictment preferred and found againſt the ſaid Mr. *Leech*, the Tenor of which followeth, *viz.*

London. ſſ. *JURATORES pro Domino Rege, ſuper ſacramentum ſuum præſentant, quod* Benjaminus Leech *nuper de* London, *Bricklayer, exiſtens perſona malæ et perverſæ diſpoſitionis, ſecundo die* Octobris, *Anno Regni Domini noſtri* Caroli *ſecundi, Dei gratia* Angliæ, Scotiæ, Franciæ, *et* Hiberniæ *Regis, fidei Defenſoris,* &c. *vicеſimo quarto; machinans, et falſe et malitioſe intendens pacem dicti Domini Regis infra civitatem* London, *inquietare et perturbare, ac diverſas differentias et diſſentiones inter cives civitatis prædictæ, et alios ligeos et ſubditos dicti Domini Regis infra hoc Regnum* Angliæ, *de et concernens electione Maioris civitatis prædictæ, et vicecomitum civitatis prædictæ et comitatus* Middleſex, *ſuſcitare, movere, et procurare; et quendam* Willielmum Prichard *Militem, adtunc, et adhuc unum Aldermannorum civitatis prædictæ, et adtunc in electione pro Maiore civitatis prædictæ, exiſtens pro uno anno adtunc et adhuc venturo; necnon quoſdam* Dudley North *Armigerum, et* Petrum Rich *Armigerum, qui quidem* Dudley North *et* Petrus Rich *nuper pro antea debito legitimo modo, ſecundum antiquas priviligias et conſuetudines civitatis prædictæ, electi et jurati fuerunt vicecomites civitatis* London, *et comitatus* Middleſex; *et electionem præfat. vicecomitum per cives civitatis prædictæ factam in maximum odium, contemptum, et ſcandalum inſurre, ipſe prædictus* Benjaminus Leech *poſtea, ſcilicet dicto ſecundo die* Octobris *anno ſupradicto, apud* London, *videlicet, in parochia Sancti* Michaelis Baſſiſhaw, *in Warda de* Baſſiſhaw, London, *predict. in* Guildhall *civitatis prædictæ, ibidem ad predict. machinationes et intentiones ſuas melius perficiend. habens colloquium cum quodam* Thoma Smyth *in* Guildhall *predicta, adtunc et ibidem falſo, illicite, injuſte et malitioſe dixit, retulit, et in auditu diverſorum ligeorum et ſubditorum dicti Domini Regis, civium civitatis prædictæ, publicavit, Quod* Prichard *(prefatum* Willielmum Prichard *Militem, innuendo) non foret Dominus Maior, (Dominus Maior civitatis prædictæ innuendo) niſi foret Dominus Maior illicite, et per furtum, Anglice* by Stealth, *prout vicecomites (prefatum* Dudley North *et* Petrum Rich, *vicecomites civitatis prædictæ et comitatus predicti, innuendo) fuerunt vicecomites civitatis et comitatus prædictæ: Ad magnam diſturbationem pacis dicti Domini Regis, ad magnum opprobrium gubernatorum et gubernationis civitatis prædictæ; necnon ad ſcandalum, opprobrium, et defamationem prefati* Willielmi Prichard *Militis, et prefati* Dudley North *et* Petri Rich *debito modo electi vicecomitum civitatis et comitatus prædictæ, in malum exemplum omnium aliorum conſimili caſu delinquentium, ac contra pacem dicti Domini Regis nunc, coronam et dignitatem ſuam,* &c.

London. ſſ. THE Jurors for our Lord the King, upon their Oaths do preſent, That *Benjamin Leech*, late of *London*, Bricklayer, being a Perſon of an evil and perverſe Diſpoſition, the ſecond Day of *October*, in the thirty-fourth Year of the Reign of our Lord *Charles* the Second, by the Grace of God of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, *&c.* deviſing, and falſely and maliciouſly intending the Peace of our ſaid Lord the King, within the City of *London*, to diſquiet and diſturb, and divers Differences and Diſſentions amongſt the Citizens of the City aforeſaid, and other the Liege People and Subjects of our ſaid Lord the King, within this Kingdom of *England*, of and concerning the Election of a Mayor and Sheriffs of the City aforeſaid, and County of *Middleſex*, to ſtir up, move and procure; and one Sir *William Prichard*, Knight, then, and yet one of the Aldermen of the City aforeſaid, then in Election of Mayor of the City aforeſaid, being for one Year then and yet to come; and alſo one *Dudley North*, Eſq. and one *Peter Rich*, Eſq. which *Dudley North* and *Peter Rich*, lately before that Time, in a due and lawful Manner, according to the ancient Privileges and Cuſtoms of the City aforeſaid, were elected and ſworn Sheriffs of the City of *London*, and County of *Middleſex*; and the Election of the aforeſaid Sheriffs by the Citizens of the City aforeſaid made, into the greateſt Hatred, Contempt, and Scandal, to bring the aforeſaid *Benjamin Leech* afterwards, that is to ſay, the ſaid ſecond Day of *October*, in the Year above-ſaid, at *London*, viz. in the Pariſh of *St. Michael Baſſiſhaw*, in the Ward of *Baſſiſhaw*, *London*, aforeſaid, in the *Guildhall* of the City aforeſaid, there his aforeſaid Contrivances and Intentions the better to perform, having Diſcourſe with one *Thomas Smyth*, in *Guildhall* aforeſaid, then and there falſely, unlawfully, unjuſtly, and maliciouſly did ſay, relate, and in the Hearing of divers the Liege People and Subjects of our ſaid Lord the King, Citizens of the City aforeſaid, publiſh, That *Prichard* (the aforeſaid Sir *William Prichard*, Knight, meaning) ſhould not be Lord-Mayor, (Lord-Mayor of the City aforeſaid, meaning) unleſs he would be Lord-Mayor unlawfully, and by Stealth, as the Sheriffs (the aforeſaid *Dudley North* and *Peter Rich*, Sheriffs of the City and County aforeſaid, meaning) were Sheriffs of the City and County aforeſaid: To the great Diſturbance of the Peace of our ſaid Lord the King, to the great Diſparagement of the Governors and Government of the City aforeſaid, and alſo the Scandal, Diſparagement and Defamation of the aforeſaid Sir *William Prichard*, and the aforeſaid *Dudley North*, and *Peter Rich*, in due Manner elected Sheriffs of the City and County aforeſaid, to the evil Example of all others in the like Caſe offending, and againſt the Peace of our ſaid Lord the King that now is, his Crown and Dignity, *&c.*

Whereunto the Defendant offered the Plea following.

Leech ad s' Domini Regis. } *ET predictus* Benjaminus Leech, *in propria perſona ſua venit et defendit vim et injuriam quando,* &c. *et omnem contemptum et quicquid,* &c. *et petit judicium de indictamento predicto, quia dicit quod jurateres pro Domino Rege predicto, qui indictamentum illud fecerunt et preſentaverunt, adinde retornati et impannellati fuerunt per quoſdam* Dudley North *Armigerum, et* Petrum Rich *Armigerum, tanquam vicecomites civitatis* London, *qui quidem* Dudley *et* Petrus *tempore panelli et retornatus illius per eos ſic facti, non fuerunt nec eorum alter fuit vicecomites dictæ civitatis* London, *per quod idem indictamentum ſic factum et preſentatum per hujuſmodi juratores ſic ut preſertur impannellatos et retornatos per perſonas tunc non exiſtentes vicecomites civitatis prædictæ, vigore ſtatuti in hujuſmodi caſu editi et proviſi, vacuum in lege exiſtit et nullius effectus, et hoc paratus eſt verificare; unde petit judicium de indictamento illo, et quod indictamentum illud caſſetur,* &c.

W. THOMPSON.

Whereunto the Defendant offered the Plea following.

Leech *at the Suit of our Lord the King.* } AND the aforeſaid *Benjamin Leech*, in his proper Perſon, doth come and defend the Force and Injury, when, *&c.* and all Contempt and whatſoever, *&c.* and prays Judgment of the Indictment aforeſaid, becauſe he ſaith the Jurors for our Lord the King aforeſaid, who that Indictment made and preſented, were thereunto returned and impannelled by one *Dudley North*, Eſq. and one *Peter Rich*, Eſq. as Sheriffs of the City of *London*, which *Dudley* and *Peter* at that Time of the Pannel, and the Return thereof by them ſo made, were not, nor either of them was Sheriffs of the ſaid City of *London*, by which the ſaid Indictment ſo made and preſented by ſuch Jurors ſo as aforeſaid impannelled, and returned by Perſons then not being Sheriffs of the City aforeſaid, by Force of the Statute in the like Caſe made and provided, is void in Law and of none Effect, and this he is ready to verify; whereupon he prays Judgment of that Indictment, and that that Indictment might be quaſhed, *&c.*

W. THOMPSON.

Which ſaid Plea being ingroſſed in Parchment, and ſigned by *William Thompſon*, of the *Middle-Temple*, Counſellor at Law, was on *Saturday* Morning delivered into Court by the Defendant, who preſſed that the Plea might be received, and he and his Bail diſmiſſed from further Attendance for that Time: Whereunto it was anſwered, That the Court would conſider thereof till the Afternoon. In the Afternoon, the Defendant attended with Mr. *Thompſon* his Counſel; and Mr. *Oſborn of the Inner Temple*, Counſellor at Law, attended for the King: The Court being ſat, the Plea was read, and then Mr. *Oſborn* moved, that the Plea ought not to be received, for that it was a new Plea without a Precedent, and that it could not be tried or determined there; that it was a frivolous Plea, and ought not to be received, and ſo left it to the Judgment of the Bench. Upon which Mr. *Thompſon* allowed, that ſuch a Plea had rarely been made uſe of, becauſe the like Caſe had rarely or never happened, but the Reaſon thereof did juſtify its Legality, and therefore preſſed that the Plea might be accepted; that it never was hitherto denied to any Man to plead to an Indictment of this Nature, what he thought fit in his own Defence, eſpecially when he offers the ſame under Counſel's Hand; that this was a ready Way to determine who were legally Sheriffs; if the Plea was not good in Law,

the Attorney-General or the King's-Counſel might demur to it; that if the Matter alledged in the Plea was falſe, Iſſue might be taken thereon, which might ſoon be tried by a Jury; but if the Matter ſhould appear to be true, there was not ſo much as any Colour in Law for thoſe worthy Gentlemen, Mr. *North* and Mr. *Rich*, to take upon them to return Juries; and therefore, in the Behalf of his Client, demanded again that the Plea might be received; the Truth or Validity thereof being not to be determined, till ſome Anſwer ſhould be made thereunto by Replication or Demurring in Writing.

In Anſwer thereunto Mr. Juſtice *Levinz* (being the only Judge then preſent) was pleaſed to expreſs himſelf to this Effect: That he deſired to ſee the Statute mentioned in the Plea; whereupon it was read, *viz.* the 11 *H.* IV. c. 9. Then Mr. Juſtice *Levinz* ſpake to this Effect: That this Statute was made to prevent the Nomination of Juries to the Sheriffs; and though it be thereby provided that Pannels ſhould be returned by the Sheriffs without Denomination of any, yet he was of Opinion that it could not extend to the Caſe in Hand, ſeeing the worthy Perſons that attended there, were owned as Sheriffs by Lord-Mayor, Mr. Recorder, and ſeveral Aldermen there preſent, and that he made no Difference between Sheriffs *de facto* and *de jure*; and that theſe Perſons being there ſo allowed, he muſt look upon them as Sheriffs *de jure*: That a Goal-delivery had been held, wherein above forty Priſoners had been tried; and that if this Plea ſhould be allowed, all the Proceedings againſt them would come in Queſtion: And then aſked Mr. *Thompſon*, What if all the Felons at an Aſſizes ſhould inſiſt upon the like Plea, muſt all further Proceedings ſtop, till the Sheriff goes Home and fetch his Letters Patents?

Whereupon Mr. *Thompſon* ſaid, That he thought in that Caſe ſuch Stop could not be prevented, the Law being plain.

Then Mr. Juſtice *Levinz* ſaid further to this Effect, That he had conſidered of this Matter; and that in his Judgment the Plea was a frivolous Plea, and ought not to be received; but yet he being the only Judge then preſent, he ſhould adviſe my Lord-Mayor and the reſt of the Bench to take Advice of all the Judges, before an abſolute Determination whether the Plea ought to be refuſed or not.

Upon this Sir *John Peak* ſaid, We will not receive the Plea; with whom agreed Sir *James Edwards*, Sir *James Smith*, Sir *Thomas Beckford*, and Sir *Robert Jefferies*, and the Lord-Mayor alſo.

Sir *George Treby* the Recorder ſaid, That he was of Opinion with Mr. Juſtice *Levinz*.

Upon this *Leech* was preſſed to plead Not Guilty: Which he refuſed, ſaying ſeveral Times, He would plead no other Plea than what he had offered. Then the Court gave him half an Hour's Time to adviſe with his Counſel; who withdrew and adviſed accordingly, and returned with the ſame Reſolution not to alter his Plea, and tendered his Plea again to the Court, who again rejected it: And becauſe he would plead no other Plea, he (being firſt aſked, whether he would ſubmit to the Court and aſk Pardon; and refuſing ſo to do, having as he apprehended done no Wrong) was fined Twenty Marks, and committed to *Newgate* till he ſhould pay the ſame; which was done that Night, and *Leech* thereby diſcharged.

NUMBER IV.

The Trial of ROBERT FRANCES, Gent. for the Murder of THOMAS DANGERFIELD *, at *Juſtice-Hall* in the *Old-Bailey*, the 16th Day of *July*, 1685, in the firſt Year of his Majeſty's Reign, before the Right Hon. Sir *James Smith*, Knt. Lord-Mayor of *London*, Sir *Thomas Jenner*, Knt. Recorder of the ſaid City, and one of his Majeſty's Serjeants at Law, and others his Majeſty's Juſtices.

London Jury.

Thomas Anger,	*Stephen Coleman*,
Philip Perry,	*Henry Cremer*,
Philip Stockes,	*Stephen Gibons*,
Luke Poe,	*Simon Chapman*,
John Warfield,	*Joſeph Speed*,
Chriſtopher Johnſon,	*Richard Shaw.*

ROBERT *FRANCES*, Gent. was indicted for aſſaulting *Thomas Dangerfield*, in the Pariſh of *St. Andrew's*, *Holborn*, *London*, with a Bamboo Cane, to the Value of 6*d.* ſtriking it into his Left Eye, of which Wound the ſaid *Thomas Dangerfield* is ſince dead †.

The Witneſſes againſt the Priſoner were many, and moſt of them very poſitive; depoſing, That they ſaw the ſaid *Robert Frances* coming to the Side of the Coach in which Mr. *Dangerfield* was, and that there he thruſt his ſaid Cane into his Eye; after which, running into *St. Thavie's-Inn*, in *Holborn*, he was preſently ſeized, and ſent to *Newgate*; where when he went in, one of the Retinue of the Priſon telling him that *Dangerfield* would die, he the ſaid *Frances* replied, *That if he ſhould die, it would ſave the Hangman a Labour.* Mr. *Dangerfield*, after he was carried to the Goal, cried out very much of the Anguiſh of his Eye, ſaying, *Oh, my Eye! Oh, my Eye! Forbear to make a Noiſe.* A Phyſician being brought to give his Advice, whether it was requiſite to bleed him, he found him deſperately ill, and vomiting extremely. The Chirurgeon being likewiſe ſent

* Though we have not been able to procure *Dangerfield*'s Trial for a Libel; yet ſhall inſert the Trial of Mr. *Frances* for killing him, from the Seſſions-Paper of that Time, with his Speech at *Tyburn*, as it will give ſome Light to the Hiſtory of that Time.

† Biſhop *Burnet*, in his *Hiſtory of his Own Times*, Vol. I. p. 537, ſays, "*Dangerfield*, another of the Witneſſes in the *Popiſh* Plot, was alſo *found Guilty of Perjury*, and had "the ſame Puniſhment (as *Oates*); but it had a more terrible Concluſion; for a brutal Student of the Law, who had no private Quarrel with him, but was only tranſported "with the Zeal of that Time, ſtruck him *over the Head with his Cane*, as he got *his laſt Laſh*: This hit him ſo fatally, that he died of it immediately. The Perſon was "apprehended, and the King left him to the Law; and though great Interceſſion was made for him, the King would not interpoſe, ſo he was hanged for it."——The Biſhop here ſeems miſtaken; for I do not find *Dangerfield* was *convicted* of *Perjury*; or that he got his Death *on the laſt Laſh*.—*Rapin*, Vol. II. 744, ſays thus, "The next "Victim to the Catholicks, not long after *Oates*, was *Thomas Dangerfield*, who diſcovered the pretended Meal-Tub Plot, which he had laid to the Charge of the Proteſtants. "But afterwards not being able to maintain before the Council what he had depoſed, he confeſſed, he was perſuaded to invent it by the Counteſs of *Powis*, and the *Popiſh* "Lords in the *Tower*. Moreover, he had publiſhed *a Narrative* of all the ſecret Practices uſed as well to corrupt him, as to render the Plot probable. As he owned he had "received Money from the late King and the Duke of *York*, the laſt would never ſuffer ſuch an Offence to go unpuniſhed, when he came to be King. *Dangerfield* therefore "was committed to Priſon, and indicted for publiſhing a ſcandalous LIBEL. He was tried, and brought in Guilty by the Jury; after which he received Judgment at the "*King's-Bench* Bar, That he ſhould ſtand twice in the Pillory; that he ſhould be whipt from *Aldgate* to *Newgate* on one Day, and from *Newgate* to *Tyburn* on another; "and ſhould pay a Fine of five hundred Pounds. The Scourging was executed with Rigour, though with leſs Cruelty than on *Oates*. The ſecond Day, *Dangerfield*, after "the Whipping was over, being in a Coach againſt *Hatton-Garden*, *Robert Frances*, a Barriſter of *Gray's-Inn*, came to the Coach-ſide; and uſing ſome inſulting Expreſſions, "*Dangerfield* returned a reproachful Anſwer. [*Frances* ſaid, *How now, Friend, have you had your Heat this Morning?* Upon which the other, with two or three Curſes, "called him *Son of a Whore.*] *Frances*, having a ſmall Cane in his Hand, *thruſt it into his Eye with all his Force*, which in two Hours put an End to his Life. *Frances* was "condemned to be hanged, and was executed accordingly; the King, though ſtrongly ſollicited for a Pardon, not thinking proper to leave ſuch a Crime unpuniſhed."

"Sir *William Williams*, who had been Speaker of the Houſe of Commons, for publiſhing an infamous Libel, (as Speaker, by Order of the Houſe of Commons) called "*Dangerfield's Narrative*, was fined by the Court of *King's-Bench* 10,000 *l.* but, upon paying 8000 *l.* of it, Satisfaction was acknowledged upon Record, *Eaſter* Term, "1 *Jac.* II. *K. B. Shower* 471.

"Upon an Information againſt the Defendant, (Sir *William Williams*) for publiſhing a Libel called *Dangerfield's Narrative*, he pleaded that he was at the Time of Publication Speaker of the Houſe of Commons; and, as ſuch, had a Right to publiſh the Votes and Acts of the Houſe; and that the *Narrative* was printed and publiſhed "as Parcel of the Proceedings. The Court would not debate the Formality of ſuch an idle inſignificant Plea (as they were pleaſed to call it), but gave Judgment for the "King, *Eaſter* Term, 2 *Jac.* II. 1686, *K. B. Shower Rep.* 471. *pl.* 436. *Comb.* 18. See *Atkins's Power of Parliaments*, &c. The King againſt *Williams*.——It is obſervable, "that Sir *William Williams* was not Speaker of the Houſe of Commons at the Time this Caſe was adjudged, though he was when the Offence, of which he was accuſed, was "committed.—The Lord Chief Juſtice *Wright* aſked the Defendant's Counſel Whether an Order of the Houſe of Commons could juſtify a ſcandalous, infamous and "flagitious Libel? 2 *Shower* 471." *A Digeſt of the Laws concerning Libels*, 4to. *p.* 75.

"As the Proceedings againſt Sir *William Williams* were very extraordinary, ſo was the Puniſhment: The Fine was the heavieſt that ever was impoſed in any Court for "the like Crime. Sir *Bar. Tolomew Shower*, one of the Reporters of this Caſe, ſays, Sir *William Williams*, being fined 10,000 *l.* paid 8000 *l.* of the Money, and thereupon "Satisfaction was acknowledged on Record. I own, when I find Sir *William Williams* in this ſame Reign moſt violently perſecuting the Seven Biſhops for a Libel, in the "Character of Solicitor-General, I am apt to think, that the Fine was impoſed *in Terrorem* to others; and that the only Purpoſe of ſuing Sir *William Williams*, was to "make a Precedent of an Inſult upon the Commons, whoſe Privileges, if the Deſigns then on Foot had prevailed, muſt ſoon have fallen to nothing." *Digeſt of the Laws "concerning Libels*, *p.* 118, 119.

for, probing the Wound, found it to be mortal; and he, with others, did verily believe, that it occasioned his Death. Mr. *Frances*, in his own Defence, alledged, That coming to the Coach, he asked *Dangerfield*, *If he had not been heated?* Upon which Mr. *Dangerfield calling him Son of a Whore*, he, in his Passion, gave him a slight Blow with his Cane, which he verily believed could not kill him; and that he did it out of no Malice or Hatred. He called several Witnesses, who gave him a very good Character, but spoke very little to the Fact; whereupon he was found Guilty.—The Reverend Mr. *Samuel Smith*, the Ordinary of *Newgate*, gives this Account of him:

"I went to Mr. *Robert Frances* his Chamber, because he desired me "to take a particular Care of him; and found him in a serious, good "Frame and Composure of Mind; willing to resign himself to the all-"wise Ducture of God's Spirit, and his Determination for Life or Death. "First I prayed with him, and then entered upon an Inquiry into his "Life and Conversation, precedent to the Crime of killing Mr. *Dan-"gerfield*. He was very free to give an Account of himself. He said, "that he was born of Protestant Parents, and bred up in good Litera-"ture; that twenty Years since he was a Student in *Christ-Church* Col-"lege in *Oxford*; that afterward he went over Sea with Sir *Joseph Wil-"liamson*, his late Majesty's Ambassador, as an Attendant on him; that "for fourteen Years last past he hath been of the Society of *Gray's-Inn*, "and practised in the Law; that he did not lead any extravagant Life "till this unhappy Crime. He acknowledged that he saw *Dangerfield* in "the Pillory at *Westminster*; and that on the Day in which he was "whipped to *Tyburn*, Mr. *Frances* was with a Friend at a Coffee-house "near to *St. Andrew*'s Church in *Holborn*; and thought not to have "stayed there, because he was to dine that Day with his Friend, and "was, in the Afternoon, to have managed a Cause for a Client at *Guild-"hall*, so that he was going Home from the said Coffee-house: But a "Report coming thither that *Dangerfield* was in his Return from *Tyburn*, "and very near, he left his Wife in his Friend's Hand, and went to "meet the Coach in which *Dangerfield* was, only out of Curiosity (as he "saith) to observe how he looked after his being whipped. He said, "that the Coach did not stop, but he went to the Side of it, and "said, *Have you had your Heat To-day? How is it now with you?* "*Dangerfield*, upon those Words, (he says) called him *Son of a Whore*, "and said, *What have you to do with me?* Mr. *Frances* being asked by the "Ordinary, what moved him to kill *Dangerfield*, he replied, that his "Passion was stirred up at *Dangerfield*'s reviling Language, and said, that "he only intended to beat him with a Bamboo Cane, which was furzed "and worn out at the End of it: But the Coach moving onward, the "Cane wounded *Dangerfield* in the Eye; but he intended only to have "thrust it at his Breast. He also said, that he had a short Sword, and "yet used it not, because he did not design to kill *Dangerfield*.

"Mr. *Frances* being told by the Ordinary, that the very Thrust proved "fatal, and was a very inhuman Act toward a Person in his Distress; "to this Mr. *Frances* replied, That he never bore any Malice nor Grudge "to Mr. *Dangerfield*, nor was he moved to that Act by any Person what-"soever; only God left him to himself, for the Punishment of his for-"mer Sins, to run into this sudden Effort of Passion. Mr. *Frances* was "much affected with my Discourse, and wept in praying with him: He "was very attentive to the Sermons and Prayers on the Lord's Day, "more than the other Criminals; so he seemed very penitent, and I hope "that this Sentence of Death on him did awaken him to a serious re-"calling to Mind whatsoever former Sins he might be guilty of, in or-"der to make his Peace with God, who is the Searcher of all Hearts, "and only knows who are truly penitent."

The Dying Speech of ROBERT FRANCES, *of* Gray's-Inn, *Esq.* July 24, 1685. *Delivered by his own Hand to the Ordinary, at the Place of Execution, desiring the same might be published.*

I AM here by the Divine Permission and Providence of God become a Spectacle to God, Angels and Men, for a rash, extravagant and imprudent Act, wherein I do confess, I have not only offended against the Government and Courts of Justice, but against *Christianity*, and even the Rules of Morality itself: Nevertheless, (I hope) not only the Court, but all unbiassed Men, from the several Circumstances of the Fact, are satisfied that I had no malicious Intent of doing what fell out, nor had any Grudge or personal Prejudice to him upon any Account whatsoever, more than what all honest and good Men could not but have, that love the King and the Government. The solemn Truth of all which I have declared, not only upon the Holy Sacrament I received from Mr. *Master*, but also that I never knew nor saw him before that unhappy Moment, save once at a Distance in the Pillory at *Westminster*; and do now, as a dying Man, solemnly avow and protest the same: And therefore I hope I may boldly say I am not conscious of any Guilt before God as to the Malice: However, God in his great Wisdom has been pleased to suffer this great Calamity to fall upon me: And I hope this his severe Chastisement is in order to bring me to himself, when softer Means had not sufficiently done it. All them that know me (I am sure) will do me that Justice as to believe I am far from having done it either wilfully or mercenarily (as most untruly is reported). And that these Honourable Persons are above the Thoughts of such unworthy Things, for which they have been as maliciously as falsely traduced upon my Score; I beg their Pardon for the Scandal I have unhappily been the Occasion of, and desire this Acknowledgement may be by them accepted as a Reparation, since to disown it at this Time of my Death, is all the Satisfaction I am able to make them.

As to my Religion, (however I have been represented) there are People that knew me at the University, and since that can be my Witnesses, how obedient and zealous a Son of the Church of *England* (by Law established) I have been.

And these worthy Divines that did me the Favour to visit me in Affliction, will give the World an Account (as Occasion serves) of my Integrity therein: And if I had been as zealous in the Service of God, as my Prince, he would not have left me so much to myself, as to have permitted me to have fallen into this unexpected Extremity.

And as for my Morals, the Honourable Society of *Gray's-Inn* will answer for me, that in above these twelve Years Time, I have had the Honour of being admitted a Member of that Society, I never had any Quarrel or Controversy with any Member thereof; and all Persons with whom I have had Conversation, I question not, will give a good Character of my innocent and peaceable Behaviour.

I pray God Almighty preserve and bless his most Sacred Majesty, his Royal Consort Queen *Mary*, *Catherine* the Queen Dowager, their Royal Highnesses, and all the Royal Family; and grant that there may never want one of that Royal Line to sway the Scepters of these Kingdoms as long as Sun and Moon endure. In the Union and Love of his Subjects, strengthen him that he may vanquish and overcome all his Enemies, which I am glad to have seen so much Prospect of, and am only sorry I am cut off from seeing my so much desired Satisfaction of those happy Days all his good Subjects will enjoy under his auspicious Government. I pray God forgive me my Sins, that have made me unworthy of that Blessing.

Blessed be the Lord, that I have lived so as not to be ashamed to live, or afraid to die; though I cannot but regret my being made a Sacrifice to the Faction, who I am satisfied are the only People that will rejoice in my Ruin; for there is no Man that loves his Prince, but will lament that nothing less than the Blood of an inoffensive Man (save in this single Extravagance) can satisfy them for the sudden intemperate Transport of Zeal and Passion against one so notoriously wicked and infamous; for I do protest before Almighty God, (before whom I shall immediately appear) that when I went to the Coach-side, I did not intend so much as to speak to him, or believe I could have had Opportunity of so doing, much less of doing him any Harm. Neither is it probable I should with a small Bamboo Cane, no bigger than a Man's little Finger, without any Iron upon it, much less a Dart in it, as it was most industriously spread abroad to prejudice me in the Opinion of the World: For, if I had had such a wicked Design intentionally, I had a little short Sword by my Side much more proper for such a Purpose. And further, if I had believed or known that I had done any Harm to him, I had Opportunity enough of escaping afterwards, which I never endeavoured. Now all these Things being duly weighed with their several Circumstances, I leave my sad Case to the Consideration of all sober and charitable Men. However, I would not have this to be interpreted as a Reflection upon the Court, who I doubt not are by this Time satisfied, (and Mr. *Recorder* did in open Court declare) that in their Consciences they did not believe I maliciously designed him the Mischief that happened, but that it was purely accidental. But in the strict Construction of Law I was found guilty of Murder.

But that which most sensibly afflicts me, and is worse to me than Death, that I cannot suffer alone, but that they have not only raised Scandals upon me in particular preparatory to it, but upon my poor innocent Wife, as if my Jealousy of her had been the Reason of my Animosity to *Dangerfield*; when I am morally certain she never saw him in her whole Life, save that fatal Moment; and no Couple (as Hundreds can witness) have lived in better Correspondence. And besides that, she is as virtuous a Woman as lives, and born of so good and loyal a Family, that if she had been so inclined, she would have scorned to have prostituted herself to such a profligate Person: But, on the contrary, (God is my Witness) I never had any such Thoughts of her, and do as verily believe, as there is a God in Heaven, I never had any Reason; she having always been the most indulgent, kind, and loving Wife that ever Man had, and in my Conscience one of the best of Women; nay, I am so far from suspecting her Virtue, that she is the only Loss I regret on Earth, and can freely part with every Thing else here below without repining, which in all my Trouble I have owned before all People, and particularly Mr. *Master*, Mr. Ordinary, and Mr. *Smithies* of *Cripplegate*, who can all testify those Tears and endeared Expressions that have passed between us, when any of them did me the Kindness to visit me in my Distress.

And I do from the Bottom of my Heart freely forgive the Witnesses that swore against me those Words I never spoke; for, as I shall answer at the Great Tribunal, I said no other or more Words than these; *How now, Friend, have you had your Heat this Morning?* For all the Ill they have done me, give them Repentance, good God! Even for these that have contributed to the shedding of my Blood, I pray thee shed thy Bowels of Mercy.

I do heartily thank those Noble and Honourable Persons, and all other my Friends, that have so charitably interposed with his Majesty on my Behalf (though it hath proved unsuccessful). I pray God nevertheless to return their kind Endeavours a thousand-fold into their own Bosoms: Lord, return it to them and theirs!

Lord Jesus, receive my Soul! *Thy Will be done on Earth as it is in Heaven, Amen, Amen, Amen.*

ROBERT FRANCES.

NUMBER V.

Proceedings againſt RICHARD BAXTER, Clerk, for a ſeditious Libel, at *Guildhall*, before Lord Chief Juſtice *Jeffreys*, *May* 30, 1685. 1 Jac. II. (Taken by the Priſoner's Friends.)

The INDICTMENT.

REX *verſus* BAXTER*.

Paſch. 1 *Jacobi Secundi. Rot.* 35.

London. ſſ. QUOD Richardus Baxter nuper, de, &c. Clericus exiſtens perſon' ſeditioſa et factioſa, pravæ mentis, impiæ, inquietæ, turbulent' diſpoſition' et converſation', ac machinans, practicans et intendens, quantum in ipſo fuit, non ſolum pacem et communem tranquillitat' dict' Dom' Regis infra hoc regnum Angl' inquietare, moleſtare et perturbare, ac ſeditionem, diſcord' et malevolent' int' ligeos et fideles ſubdit' dict' Dom' Regis movere, p'curare et excitare, verum etiam ſinceram, piam, beatam et pacificam Proteſtan' Religion' infra hoc regn' Angl' uſitat', ac Prelat', Epiſcopos, alioſq; Clericos in Eccleſia Anglicana legibus hujus regni Angl' ſtabilit', ac Novum Teſtamentu' Dom' Salvator' noſtri Jeſu Chriſti in contempt' et vilipend' inducere et inutile reddere; quodq; p'd' R. B. ad nequiſſimas, nefandiſſimas et diabolicas intention' ſuas pred' perimplend', perficiend' et ad effect' redigend' 14 die Febr', anno regni dict Dom' Jacobi Secundi, &c. primo, vi et armis, &c. apud, &c. falſo, illicite, injuſte, nequit', factioſe, ſeditioſe, et irreligioſe fecit, compoſuit, ſcripſit, impreſſit et publicavit, et fieri, componi, ſcribi, imprimi et publicari cauſavit, quendam falſum, ſeditioſum libelloſum, factioſum & irreligioſum librum, intitulat' *A Paraphraſe on the Teſtament, with Notes doctrinal and practical:* In quo quidem falſo, ſeditioſo, libelloſo factioſo & irreligioſo libro int' al' content' fuer' hæ falſæ, factioſæ, malitioſæ, ſcandaloſæ, et ſeditioſæ ſententiæ de eiſdem Prelat' Epiſcopis, aliiſq; Clericis Eccleſiæ hujus regn' in his Anglican' verbis ſequen', videl't, *Note, Are not theſe Preachers and Prelates* (Epo's alioſq; Clericos præd' Eccleſiæ hujus regn' Angl' innuend') *then the leaſt and baſeſt that preach and tread down Chriſtian Love of all that diſſent from any of their Preſumptions, and ſo preach down not the leaſt but the great Command?* Et ult' idem Attorn' dict' Dom' Regis nunc general' pro eodem Dom' Rege dat Cur' hic intelligi et informari, quod in al' loco in p'd' falſo, ſcandaloſo, ſeditioſo & irreligioſo libro, int' al' content' fuer' hæ al' falſæ, libelloſæ, ſcandaloſæ, ſeditioſæ et irreligioſæ ſentent' ſequen' de Clericis Eccleſiæ hujus regn', videl't, Note, *It is Folly to doubt whether there be Devils, while Devils incarnate live here amongſt us.* (Clericos pred' hujus regni Angl' innuendo) *What elſe but Devils, ſure, could make ceremonious Hypocrites* (Clericos pred' innuendo), *conſult with Politick Royaliſts* (ligeos et fidel' ſubdit' dict' Dom' Regis hujus regni Angl' innuendo) *to deſtroy the Son of God for ſaving Men's Health and Lives by Miracle?* Quere, *Whether if this withered Hand had been their own, they would have plotted to kill him, that would have cured them by a Miracle, as a Sabbath-Breaker? And whether their Succeſſors* (Prelat', Epiſcopos, alioſq; Clericos Eccleſiæ hujus regni Angl' qui deinceps fuerint innuendo) *would ſilence and impriſon godly Miniſters* (ſeipſum R. B. et al' factioſas et ſeditioſas p'ſon' infra hoc regn' Angl' contra leges hujus regni ac Liturg' Eccleſiæ infra hoc reg' ſtabilit' p'dican' innuendo) *if they could cure them of all their Sickneſſes, and help them to Preferment, and give them Money to feed their Luſts?* Et ult' idem Attorn' dict' Dom' Regis nunc general' pro eodem Dom' rege dat Cur' hic intelligi et informari, quod in al' loco in pred' falſo, libelloſo, ſcandaloſo et irreligioſo libro inter al' content' fuer' hæ al' falſæ, libelloſæ, ſcandaloſæ, ſeditioſæ et irreligioſæ Anglican' ſentent' ſequen' de et concernen' Ep'is p'd' et Miniſtris Juſtitiæ hujus regn' Angl', videl't, Note, *Men that preach in Chriſt's Name* (ſeipſum R. B. et al' factioſas et ſeditioſas p'ſon' infra hoc regn' Angl 'contra leges hujus regn' Angl' et Liturg' Eccleſiæ hujus regn' per legem ſtabilit' pred' innuendo), *therefore are not to be ſilenced, though faulty, if they* (pred' malæ diſpo'it' factioſas et ſeditioſas perſon' pred' iterum innuendo) *do more good than Harm; dreadful then is the Caſe of them* (Epiſcopos et Miniſtros Juſtitiæ infra hoc regn' Angl' innuendo) *that ſilence Chriſt's faithful Miniſters* (ſeipſum R. B. et al' ſeditioſas et factioſas perſon' pred' innuendo). Et ulterius idem Attorn' dict' Dom' Regis nunc general' pro eodem Dom' Rege dat Cur' hic intelligi et informari, quod ad excitand' popul' hujus regn' Angl' in illicit' Conventicul' convenire, et defamand' Juſtit' hujus regn' impuniendo illicit' Conventicul', in al' loco in pred' falſo, ſcandaloſo, ſeditioſo, et irreligioſo libro, int' al' content' fuer' hæ al' falſæ, ſcandaloſæ, libelloſæ, ſeditioſæ et irreligioſæ Anglican' ſentent' ſequen', videl't, (1.) Note, *It was well that they conſidered what might be ſaid againſt them, which now moſt Chriſtians do not in their Diſputes.* (2.) *Theſe Perſecutors, and the* Romans, *had ſome Charity and Conſideration, in that they were reſtrained by the Fear of the People, and did not accuſe and fine them as for Routs, Riots, and Seditions.* (3.) *They that deny neceſſary Premiſſes are not to be diſputed with.* Et ulterius idem Attorn' dict' Dom' Regis nunc general' pro eodem Dom' Rege dat Cur' hic intelligi et informari, quod in al' loco in pred' falſo, ſcandaloſo, ſeditioſo et irreligioſo libro, int' al' content' fuer' hæ al' falſæ, libelloſæ, ſcandaloſæ, ſeditioſæ et irreligioſæ Anglican' ſententiæ ſequent' de et concernen' Epiſcopis et al' Clericis hujus regn' Angl', videl't. (3) *Let not thoſe proud Hypocrites* (Epiſcopos et al' Clericos Eccleſiæ hujus regn' Angl' innuendo) *deceive you,* (ſubdit' dicti Dom' Regis hujus regn' Angl' innuendo) *who by their long Liturgies and Ceremonies,* (Liturg' et Ceremon' Eccleſiæ hujus regn' Angl' innuendo) *and Claim of Superiority, do but cloak their Worldlineſs, Pride and Oppreſſion, and are religious to their greater Damnation.* Et ulterius idem Attorn' dicti Dom' Regis nunc general' pro eodem Dom' Rege dat Cur' hic intelligi et informari, quod in al' loco in pred' falſo, ſcandaloſo, ſeditioſo et irreligioſo libro, int' al' content' fuer' hæ al' falſæ, libelloſæ, ſcandaloſæ, ſeditioſæ, et religioſæ, ſentent' Anglican' ſequent' de et concernen' Cleticis hujus regn' Angl', (2.) Note, *Prieſts now are many,* (Clericos Eccleſiæ hujus regn' Angl' innuendo) *but Labourers few; what Men are they that have and do ſilence the faithfulleſt Labourers,* (ſeipſum R. B. & al' factiʼas & ſeditʼas pʼſon' predʼ innuendo) *ſuſpecting that they are not for their Intereſt?* (intereſſe Clericor' Eccleſiæ hujus regn' Angl' innuendo.) Et ulterius idem Attorn' dicti Dom' Regis nunc general' pro eodem Dom' Rege dat Cur' hic intelligi et informari, quod in al' loco in pred' falſo, ſcandaloſo, ſeditioſo et irreligioſo libro, inter al' content' fuerunt hæ al' falſæ, libelloſæ, ſcandaloſæ, ſeditioſæ, et irreligioſæ, ſentent' ſequen' de et concernen' Clericis hujus regn' Angl', videl't, (3.) Note, *Chriſt's Miniſters uſe God's Ordinances to ſave Men, and the Devil's Clergy* (Clericos Eccleſiæ hujus regn' Angl' innuendo) *uſe them for Snares, Miſchief and Murder.* (2.) *They* (Clericos Eccleſiæ hujus regn' Angl' innuendo) *will not let the People* (ſubdit' hujus regn' Angl' innuendo) *be Neuters between God and the Devil, but force them* (ſubdit' hujus regn' Angl' innuendo) *to be informing Perſecutors.* Et ulterius idem Attorn' dicti Dom' Regis nunc general' pro eodem Dom' Rege dat Cur' hic intelligi et informari, quod in al' loco in præd' falſo, ſcandaloſo, ſeditioſo et irreligioſo libro, int' al' content' fuerunt hæ aliæ falſæ, libelloſæ, ſcandaloſæ, ſeditioſæ et irreligioſæ ſententiæ Anglicanæ ſequen' de et concernen' legibus hujus regn' Angl' contra illicit' Conventicul', et ad excitand' popul' convenire in illicit' Conventicul', videl't, (2.) Note, *To be Diſſenters and Diſputants againſt Errors and tyrannical Impoſitions upon Conſcience* (leges et ſtatut' hujus regn' Angl' contra perſon' factioſ' et Liturg' Eccl' hujus regn' Angl' adverſar', Anglice, *againſt Diſſenters*, edit' & provis' innuendo) *is no Fault but a great Duty.* In magnam Dei omnipotent' diſplicent', in contempt' leg' hujus regn' Angl' manifeſt' in malum et pernitioſiſſim' exemplum omniu' al' in tali caſu delinquen', ac contra pacem dicti Dom' Regis nunc, coron' et dignitat' ſuas, &c. Unde idem Attorn' dicti Dom' Regis nunc general' pro eodem Dom' Rege pet' adviſament' Cur' hic in premiſs' et debit' legis proceſs' verſus ipſum prefat' R. B. in hac parte fieri ad reſpond' dicto Dom' Regi de et in premiſs', &c.

ON the 28th of *February*, 1684-5, Mr. *Baxter* was committed to the *King's-Bench* Priſon by the Lord Chief Juſtice *Jeffreys*'s Warrant, for his *Paraphraſe on the New-Teſtament*, printed a little before, which was called a ſcandalous and ſeditious Book againſt the Government. On the 6th of *May*, which was the firſt Day of Term, he appeared in *Weſtminſter-Hall*, and an Information was ordered to be drawn up againſt him. *May* 14th, he pleaded *Not Guilty* to the Information. *May* 15th, he being much indiſpoſed, moved by his Counſel, That he might have farther Time given him for his Trial; but it was denied him; and *Jeffreys* cries out in a Paſſion, "I will not give him a Minute's Time more to ſave "his Life. We have had (ſays he) to do with other Sort of Perſons, but now we have a Saint to deal with; and I know how to "deal with Saints as well as Sinners. Yonder (ſays he) ſtands *Oates* in "the Pillory, *(as he actually did at that very Time in the* New Palace-"Yard,) and he ſays he ſuffers for the Truth, and ſo ſays *Baxter*; but if "*Baxter* did but ſtand on the other Side of the Pillory with him, I would "ſay, two of the greateſt Rogues and Raſcals in the Kingdom ſtood "there." On *May* 30th, in the Afternoon, he was brought to his Trial before the Lord Chief Juſtice *Jeffreys* at *Guildhall*. Sir *Henry Aſhhurſt*, who could not forſake his own and his Father's Friends, ſtood by him all the while. Mr. *Baxter* came firſt into Court, and with all the Marks of Serenity and Compoſure, waited for the Coming of the Lord Chief Juſtice, who appeared quickly after with great Indignation in his Face. He no ſooner ſat down than a ſhort Cauſe was called and tried; after which the Clerk began to read the Title of another Cauſe: *You Blockhead you,* (ſays *Jeffreys*) *the next Cauſe is between* Richard Baxter *and the King*; upon which Mr. *Baxter*'s Cauſe was called. The Paſſages mentioned in the Information, were his Paraphraſe on *Matth.* v. 19. *Mark* ix. 39. *Mark* xi. 31. *Mark* xii. 38, 39, 40. *Luke* x. 2. *John* xi. 57. and *Acts* xv. 2. Theſe Paſſages were picked out by Sir *Roger L'Eſtrange*, and ſome of his Companions: And a certain noted Clergyman (who ſhall be nameleſs) put into the Hands of his Enemies ſome Accuſations out of *Rom.* xiii. &c. as againſt the King, to touch his Life; but no Uſe was made of them. The great Charge was, "That in theſe ſeveral Paſſages he reflected on "the Prelates of the Church of *England*, and ſo was guilty of Sedition, "*&c.*" The King's Counſel opened the Information at large with its Aggravations. Mr. *Wallop*, Mr. *Williams*, Mr. *Rotheram*, Mr. *Atwood*, and Mr. *Phipps*, were Mr. *Baxter*'s Counſel, and had been feed by Sir *Henry Aſhhurſt*.

† Mr. *Wallop* ſaid, "That he conceived, the Matter depending be-"ing a Point of Doctrine, it ought to be referred to the Biſhop his

* *Tremaine's Pleas of the Crown*, p. 45.

† We could never find (though great Inquiry has been made among the Diſſenters) that this Trial was ever taken in Short-Hand, which is a great Pity, becauſe it muſt have been very curious; ſo have inſerted this ſhort Account, which ſhews the Temper of the Chief Juſtice, and the cruel Uſage of the Priſoner, taken from *Calamy's Life of Baxter.*

" Ordinary; but if not, he humbly conceived the Doctrine was inno-
" cent and juſtifiable, ſetting aſide the *Innuendos*, for which there was
" no Colour, there being no Antecedent to refer them to (that is, no
" Biſhop or Clergy of the Church of *England* named). He ſaid the Book
" accuſed, *i. e. the Comment on the New Teſtament*, contained many eternal
" Truths: But they who drew the Information, were the Libellers, in
" applying to the Prelates of the Church of *England* thoſe ſevere Things
" which were written concerning ſome Prelates, who deſerved the
" Character he gave. My Lord (ſays he), I humbly conceive the Biſhops
" Mr. *Baxter* ſpeaks of, as your Lordſhip, if you have read Church-
" Hiſtory, muſt confeſs, were the Plagues of the Church and the World."
—" Mr. *Wallop*, (ſays the Lord Chief Juſtice) I obſerve you are in
" all theſe dirty Cauſes; and were it not for you Gentlemen of the Long
" Robe, who ſhould have more Wit and Honeſty than to ſupport and
" hold up theſe factious Knaves by the Chin, we ſhould not be at the
" Paſs we are at."——" My Lord, (ſays Mr. *Wallop*) I humbly con-
" ceive, that the Paſſages accuſed are natural Deductions from the
" Text."—" You humbly conceive, (ſays *Jeffreys*) and I humbly con-
" ceive; ſwear him, ſwear him."—" My Lord, (ſaith he) under Fa-
" vour, I am Counſel for the Defendant; and if I underſtand either
" *Latin* or *Engliſh*, the Information now brought againſt Mr. *Baxter*
" upon ſo ſlight a Ground, is a greater Reflection upon the Church of
" *England*, than any Thing contained in the Book he is accuſed for."
Says *Jeffreys* to him, " Sometimes you humbly conceive, and ſometimes
" you are very poſitive: You talk of your Skill in Church-Hiſtory, and
" of your underſtanding *Latin* and *Engliſh*; I think I underſtand ſome-
" thing of them as well as you; but in ſhort muſt tell you, that if you
" do not underſtand your Duty better, I ſhall teach it you." Upon
which Mr. *Wallop* ſat down.

Mr. *Rotheram* urged, " That if Mr. *Baxter*'s Book had ſharp Re-
" flections upon the Church of *Rome* by Name, but ſpake well of the
" Prelates of the Church of *England*, it was to be preſumed, that the
" ſharp Reflections were intended only againſt the Prelates of the Church
" of *Rome*." The Lord Chief Juſtice ſaid, " *Baxter* was an Enemy to
" the Name and Thing, the Office and Perſons of Biſhops."—*Rotheram*
added, " That Mr. *Baxter* frequently attended Divine Service, went to
" the Sacrament, and perſuaded others to do ſo too, as was certainly
" and publickly known; and had, in the very Book ſo charged, ſpoken
" very moderately and honourably of the Biſhops of the Church of
" *England*."——Mr. *Baxter* added, " My Lord, I have been ſo mo-
" derate with reſpect to the Church of *England*, that I have incurred
" the Cenſure of many of the Diſſenters upon that Account."——
" *Baxter* for Biſhops! (ſaith *Jeffreys*) that's a merry Conceit indeed!
" turn to it, turn to it."——Upon this *Rotheram* turned to a Place,
where 'tis ſaid, *That great Reſpect is due to thoſe truly called to be Biſhops
among us*; or to that Purpoſe.——" Ay, (ſays *Jeffreys*) this is your *Preſ-
" byterian* Cant, *truly called to be Biſhops*; that is himſelf, and ſuch
" Raſcals called to be Biſhops of *Kidderminſter*, and other ſuch like Places;
" Biſhops ſet apart by ſuch factious, ſnivelling *Preſbyterians* as himſelf;
" a *Kidderminſter* Biſhop he means, according to the Saying of a late
" learned Author; *And every Pariſh ſhall maintain a Tythe-Pig Metropo-
" litan*." Mr. *Baxter* beginning to ſpeak again, ſaith *Jeffreys* to him,
" *Richard*, *Richard*, doſt thou think we'll hear thee poiſon the Court?
" *Richard*, thou art an old Fellow, an old Knave; thou haſt written
" Books enough to load a Cart; every one is as full of Sedition (I
" might ſay Treaſon) as an Egg is full of Meat: Hadſt thou been
" whipt out of thy writing Trade forty Years ago, it had been happy.
" Thou pretendeſt to be a Preacher of the Goſpel of Peace, and thou
" haſt one Foot in the Grave; 'tis Time for thee to begin to think what
" Account thou intendeſt to give: But leave thee to thyſelf, and I ſee
" thou wilt go on as thou haſt began; but by the Grace of God I'll look
" after thee. I know thou haſt a mighty Party, and I ſee a great many of
" the Brotherhood in Corners, waiting to ſee what will become of their
" mighty *Don*; and a Doctor of the Party (*looking to Doctor* Bates) at
" your Elbow; but by the Grace of Almighty God, I will cruſh you all."

Mr. *Rotheram* ſitting down, Mr. *Atwood* began to ſhew, That not one of the Paſſages mentioned in the Information ought to be ſtrained to that Senſe, which was put upon them by the *Innuendos*, they being more natural when taken in a milder Senſe; nor could any one of them be applied to the Prelates of the Church of *England*, without a very forced Conſtruction: To evidence this, he would have read ſome of the Text; but *Jeffreys* cried out, " You ſha'n't draw me into a Conventicle with
" your Annotations, nor your ſnivelling Parſon neither."——

" My Lord, (ſays Mr. *Atwood*) I conceive this to be expreſly within
" *Roſewel*'s Caſe, lately before your Lordſhip." (*Vide Vol.* III. *p.* 1053.)
—— " You conceive, (ſaith *Jeffreys*) you conceive amiſs; it is not."—
" My Lord, (ſaith *Atwood*) that I may uſe the beſt Authority, permit
" me to repeat your Lordſhip's own Words in that Caſe."——" No,
" you ſha'n't, (ſays he) you need not ſpeak, for you are an Author al-
" ready, though you ſpeak and write impertinently."——Says *Atwood*,
" I cannot help that, my Lord, if my Talent be no better; but it is my
" Duty to do my beſt for my Client."——*Jeffreys* thereupon went on, inveighing againſt what *Atwood* had publiſhed; and *Atwood* juſtified it to be in Defence of the *Engliſh* Conſtitution, declaring that he never diſ-owned any Thing he had written. *Jeffreys* ſeveral Times ordered him to ſit down, but he ſtill went on. " My Lord (ſays he), I have Matters of
" Law to offer for my Client;" and he proceeded to cite ſeveral Caſes, wherein it had been adjudged, that Words ought to be taken in the milder Senſe, and not in the ſtrained, by *Innuendos*. " Well, (ſays
" *Jeffreys* when he had done) you have had your Say."

Mr. *Williams* and Mr. *Phipps* ſaid nothing; for they ſaw it was to no Purpoſe. At length ſays Mr. *Baxter* himſelf, " My Lord, I think I
" can clearly anſwer all that is laid to my Charge, and I ſhall do it
" briefly; the Sum is contained in theſe few Papers, to which I ſhall add
" a little by Teſtimony."—But he would not hear a Word:—At length the Chief Juſtice ſummed up the Matter in a long and fulſome Harangue.

" 'Tis notoriouſly known (ſays he) there has been a Deſign to ruin
" the King and Nation; the old Game has been renewed, and this has
" been the main Incendiary: He is as modeſt now as can be; but Time
" was, when no Man was ſo ready at, *Bind your Kings in Chains, and
" your Nobles in Fetters of Iron*; and, *To your Tents, O* Iſrael! Gentlemen,
" for God's ſake, don't let us be gulled twice in an Age, *&c.*"——And when he concluded, he told the Jury, " That if they in their Con-
" ſcience believed he meant the Biſhops and Clergy of the Church of
" *England*, in the Paſſages which the Information referred to, they muſt
" find him *Guilty*; and he could mean no Men elſe; if not, they muſt
" find him *Not Guilty*."——

When he had done, ſays Mr. *Baxter* to him; " Does your Lordſhip
" think any Jury will pretend to paſs a Verdict upon me upon ſuch a
" Trial?"——" I'll warrant you, Mr. *Baxter*, (ſays he) don't you
" trouble yourſelf about that."

The Jury immediately laid their Heads together at the Bar, and found him *Guilty*.

As Mr. *Baxter* was going from the Bar, he told the Lord Chief Juſtice, who had ſo loaded him with Reproaches, and yet continued them, That a Predeceſſor of his (meaning Sir *Matthew Hale*) had other Thoughts of him. Upon which the Judge replied, " *That there was
" not an honeſt Man in* England, *but what took him for a great Knave.*"

He had ſubpœna'd ſeveral Clergymen, who had appeared in Court, but were of no Uſe to him, through the Violence of the Chief Juſtice.

The Trial being over, Sir *Henry Aſhhurſt* led Mr. *Baxter* through the Crowd, (I mention it to his Honour, ſays Biſhop *Kennet*) and conveyed him away in his Coach. On *June* 29 following, he had Judgment given againſt him; he was fined five hundred Marks; to lie in Priſon till he paid it, and be bound to his good Behaviour for ſeven Years.

Mr. *Baxter* afterwards obtained the King's Pardon, by the Mediation of the Lord *Powis*: His Fine was remitted; and on *Wedneſday*, *November* 24, Sir *Samuel Aſtry* ſent his Warrant to the Keeper of the *King's-Bench* Priſon to diſcharge him; but he gave Sureties for his good Behaviour; his Majeſty declaring (for his Satisfaction) that it ſhould not in him be interpreted a Breach of the good Behaviour for him to reſide in *London*, which was not allowable according to the *Oxford* Act: And this was entered upon his Bail-Bond. Notwithſtanding this, he continued ſome Time after in the Rules; and on *February* 28 following, removed to a Houſe he took in *Charter-Houſe-Yard*, where he preached to a ſeparate Congregation without Interruption as long as he lived; his Death happening after the Revolution, *viz. December* 8, 1691.

The Defendant was found Guilty on this Information, and after Exceptions taken in Arreſt of Judgment and over-ruled, the Court gave Judgment and fined him 500l. *and ordered him to give Security for his good Behaviour for Seven Years.—The Caſe is reported*, 3 Mod. 68. Tremaine, *p.* 47.

NUMBER VI.

Proceedings againſt Mr. CRONE, *May*, 19, 1690.

[This Caſe of CRONE is taken from Lord *Clarendon*'s Diary 16$\frac{88}{89}$ and 1690, printed at the End of his Letters, publiſhed 1763.]

" MARCH 6, 16$\frac{88}{89}$. *Thurſday*. One Mrs. *Clifford*'s Houſe was
" ſearched laſt Night, about Midnight, for one *Crone*; who,
" they ſay, came lately out of *France*. He was betrayed by one
" *Fowler*, who came over with him. But *Crone* not being found, the
" Meſſenger ſeized Mrs. *Clifford*, and carried her away this Morning to
" his Houſe. About Noon, *Crone* was taken upon the *Exchange*, and
" brought before my Lord *Shrewſbury*, who committed him cloſe Priſoner
" to the *Tower* for High Treaſon, in levying War againſt their Majeſties.

" *May* 19, 1690. *Monday*. *Crone*'s Trial, which had been put off once
" before; and it being alledged, that one of the Witneſſes was not to
" be found, it was put off till *Friday* Fortnight.

" *June* 6. *Friday*. *Crone* was brought to his Trial; in which were
" many remarkable Paſſages. The Judges were very ſevere, eſpecially
" the Chief Baron. The Jury ſat up all Night.

" *June* 7. *Saturday*. About Noon the Jury brought in their Verdict,
" that *Crone* was Guilty; though one of them declared, he was not ſatis-
" fied that the Evidence ſpoke Truth; and he urged Sir *Robert Atkyns*'s
" Book in Defence of Lord *Ruſſel*'s Innocency; (*See Vol.* III. *p.* 537.)
" but it ſignified nothing. The Priſoner being then aſked, why Sentence
" ſhould not be awarded againſt him, he ſaid, There was an Error in
" the Indictment before the Grand Jury; that the Bill was indorſed *Billa
" Verra* inſtead of *Vera*. The King's Counſel not being there, it was
" put off till Five in the Afternoon; and then the Priſoner inſiſted to
" be heard; the Court appointed to hear it argued on *Thurſday* next,
" and aſſigned Counſel to the Priſoner: In the mean time Sentence was
" reſpited.

" *June* 8. *Whitſunday*. In the Morning Mrs. *Clifford* was with me.
" She told me, ſhe had been to ſee *Crone*; that he was in a Rage to think

" of Death; that he said, he was too young to be a Martyr; and that " she did believe, rather than die, he would tell all he knew.

" *June* 9. *Monday*. Mrs. *Clifford* told me, she had been again with " *Crone*; that he was in a better Humour, and talked courageously.

" *June* 12. *Thursday*. In the Morning *Crone*'s Plea was argued and over- " ruled. The three Chief Judges and *Eyres* were in Court.

" *June* 19. *Thursday*. In the Morning Lord *Nottingham* went to *Crone* " in *Newgate*, upon a Letter (as was said) he had from him last Night. " My Lord (as it is given out) urged him much to confess, that he might " deserve his Life; but the Fellow said, he had told all at his Trial, and " that he knew nothing more. Upon which his Lordship said, he doubt- " ed he should see him no more, for he would certainly die To-morrow, " if he did not confess; but he would acquaint the Queen with what he " had said. In the Evening Lord *Monmouth* and Lord *Lincoln* were at " *Newgate*, pressing *Crone* to make a full Confession, making him many " fair Promises, in case he would be ingenuous: But he still said, he " could say nothing. At Ten at Night Mr. *Finch* brought him a Re- " prieve till *Wednesday* next.

" *June* 25. *Wednesday*. *Crone* was this Day to have been executed; the " Sledge was at *Newgate*, and all the People thronged together, as usual " upon those Occasions; but he was again reprieved, in Hopes he would " deserve his Life by the Confession he might make."

[Thus far from Lord *Clarendon*.]

The next Day, *June* 26, he was sent for, as appears by the following Warrant*:

" These are, in his Majesty's Name, to require you to bring Mr. *Mat-* " *thew Crone*, a Prisoner in your Custody, attainted of High-Trea- " son, to my Office in *Whitehall* this Afternoon; for which this shall " be your Warrant. Given at the Court at *Whitehall*, the 26th Day " of *June*, 1690.

NOTTINGHAM."

To Major Richardson, *Keeper of* Newgate.

By the following List of Persons excepted out of the Act of Indemnity, which passed 1690, one would think this Mr. *Crone* was a Person of some Consequence. Their Names were,

William, Marquis of *Powis*.
Robert, Earl of *Sunderland*.
Roger, Earl of *Castlehaven*.
Nathaniel, Lord Bishop of *Durham*.
Henry, Lord *Dover*.
Sir *Edward Hales*.
Sir *Francis Wythens*.
Sir *Edward Lutwych*.
Sir *Thomas Jenner*.
Sir *Nicholas Butler*.
Theo. Earl of *Huntingdon*.
John, Lord *Melford*.
Thomas, Lord *Howard*.
Thomas, Lord Bishop of *St. David's*.
William Molineux.
Sir *Edward Herbert*.
Sir *Richard Holloway*.
Sir *Richard Heath*.
Sir *Roger L'Estrange*.
Edward Petre.
Thomas Tildesley.
Rowland Tempest.
Obadiah Walker.
Richard Graham.
Robert Lundy.
—— *Townley*, commonly called Col. *Townley*.
Edward Morgan.
Robert Brent.
Philip Burton.
MATTHEW CRONE.

How long he lay in *Newgate* does not appear; but that he was a considerable Time in Custody, appears by Mr. *Crone*'s Letter to Major *Richardson*, though without Date, and printed as wrote †.

To Major Richardson.

" SIR,

" IF you please, I would be glad you would let me have a Chamber in " the Press-Yard, not that I would expect any more Libertie theire " than I have hear. Only I am desireous to be in the Hearing of People, " for you cannot be unsencible how troublesom itt is to your Servtts, nay " sometimes to yourselfe, when you are pleased to chide my Mother for " staying so late; but beleive me, Sir, she cannot help it, for none can " heare us, and 'tis unserting when any body comes to let her out," which " sometymes obleidges her to neglect my Busines when it should be lookt " after, therefore I know 'tis the same Thing to you whether I lye theire " or heare. You are sencible how lonnge I have laine under Uncertain- " tys, and I can see no Alteration, therefore am ashamed to request or " petition for any more Liberty then I have hitherto had, though God " knows I much want it, as you may beleive, haveing been very neare " three Quarters of a Year close Prisoner heare and in the *Tower*, and " with my Confinemt as could Comfort as ever poore Criminall receivd. " Pray, Sir, excuse me for this; since I can never have the Honr of see- " ing you. I desire my humble Service may be given to your good Lady " and the reast of your Family; and that if it stands with your Likeing, " I may be removed; if not, assure yourselfe I shall at all Times willing- " ly comply with that which may seem most agreeable to you, and am, Sir,

" *Your reale Friend and humble Servantt*,

Thursday Night. " M. CRONE."

The famous, or rather infamous, Mr. *Fuller*, in his Pamphlet, intitled, *A brief Discovery of the true Mother of the pretended Prince of* Wales, *p*. 24, says, (if he is to be credited) " Mr. *Crone*, with myself, was sent to " *England* with several Commissions and Letters from King *James*, for " raising Men."—*Page* 28, " After my last Return from *France* with " Mr. *Crone*, I informed his Majesty of all I knew: Mr. *Crone* was seiz- " ed, and sent Prisoner to the *Tower*."—*Page* 29, " They (the Jaco- " bites) finding their whole Design unravelled, and that I had discovered " all I knew, and Mr. *Crone* safe, and to be suddenly tried, which might " make him confess, they (the Jacobites) got me poisoned, in Hopes to " have prevented *Crone*'s Trial; but it pleased Almighty God to restore " me to my Health after ten Weeks Sickness. I was able to come to the " *Old-Bailey*, where Mr. *Crone* was tried and condemned for High-Trea- " son. He had several Reprieves from Time to Time, on his Promise of " making a full Confession; but as he was lingering it out, about six " Months after his Conviction, I received a Letter from the Earl of *Mel-* " *ford*, King *James*'s Secretary, in which I was promised King *James*'s " Pardon, and all the Favour I could desire from him and the Court of " *France*, and 500 *l*. if I would return to *France*, and recant what I had " done. I carried this Letter to King *William*, who sent me to Lord " Chief Justice *Holt* for his Advice; but his Lordship was of Opinion, " it was all a Trick to invalidate my Evidence, they being apprehensive " of Mr. *Crone*'s Confessions, which they must know would be so agree- " able to my Informations, that the Heads of King *James*'s Party had " been entirely at King *William*'s Mercy: And this Matter highly con- " cerned the *French* Court; for, had *Crone* been just to him that gave " him his Life, there might have been but small Encouragement from " *England* to the *French*, and consequently no Plotting now. They of " King *James*'s Party made it their Interest to have *Crone* hanged, and " stop his Mouth; and that, as I am well informed, occasioned his " making almost a full Discovery: Though he went for *France*, as soon " as he was let out of *Newgate*, being invited back with great Promises, " I must thank him for his Justice to me in his last and most authentic " Confession: He affirms on Oath, That all my Information was true. " For the Confirmation of this, I appeal to any Member of Parliament " that heard Mr. *Crone*'s or Lord *Preston*'s Confessions read before that " honourable House. After this, it may seem strange to some, how the " House came to be so angry with me. I beg Leave to inform them, " That the Jacobites, by Mr. *Crone*'s going off, knew they had partly " secured themselves from the just Power of the Law."

See the Trial of this *William Fuller* for a Cheat and Impostor, *Vol. V. p*. 441.

NUMBER VII.

CROSBY's *Case*.

Rex *versus* Crosby, *alias* Philips. B. R ‡.

CROSBY was indicted for High-Treason; and at the Trial at Bar he excepted against the Evidence of Mr. *Aaron Smith*, because he had been set in the Pillory upon a Judgment given against him in this Court, upon an Information, 34 *Car*. II. the Record of which he produced. Mr. Sollicitor General *Trevor* and Mr. *Cowper*, on Behalf of *Aaron Smith*, agreed, That the Infamy was always a Consequence of the Guilt, and not of the Punishment; and therefore (by them) if an innocent Man hath an infamous Judgment given against him, for a Crime that does not deserve such Judgment, this will not render the Party infamous. Then for Application, they said, That the Crime of which Mr. *Aaron Smith* was accused, did not deserve such Judgment; and therefore shall not take away his Testimony. And,

Sir *Samuel Eyre*, Justice, seemed to be of that Opinion.

But *Holt*, Chief Justice, gave no Opinion as to this Point, saying, that he could not impeach the Record; but he was of Opinion, that the general Act of Pardon, 2 *Wil*. and *Mar*. gave Mr. *Smith* a new Credit, but did not work by way of Restoration, to restore him to his old Credit: As, if a Person be attainted of Felony, he is now incapable of making a Purchase to hold, or to give Evidence; but if the King pardons him, he is now become a new Creature, and may do both; but he is not restored to inherit to those Persons, to whom he was inheritable before: And the Difference is, between a Civil Disability, which the Pardon cannot cure, (*Co. Lit*. 234. Sir *Ar. Ingram's* Case) and a Criminal Disability, which the Pardon may take away. And for these Reasons the Testimony of Mr. *Aaron Smith* was admitted.

But the principal Point of Treason charged upon Mr. *Crosby* being the writing of certain treasonable Papers, which the King's Counsel endeavoured to prove by Comparison of Hands, having no other Evidence; the Prisoner, *Crosby*, produced the Copy of the Act of Parliament for the Reversal of the Attainder of *Algernon Sidney*, Esq. (*Vide Vol. VIII. p*. 472.) in which it is declared, That the Comparison of Hands is not legal Evidence. Upon which the Jury found the Prisoner Not Guilty.——Mr. J. *Foster*, in his Reports of Crown Cases, *p*. 198. says, " In Mr. *Sidney*'s " Case, it was said, *Scribere est agere*. This is undoubtedly true under " proper Limitations, but it was not applicable to his Case. Writing " being a deliberate Act, and capable of satisfactory Proof, certainly may, " under some Circumstances *with Publication*, be an Overt-Act of Trea- " son. And I freely admit, that had the Papers found in Mr. *Sidney*'s " Closet been plainly relative to the other *treasonable Practices charged in* " *the Indictment*, they might have been read in Evidence against him, tho' " not published.——But Papers not capable of such Connection, whilst " they remain in the Hands of the Author unpublished, as Mr. *Sidney*'s " did, will not make a Man a Traitor.".

* From the Collection of Papers of Major *Richardson*, many Years Keeper of *Newgate*, in the Hands of the Editor.

† From the original Letter among Major *Richardson*'s Papers.

‡ It is great Pity this Trial (if taken at large) could not be procured, for the Arguments of the Court and Counsel must have been curious; so have inserted this short Account from Lord *Raymond's Reports*, *Vol. I. p*. 39. See also *Salkeld*, 689.

NUMBER VIII.

The Proceedings againſt the Three Nonjuring Clergymen, Mr. COLLIER, Mr. COOK, and Mr. SNATT, for publickly abſolving Sir *Willidm Perkins* and Sir *John Friend* at *Tyburn*, *April* 3, 1696.

THE Editor of the *State Trials*, in *Vol.* IV. *p.* 660, ſays no more than this:

"*Jeremy Collier*, a Nonjuring Miniſter, publickly abſolved "them at the Gallows."

This Affair made a great Noiſe at that Time. Biſhop *Burnet*, *Vol.* II. *p.* 174, ſays, "A very unuſual Inſtance of the Boldneſs of the Jacobites "appeared upon that Occaſion: Theſe two had *not* changed their Reli- "gion, but ſtill called themſelves Proteſtants; ſo three of the Nonjuring "Clergymen waited on them to *Tyburn*; two of them had been oft with "*Friend*, and one of them with *Perkins*; and all three, at the Place of "Execution, joined to give them public Abſolution, with an Impoſition "of Hands, in the View of all the People: A Strain of Impudence, "that was as new as it was wicked! ſince theſe Perſons died, owning the "ill Deſigns they had been engaged in, and expreſſing no Sort of Re- "pentance for them. So theſe Clergymen, in this ſolemn Abſolution, "made an open Declaration of their allowing and juſtifying theſe Per- "ſons in all they had been concerned in. Two of them were taken "up, and cenſured for this in the *King's-Bench*, the third made his "Eſcape." The Account publiſhed at that Time, by Permiſſion of the Sheriffs, is as follows:

An Account of what paſſed at the Execution of Sir William Perkins, *and Sir* John Friend, *at* Tyburn, *on* Friday, April 3, 1696.

THE Priſoners being drawn in a Sledge from *Newgate* to the Place of Execution, were permitted to have the Aſſiſtance of three Nonjuring Miniſters of their own chuſing, *viz.* Mr. *Collier*, Mr. *Cook*, and Mr. *Snatt*.

Sir *William Perkins* came firſt up into the Cart, and had ſome private Diſcourſe with one of the Miniſters.

Sir *William Perkins*. When muſt I deliver my Paper?

Miniſter. When all is over.

Then the Executioner went to put the Rope about Sir *William Perkins*'s Neck.

Sir *William Perkins*. May not I pray before it be put on?

Executioner. Yes, Sir, if you pleaſe.

Then Sir *John Friend* came into the Cart; and the three Miniſters and Priſoners all kneeling down, Mr. *Cook* read ſome Prayers out of the Morning-Prayer, and the Office for Viſitation of the Sick: And then the Miniſters ſtanding up, aſked them, Whether they were in Charity with all the World? And if they had offended any, whether they did aſk them Forgiveneſs? And whether they did deſire the Abſolution of the Church? Upon their Anſwer, That they did, they all laid their Hands upon their Heads, and Mr. *Cook* pronounced the Abſolution, which ended in theſe Words: *And by his Authority committed to me, I abſolve thee from all thy Sins, in the Name of the Father*, &c.

Sir *William Perkins*. When are we to deliver our Papers?

Miniſter. Now, if you pleaſe.

Mr. Sheriff. Take what Time you pleaſe, Sir, for your Devotions, we will wait your Leiſure.

Then the two Priſoners continued in their private Prayers, Sir *William Perkins* making uſe of the Prayers in the *Whole Duty of Man*, and Sir *John Friend* read ſome Prayer out of a written Paper; and afterwards, Sir *William Perkins* delivered to the Sheriffs a Paper.

Mr. Sheriff. If you require any more Time, you ſhall have it. You ſay this is your Paper?

Sir *William Perkins*. Yes, Sir; and I deſire you to diſpoſe of it as you think fit.

Mr. Sheriff. Have you any Thing to ſay, by way of Confeſſion or Denial, of the Fact for which ye come hither to ſuffer?

Sir *William Perkins*. What I think fit to ſay, is contained in that Paper.

Mr. Sheriff. If you deſire any more Time, you may have it; you ſhall have your Liberty.

Then Sir *John Friend* held a Paper up.

Mr. Sheriff. What do you ſay, Sir *John*?

Sir *John Friend*. Sir, here is a Paper, I deſire it may be printed; for I came here to die, and not to make a Speech; but to die, and to reſign myſelf to God; and I deſire it may be printed, for all People to ſee it. (*For both their Speeches, ſee Vol.* IV. *p.* 659, 660.) And I have no more to ſay, but to beg of God to receive my Soul; I reſign my Soul to him.

Mr. Sheriff. The Lord have Mercy upon you.

Sir *John Friend*. I hope the Lord will have Mercy on me.

Mr. Sheriff. Sir *John*, if you deſire any more Time, you ſhall have it; we will wait on you with great Willingneſs.

Sir *John Friend*. I thank you, Sir. Mr. *Sheriff*, I deſire the Cart may not be too haſty to go away, 'till we give a Sign.

Mr. Sheriff. You ſhall have your own Time; take your Time, communicate your own Sign, and the Cart ſhall not go before.

Then the Ropes were tied about them.

Sir *John Friend*. I have no Animoſity againſt any Man; I freely forgive all, and I hope God, for Chriſt's ſake, will forgive me.

Then their Caps were put on.

Sir *John Friend*. My Saviour had a Crown of Thorns for me; the Lord receive my Soul! the Lord have Mercy upon me!

Then the Executioner aſked them both Forgiveneſs; and they anſwered, We freely forgive you.

Sir *John Friend*. Will not the Things lie in my Way?

Executioner. I will remove them. If you pleaſe, tell me when I may pull your Caps over your Eyes.

Priſoners. When you will.

Sir *William Perkins*. The Lord receive my Spirit! Executioner, had I beſt hold up my Legs, or ſtand in the Cart when it goes away?

Executioner. It is beſt to ſtand, Sir, I think.

Sir *William Perkins*. But then my Feet will hang in the Cart.

Executioner. If you pleaſe, give me Notice when you will have the Cart go away.

Sir *John Friend*. Stretch forth thy Arms, O Lord, and receive my Soul, and carry it into Heaven, I beſeech thee! Executioner, when we knock, go away.

And after a few Ejaculations, they gave the Sign, and the Cart drew away.

They both of them gave Money to the Executioner; and having hung above half an Hour, being a conſiderable Time after they were dead, they were cut down and quartered, according to the Sentence.

For this Act of theirs, Mr. *Cook* and Mr. *Snatt* were committed to *Newgate*, and ordered to be proſecuted by the Attorney-General; but Mr. *Collier* kept out of the Way, and was not taken.—On this Occaſion, Mr. *Collier* publiſhed the following Defence of himſelf:

A Defence of the Abſolution given to Sir William Perkins *at the Place of Execution, April the* 3*d*.

MY being preſent, and in ſome meaſure officiating, at the Place of Execution on *Friday* laſt, has been extremely miſunderſtood. The *Weekly Intelligence*, together with the *Remarker*, have cenſured this Action with a great deal of Liberty and Heat. I thank God I am not eaſily diſturbed with intemperate Language, eſpecially when it is given without Occaſion. So that if Matters had gone no farther, I could have paſſed over the ill Uſage, and ſaid nothing. I confeſs, having received Notice that ſome Perſons of Figure threatened me with Impriſonment, I took a little Care of myſelf; and as it happened, not without Reaſon: For on *Monday* about Twelve at Night, ſix or eight Perſons ruſhed into my Lodgings, broke open a Trunk, and ſeized ſome *Papers* of Value, though perfectly inoffenſive and foreign to their Purpoſe. And ſince, I underſtand there is a *Bill* found againſt me for *High Miſdemeanors*. And now one would think I had done ſomething very extraordinary.

I ſhall therefore make a brief Report of Matters of Fact, and leave the World to judge, whether all theſe Cenſures and Severities are deſerved or not.

Sir *William Perkins* (whom I had not ſeen for four or five Years laſt paſt) after his Trial, deſired me to come to him, in order to his Preparation for another World. I accordingly viſited him in *Newgate*, as I thought myſelf obliged by my Character. I was put in the Liſt of thoſe who had Leave to ſee him by public Order, and had the firſt two Days the Liberty of converſing with him in private. Afterwards I was not permitted to ſpeak or pray with him alone, a *Keeper* being always preſent. At laſt even this Permiſſion was recalled, inſomuch that I could never ſee him from *Wedneſday* Morning, *April* the 1ſt, till *Friday* at the Place of Execution. Sir *William*, being under an Expectation of Death from the Time of his *Sentence*, had given me the State of his Conſcience, and therefore deſired the ſolemn Abſolution of the Church might be pronounced to him by me the laſt Day. And underſtanding I was refuſed Admittance on *Friday* Morning, he ſent me Word that he would gladly ſee me at the Place of *Execution*. I went thither, and gave him the Abſolution he requeſted, it being impracticable for me to do it elſewhere. This Office I performed Word for Word in Form, as it ſtands in the *Viſitation of the Sick*. And now where lies the great Crime of all this? When a Man has declared his Sorrow for all the Faults and Miſcarriages of his Life, and qualified himſelf for the Privilege of Abſolution, with what Juſtice could it be denied him? Ought not dying Perſons to be ſupported in their laſt Agonies, and paſs into the other World with all the Advantage the Church can give them? I am ſurprized, ſo regular a Proceeding as this ſhould give ſo much Offence, and make ſo much Noiſe as I perceive it has done. Some People, I underſtand, are diſpleaſed at the Office being performed with *Impoſition* of *Hands*. Now this is not only an innocent, but an ancient Ceremony of Abſolution. It was the general Practice of the Primitive Church in ſuch Caſes, long before there were any Exceptions to the *Roman Communion*. It is, in the Opinion of ſeveral Fathers and good modern Expoſitors, referred to by the Apoſtle, 1 *Tim.* v. 22. It is likewiſe preſcribed the *Aſſiſting Preſbyters* in our own *Ordination Form*. But I ſuppoſe I need ſay no more in Defence of this *Circumſtance*. To proceed: Others ſeem very much ſhocked at the Thing itſelf; and think it a ſtrange Preſumption to admit a Perſon charged with ſo high a Crime, to the Benefit of Abſolution. With Submiſſion, this is concluding a great deal too faſt. Are all People damned that are caſt in a Capital Indictment? If ſo, to what Purpoſe are they viſited by Divines, why are they exhorted to Repentance, and have Time allowed them to fit them for Death? But if they may be acquitted hereafter, notwithſtanding their Condemnation here; if they may be recovered by Recollection, by Repentance, and Reſignation, why ſhould the Church refuſe them her Pardon on *Earth*, when ſhe believes it is paſſed in *Heaven*? The Power of the *Keys* was given for this Purpoſe, that the Miniſters of God might *bind* or *looſe*, as the Diſpoſition of the Perſon required. The latter I ſincerely believed to be Sir *William*'s Caſe: I judged him to have a full *Right* to all the Privileges of *Communion*: And therefore had I denied him Abſolution upon his Requeſt, I had failed in my Duty, and gone againſt the Authority both of the *Ancient* and *Engliſh* Church. If it is ſaid that the Nature of this Gentleman's Charge required his being abſolved *in* private; to this I

anſwer, So he had been, had I been permitted to viſit him the laſt Morning: But this Liberty was refuſed me more than once; and I hope I ſhall not be blamed for Impoſſibilities of other Men's making. In ſhort, he ſeemed very deſirous of Abſolution at my Hands, as being the only Perſon acquainted with his Condition. Privately it was not in my Power to give it him; ſo that he muſt either receive it publickly from me, or not at all. But Sir *William* confeſſed himſelf acquainted with the intended *Aſſaſſination*. Pray, did he confeſs it to me, and have I revealed any Part of his Confeſſion? Then I had been guilty of *High Miſdemeanor* indeed: I had broke the 113th Canon, and been pronounced *Irregular* by the Church; and he that falls under *Irregularity*, is for ever after incapable of executing the Office of a Prieſt. (Dr. *Heylin's Introduction to* Cyprian, Angl. *p.* 6.) I confeſs there is an Exception in the Canon, but that does not reach the Caſe in Hand, even upon the largeſt Suppoſition. Well! But Sir *William* owned this Charge before the *Committee*. How could I know that? I neither ſaw Sir *William* after his Examination, till *Friday* Noon, nor the *Votes* which mentioned it till after that Time. But he confeſſed it in his *Paper*. What then? Which Way does the *Paper* concern me? It is well known Sir *William Perkins* was a Man of Senſe, and bred to *Law* and *Letters*, and needed no Help to aſſiſt him in writing a few Lines. Beſides, I was not permitted to come near him for more than two Days before he ſuffered: Neither was he allowed ſo much as Pen and Ink till the laſt Morning. Then it was that he penned his *Speech*, as I am told by thoſe who were preſent; and having read it before the *Keeper*, delivered a Copy of it to a Friend, which was not ſhewed to me till after the *Execution*. Indeed, I did believe he would leave ſome *Paper* behind him, both becauſe it is cuſtomary upon ſuch ſad Occaſions, and becauſe on *Tueſday* Night, when he expected Death on *Wedneſday*, he deſired Pen, Ink and Paper, for that Purpoſe.

And now, after all, I deſire to know in what ſingle Circumſtance I have miſbehaved myſelf, or done any Thing unbecoming my Profeſſion? It is very hard a Man muſt be proſecuted for performing the Obligations of his Office, and the Duties of common Friendſhip and Humanity. As for any Methods of *Murder*, I diſlike them no leſs than thoſe who rail loudeſt; and nothing but a mercenary Malice could ſuggeſt the contrary: But if the Functions of the Prieſthood, and the Aſſiſtances of Religion, and the reading the Public *Liturgy*, are grown a Crime, I am not concerned at the Imputation. I hope the *complying* Clergy will take ſome Care to check the Diſorders, and inform the Ignorance of their People a little better. If they are unreproved for theſe ſlanderous Exceſſes, their Paſtors muſt one Day expect to account for it.

As for thoſe in *Power*, it is poſſible they may have been governed by Miſ-reports, and ſudden Reſentment: If ſo, ſecond Thoughts and the Reaſon of the Caſe, will put a Stop to their Severities, and that this may be the Iſſue of the Buſineſs I think myſelf obliged to wiſh, as well for their Sakes as my own.

April 9th, 1696. JER. COLLIER.

On this Occaſion the following Declaration of the Archbiſhops, &c. appeared:

A Declaration of the Senſe of the Archbiſhops and Biſhops, now in and about London, *upon the Occaſion of their Attendance in Parliament, concerning the irregular and ſcandalous Proceedings of certain Clergymen, at the Execution of Sir* John Friend *and Sir* William Perkins.

WE the Archbiſhops and Biſhops now in and about *London*, upon Occaſion of our Attendance in *Parliament*, having ſeen a printed Paper, intituled, *A true Copy of the Papers delivered by Sir* John Friend *and Sir* William Perkins *to the Sheriffs of* London *and* Middleſex, *at* Tyburn, *the Place of Execution*, April 3, 1696: And being alſo certainly informed of the moſt irregular Behaviour of Mr. *Cook*, Mr. *Collier* *, and Mr. *Snatt*, in pretending to *abſolve* the ſaid Criminals at their Execution, to the great Scandal of the Church, and of our holy Religion, have therefore thought ourſelves obliged to declare our Senſe of the ſame, as here followeth:

1. As to the Paper before mentioned, we cannot but obſerve, that in that Part to which Sir *John Friend* is intituled, among many other Things there delivered as his private Opinion, (for which we muſt leave him to God) there are mingled ſome Things concerning the Church of *England*, to the great Diſhonour and Reproach of it. That venerable Name is, by the Author of that Paper, appropriated to that Part of our Church which hath ſeparated itſelf from the Body; and more particularly, to a Faction of them who are ſo furiouſly bent upon the reſtoring of the late King, that they ſeem not to regard by what Means it is to be effected. We have a ſad Inſtance of it in this *very* Perſon, who (as was depoſed at his Trial) was privy to the horrid Deſign of *Aſſaſſination*, and yet neither diſcovered it, nor ſhewed any Diſlike of it, but as *he was afraid it might ruin King* James *and his Affairs*; and was ready alſo, together with others of the ſame *Chriſtian Principle* (as the Author of his Paper is bold to call it) to act in Conjunction with an Army of *French* Papiſts, for the Ruin of their Country, and the Extirpation of that Religion which they themſelves do profeſs.

2. As for Sir *William Perkins*, who alſo profeſſed to die in the Communion of the Church of *England*, we cannot think he meant any thing elſe by it, than that he adhered to the ſame violent Faction: Being aſſured (as we are by very good Information), that both he and Sir *John Friend* had withdrawn themſelves from our public Aſſemblies ſome Time before their Death; which makes us the leſs wonder to find in both their Papers ſo light, and even favourable, a Mention of that moſt inhuman Deſign of aſſaſſinating his Sacred Majeſty: And eſpecially in that of Sir *William Perkins*, who, though he was publickly convicted of his having engaged ſo many in that horrible Sin, yet, after all, could think to clear himſelf of it with this wretched Excuſe: *'Tis true I was privy to the Deſign upon the Prince, but was not to act in it.* Bleſſed be God, there never was any of our Church, that in any Change of Times could have this laid to his Charge, that he was ſo much as *privy* to a Deſign of Aſſaſſination.

Laſtly, For thoſe Clergymen that took upon them to abſolve theſe Criminals at the Place of Execution, by laying all three together their Hands upon their Heads, and publickly pronouncing a Form of Abſolution; as their Manner of doing this was extremely inſolent, and without Precedent, either in our Church, or any other that we know of; ſo the Thing itſelf was altogether irregular.

The Rubrick in our Office of the Viſitation of the Sick, from whence they took the Words they then uſed, and upon which, if upon any thing in our Liturgy, they muſt ground this their Proceeding, gave them no Authority nor no Pretence for the abſolving theſe Perſons; nay, as they managed the Affair, they acted in this Abſolution far otherwiſe than is there directed.

That Rubrick is concerning ſick Perſons; and it is there required, *Firſt*, That *the ſick Perſon ſhall be moved to make a ſpecial Confeſſion of his Sins, if he feel his Conſcience troubled with any weighty Matter; and then, after ſuch Confeſſion, the Prieſt ſhall abſolve him, if he humbly and heartily deſire it.* But here they abſolved, and that publickly, Perſons condemned by Law for execrable Crimes, without ſo much as once *moving* them at that Time to make a *ſpecial Confeſſion of their Sins*, at leaſt for thoſe Sins for which they were condemned. And on the other Side, here were Perſons abſolved that did not humbly deſire Abſolution, as *feeling* any ſuch *weighty Matter* to *trouble* their *Conſcience*; but on the contrary, in Sir *John Friend*'s Paper it is declared, that he had a great deal of *Satisfaction in ſuffering* for that Cauſe, which he firmly believed to be *the Cauſe of God, and true Religion.*

If theſe Miniſters knew not the State of theſe Men's Souls, before they gave them Abſolution, as it is manifeſt two of them, Mr. *Snatt* and Mr. *Cook*, did not as to Sir *William Perkins* (they having ſince declared that they had not ſpoke with Sir *William* till they were at the Place of Execution), how could they, without manifeſt Tranſgreſſion of the Church's Order, as well as the prophane Abuſe of the Power *Chriſt* hath left with his Miniſters, abſolve them from all their Sins?

If they were acquainted with theſe Men's Sentiments declared in their Papers, then they muſt look upon them, either as *hardened Impenitents*, or as *Martyrs*.

We are ſo charitable to believe that they would not abſolve them under the former Notion, for that had been, in Effect, ſealing them to Damnation: But if they held theſe Men to be *Martyrs*, then their abſolving them in that Manner was a Juſtification of thoſe grievous Crimes for which theſe Men ſuffered, and an open Affront to the Laws both of Church and State.

Upon the Conſideration of theſe Things, and for the doing of Right to our Church, which may otherwiſe ſuffer, among ſuch as are Strangers to our Conſtitution, by the evil Principles and Practices both of the aforeſaid Criminals, and the three Clergymen that aſſiſted them, who all pretended to be Members of the Church of *England*; we do declare, That we diſown and deteſt all ſuch Principles and Practices, looking upon them as highly ſchiſmatical and ſeditious, dangerous both to the Church and State, and contrary to the true Doctrine and Spirit of the Chriſtian Religion. And we alſo take this Occaſion to warn and exhort all the People committed to our Charge, to beware of ſuch Seducers, and to avoid them; leſt (as the Apoſtle St. *Peter* ſpeaks) *they be led away with the Error of the Wicked*, and fall from their ſtedfaſt Adherence to the Principles of the true Church of *England*, as it was eſtabliſhed at the bleſſed Reformation of Religion, and as by God's eſpecial Providence it continues to this Day. *April* 10th, 1696.

Tho. Cantuar.	*Sy. Elienſ.*
Jo. Ebor.	*Gil. Hereford.*
H. Londin.	*Jo. Norwich.*
N. Dureſme.	*Ric. Peterb.*
P. Wincheſter.	*Ed. Gloucester.*
W. Cov. and *Lich.*	*Reb. Chicheſter.*
Tho. Roſſen.	*E. Aſaph.*

A farther Defence of the Abſolution given to Sir William Perkins, *occaſioned by a* Paper, *intituled*, A Declaration of the Archbiſhops and Biſhops, *&c.*

ABOUT a Fortnight ſince I publiſhed the foregoing Defence of the *Abſolution* given to Sir *William Perkins*. 'Tis true, the Vindication was not drawn out into any great Length, neither did I imagine it neceſſary. That which was ſaid, was in my Opinion ſufficient to ſatisfy any candid and impartial Reader. If the Argument was any where over-contracted, it was in that Part which mentions *Impoſition* of *Hands*. Here I confeſs the Proofs were but generally named, and the Force and Improvement of them left in ſome Meaſure to Collection. My Deſire to undeceive the People, and to ſilence their Clamours as ſoon as might be, the Diſadvantage of my Retirement, and the Plainneſs of the Caſe, were the Reaſons why I was no fuller upon that Head: But now I have a freſh Opportunity to treat the Point more at large, the late *Declaration*, &c. of the Biſhops having given me a juſt Occaſion to reſume the Argument. I muſt own the Peruſal of this *Declaration* ſurprized me very much. I could not imagine theſe *Reverend Prelates* would have publiſhed ſo unſupported a Cenſure; nor engaged their *Character* ſo far in this Affair. I am almoſt amazed an innocent Conduct ſhould be thus miſconſtrued, and the Charge run ſo high without Proof, or Provocation to defend it.

The *Declaration* begins with ſome Remarks upon the *Papers* of Sir *William Perkins* and Sir *John Friend:* Theſe Exceptions I ſhall paſs over, as being unconcerned in their Defence. Indeed, my Reſolution upon the whole is, to engage no farther than the Juſtification of my own Conduct; as being unwilling to have any unneceſſary Diſputes with theſe Reverend Prelates.

The pretended Irregularity objected againſt Mr. *Snatt*, Mr. *Cook*, and myſelf, relates wholly to the *Abſolution* given to thoſe two Gentlemen at the Place of *Execution*. The Performance of this Office, the Biſhops are pleaſed to ſay, was *extremely inſolent and without Precedent in the Manner, and altogether irregular in the Thing*.

I ſhall endeavour to juſtify my Practice againſt every Point of the Accuſation, and prove the *Abſolution* defenſible, both with reſpect to Manner

* This Mr. *Collier* was a very learned and ingenious Man, and the Author of the *Great Hiſtorical Dictionary*, in Folio;—of the *Eccleſiaſtical Hiſtory*, in Folio;—of the *View of the Stage*; and many other Pieces.

and Form, to Persons and Occasion. And, *1st*, with respect to the Manner. And here I shall make good three Things.

1st, That giving Absolution with Imposition of Hands was the general Practice of the ancient Church.

2dly, That the Performance of this Ceremony was allowed to Priests, and sometimes to Deacons, as well as Bishops.

3dly, That Imposition of Hands is enjoined the *Assisting Presbyters* by our own Church in the Office of *Ordination*, and by Parity of Reason is fairly applicable to the present Case.

First, That giving of Absolution with Imposition of Hands, was the general Practice of the ancient Church.

To begin with *Tertullian*, who lived in the Beginning of the third Century. This Father understands that Place of the Apostle, *Lay Hands suddenly on no Man*, (1 *Tim.* v. 22.) of the Offices of Penance and Absolution. (*L. de Pudic. cap.* 18.) And (*cap.* 22.) he alludes to the same Custom in these Words, *Carnem laniatam prosternens*, as *Albaspinæus* observes, (*Albasp. Obser. l.* 2. *p.* 97. *Not. in Tertull. p.* 181.) Indeed the Design of his Book, *De Pudicitia*, plainly determines the Author to this Sense. Here he treats professedly of those who were to be finally excluded from Church Communion, and denied the Discipline of Penance. He disputes nothing about *Confirmation*, or *Orders*; so that it is evident the *Imposition* of *Hands*, mentioned by him, must relate to Penitential Absolution.

St. *Cyprian*'s Council of *Carthage* is express to the same Purpose. Here *Nemesianus*, *Crescens*, *Secundinus*, and *Vincentius*, Bishops of *Thubuni*, *Cirta*, *Carpi*, and *Tiberis*, all of them agree, that the Church's Peace, and the Expedients of Reconciliation, were to pass through this Form of Imposition of Hands.

The 80th Canon of the fourth Council of *Carthage* enjoins, That during the whole Time of Abstinence, (I suppose either stated or occasional) the Priests (*Sacerdotes*) should lay their Hands upon the *Penitents*.

The 11th Canon of the third Council of *Toledo*, in the Directions for the Methods of Penance, is positive for the frequent Use of this Ceremony; which made *Albaspinæus* conclude, That *Absolution-Prayers* and *Imposition of Hands* were repeated and customary in such Cases. (*Albasp. Observ. l.* 2. *p.* 86.)

To conclude this Point, The learned Dr. *Hammond*, in his Annotations on the Text above-mentioned, (1 *Tim.* v. 22.) refers the laying on Hands to *Absolution*. "The Apostle (says he) exhorts *Timothy* that he "should not make too much Haste to receive those who were under Cen"sures, to Absolution. For that was the Thing which would most pro"bably make him Partaker, or guilty of their Sins, which the Censures "were designed to reform in them; but would not do so, if, before they "had approved their Repentance and Reformation, they were received to "the Peace of the Church." This learned Divine cites a great many Authorities in Defence of his Opinion, which the *Reader* may consult at his Leisure.

Secondly, The pronouncing the Absolution with Imposition of Hands, is no Encroachment upon the Episcopal Authority, but plainly allowed to the Order of *Presbyters*.

This Point I shall make good from several plain Testimonies of St. *Cyprian*, whose Authority must be granted to be unexceptionable, both with respect to the Antiquity and Character of the Person. Indeed it is to this Father that we are principally obliged for the Remains we have of the Discipline and Government of the Primitive Church.

Now St. *Cyprian* is categorical in the Case, and affirms roundly, that *in lesser Crimes than those of the Lapsed, the Penitent could not be admitted to full Communion, unless the Bishops and Clergy had laid their Hands upon him. Nisi prius illi ab Episcopo et Clero manus fuerit imposita.* (Ep. 17. p. 39. Ed. Oxon.) Now where the Bishops and Clergy are thus contradistinguished, the Order of Priests must be comprehended in the latter, in the most restrained Construction. I might produce his 15th and 16th *Ep.* (*p.* 34. 37.) for the same Purpose; but because these Testimonies run much in the Words of the former, I shall wave the Recital.

This Father, in his 18th Ep. tells his Priests and Deacons, That *they need not expect his coming Home, to reconcile the Lapsed; but if any of the Laity were in Danger of Death, a Priest; and if a Priest could not be had, and the Necessity was extreme, a Deacon was a sufficient Authority to hear their Confession, to lay Hands upon them, and consign them to the Peace of the Church.* The same Advice, upon the same Occasion, is repeated, *Ep.* 19. *p.* 41. From whence it is evident, that *Imposition of Hands* was no reserved incommunicable Privilege of the Bishops, but delegated as low as the Deacons, upon emergent Necessity, and visible Approaches of Death. These Authorities of St. *Cyprian* are all double charged, and prove two Points at once. They prove, that Imposition of Hands was a general Appendix to Absolution, and that it was within the Commission of the Priest to officiate in the Ceremony. To proceed:

In the 13th Canon of the first Council of *Nice*, the *Viaticum* is ordered to be given to those who are at the Point of Death. And by the *Viaticum*, *Albaspinæus* proves, that Absolution with Imposition of Hands was meant, and not the *Eucharist*: And that such an Absolution might be given by those who were no more than Priests. (*Albasp. Not. in quosdam Can. p.* 131.) I could amass a great many more Testimonies, were it necessary; but I conceive, what has been said already, may be sufficient to vindicate my Practice from the Charge of Encroachment and Singularity.

Thirdly, Imposition of Hands is enjoined the *Assisting Presbyters* by our own Church in the Office of *Ordination*, and by Parity of Reason is fairly applicable to the present Case.

If our Church had thought the Imposition of Hands too much for the Character of Priests, she would not have prescribed them a Share in it at her *Ordinations*. But since she has allowed them this Liberty in the most solemn Exercises of Authority, why should she deny it in interior Cases? To assist in the Conveyance of an Authority seems a greater Mark of Power, than the executing any Branch of the Authority conveyed. If the Presbyters are permitted to lay their Hands upon the *Clergy*, why not, *à fortiori*, upon the *Laity*? St. *Hierom* affirms plainly (*Ep. ad Evagr.*) that the *Powers* of a Priest comprehend those of a Bishop, excepting in the Point of *Ordination*. Our Church has never condemned this Father's Assertion; why then may not the first *absolve* with Imposition of Hands, no less than the other?

But there is no Appointment of this Ceremony in the *Absolution-Rubrick*. True: Neither is there any Prohibition. The *Rubrick* is perfectly silent both as to Posture and Gesture, and yet some Circumstances of this Nature must of Necessity be used.

Now since our Church allows the Priest Imposition of Hands in another Case, and does not forbid it in this, Is it any Harm if our Liberty moves upward, and determines itself by general Usage and primitive Practice? Our Church has always professed a Regard for the Patterns of Antiquity: We cannot do her a greater Honour, than by conforming to the Solemnities of the purest Ages, than by making the *Discipline* of *Fathers* and *Councils* the Rule of our Behaviour *: Especially when we are not bound up by National Law, and particular *Constitution*. Thus much for the *Manner*.

I come now to justify the Thing and the Occasion.

It is objected by these *Reverend Prelates*, that the three *assisting Clergymen pronounced a Form of Absolution*, &c. With Submission, I hope *a Form* is better than *no Form*; especially when it was a Form *Rubrically* appointed; a Form drawn up by the publick Authority of the Church, confirmed by *Canon*, and Act of *Parliament*; a Form the most pertinent and proper to the Occasion of any in the *Liturgy*. I am sorry to see the solemn Offices of Religion mentioned with such seeming Coldness, and Abatements of Expression. Were it not that I am unwilling to give these *Reverend Prelates* the Trouble of a Question, I would gladly understand, what Form they could have fixed on more suitable to so sad an Occasion? I am sure that *Form* of Absolution is the most solemn and authoritative of any in the *Service-Book*. Now if ever the Church exerts herself, ought it not to be in Cases of the greatest Necessity? Can her most comfortable Administrations, and the highest Acts of her Authority, be better employed than for the Relief of dying Persons, who are combating the *King of Terrors*, and stand just upon the Brink of Eternity? Upon the whole, I am surprized they should say the *Rubrick gave us no Pretence of Authority to absolve those Persons*. Does not the *Rubrick* give the Priest a Power to pronounce the *Absolution*, and to judge of the Condition of the Penitent? This cannot be denied. And why then had we no Pretence of Authority? *Because the Rubrick relates to the Sick*. To this I answer; Had the Church left us a stated *Office* for *Persons Condemned*, and we had refused to make Use of it, there had been some Force in the Objection; but as the Matter stands, I humbly conceive there is none at all. The Church, without Question, would have *Condemned Persons* taken care of, as well as others, and their Spiritual Necessities supplied. And if so, is it not more Respect to the Church to officiate in Forms of her own setting forth, than in private and unauthorized Compositions? And if the Function was to be performed in the publick Devotions, I desire to know what Part of them could have been more proper than the *Office of Visitation of the Sick*? If we consider the Design of the Church, and especially the *Rubrick* before the *Absolution*, we shall find that she intended this Office to prepare People for the other World, and considered them rather as dying, than likely to recover. This appears evidently from the Questions and Advices ordered to be asked and given; so that wherever Death is in View, the *Office* cannot be unseasonable, nor misapplied. And can any Persons be more certain of Death than those who are publickly condemned, who lie under fatal *Sentence*, and irresistible Power; who have the Force of the County to dispatch them, and are just ready to receive the Stroke? As to the previous Questions, they were put and answered, the *Absolution* was desired, and the *Confession* received in Prison; and in short, the Church's Directions were observed in every Particular. But we *did not move them to make a special Confession of their Sins at that Time*. With Submission, Where lies the Necessity, or even the Expediency of such a Practice? Does our Church oblige dying Persons to publick Confession? Does she require them to throw open the Retirements of Conscience, and the Secrets of private Life, to the View of the World? I am at a Loss to understand why we should be charged with Omissions on such Accounts as these.

The *Declaration*, &c. proceeds with great Vehemence, and charges us with *manifest Transgression of the Church's Order, and prophane Abuse of the Authority of Christ*. These are hard Words, but I hope altogether undeserved. It is true, they instance only in Mr. *Snatt*, and Mr. *Cook*, but I must own the Objection lies equally against myself; for I never saw Sir *John Friend* during his whole Imprisonment. But in assisting at his Absolution, so far as laying on my Hand amounts to, I did no more than what is easily defensible. I grant I had no immediate and particular Knowledge of his Condition, neither was it necessary. Our Church, in Conformity to Antiquity, has made the Priest the proper Judge of the Qualifications of the *Penitents*, and supposes him fit to be trusted, and believed in that Affair. Now Mr. *Snatt* and Mr. *Cook* (upon whose Judgment and Integrity I can very well depend) had given me a general Account of Sir *John*'s pious Disposition, and that he was well prepared for all the Assistance the Church could give him. The having so good Information from first Hands, from proper and authorized Judges, is sufficient to warrant my Part in Sir *John*'s *Absolution*. This, besides what has been said, I shall make good from two parallel Instances.

First, It is well known that Bishops of the ancient Church used to give a Sort of *Certificates* to those that travelled; by virtue of which, they were not only entertained and accommodated, but admitted to full Communion all over *Christendom*. (*Albasp. Not. in Can. p.* 115.) From whence we may observe, that personal Acquaintance, and particular Examination, are not necessary to give a Right to the Privileges of Christianity. Where the Credentials are good, the Church is to enquire no farther; she is to presume upon the Probity of the Person recommended, and to treat him accordingly.

Secondly, Our own Church, in some of the highest Administrations, acts upon Principles of Trust and Confidence. She conveys her Privileges,

* Bishop *Sanderson*, that eminent Casuist, about a Day before his Death, desired his Chaplain, Mr. *Pullen*, to give him Absolution; and at his performing that Office, he pulled off his Cap, that Mr. *Pullen* might lay his Hand upon his bare Head. *Walton's Life of Bishop* Sanderson, p. 94. Folio Edit.

vileges, and exercises her Authority, without always insisting on personal Inquiry and immediate Proof. At the giving of *Holy Orders*, neither the Bishops, nor the assisting Presbyters, are always personally acquainted with those they *Ordain*. The Prudence of our Church does not tie us up to such unreasonable Rigours. Both Practice, and the *Ordination Form*, suppose the contrary. And why then may not the Priest assist in *Absolution* as well as *Orders*, without any previous Experiment of the State of the Person? Why may not he in the first, as well as the latter Branch of his Authority, act upon the Warrant of unexceptionable Testimony? By all Parity of Reason and Force of Consequence, the Practice is no less defensible in one Case, than in the other.

If it is objected, That the joining of all the three Clergymen in the Imposition of Hands is unprecedented, and exceptionable; to this I answer, That if the Action was lawful, singly performed, I cannot imagine how a Concurrence of more authorised Persons should make it otherwise? Is there any Harm in Union and Solemnity? Or can Religion be treated with too many Circumstances of Advantage? What *Canon* is there that stints the Assistance to *One*, and forbids a Plurality of Persons? *Timothy* had the *Hands of the Presbytery laid upon him*, (1 Tim. iv. 14.) which, without Doubt, exceeded the Number now objected. Our Church, at her *Ordination*, allows this *Ceremony* to all the Presbyters present. And in the very Case of *Absolution*, the *Penitent* was to receive *Imposition of Hands* from the Bishop and Clergy; as appears from the Testimony of St. *Cyprian* above-mentioned. Farther,

These *Reverend Prelates* argue, that *we must either look on the Persons absolved as Impenitents, or Martyrs*; and they make their Advantage of each Branch of the Supposition. But, with Submission, I see no Necessity of granting the Disjunction. For there may be a third Way of considering the Matter. To speak to my own Case: I absolved Sir *William Perkins* as a *Penitent*; and I suppose every Body must be absolved under that Consideration: For Absolution supposes both Sin and Repentance, in the Notion of it. But as for the *Matter* of Sir *William*'s Repentance, that is never likely to be known from me. Neither am I in the least affected with the Bishops Inference. For supposing I received a defective *Confession*, am I accountable for that? However, I neither do nor am obliged to declare my Opinion in this Matter. But thus far I am positive, that there was nothing confessed to me, which the *Canon* obliges me to reveal: And what the Canon does not enjoin me to discover, it enjoins me not to discover. (*Can.* 113. *Vid. first Defence.*) And so there is an End of this Dispute.

I hope by this Time it may appear, that I am neither unfurnished with *Reason*, or *Precedent*, to justfy what I have done. However, I shall give one late Instance for the whole Case, and so conclude.

At the *Execution* of Mr. *Ashton*, *Jan.* 1690, Absolution was given him in the same Form, with Imposition of Hands, at the same Place, and upon the same Occasion; and a justifying *Paper* left by the Person that suffered. Now at that Time there were no Exceptions made either to *Manner* or *Thing*. The Performance was so far from displeasing, that the *Sheriff* gave his Thanks for the *Solemnity* of the *Office*. There were no Complaints either at *Lambeth*, or *Whitehall*, no public Invectives, no seizing of *Body* and *Goods*; in short, no Signs of the least Dissatisfaction. And who could imagine, that the bare repeating of an Action should raise such a Storm upon us now, which was so perfectly inoffensive before? To punish in this Manner, without Warning or *Precedent*, without Canon or Law, is (with Submission) somewhat unintelligible.

And now having defended myself, I shall reply nothing to all the unkind Reflections, and tragical Language of the *Declaration*. It is probably within my Power, to turn some of these *Reverend Prelates* Artillery upon them. But my Regard to their Character, and Inclination not to displease, makes me wave the Advantage.

However, their extraordinary Usage has done me the Honour of an Opportunity to forgive them, which I thank God I heartily do.

April 21, 1696. *J. C.*

P. S. "I have just now received a Sheet, called *An Answer to my Defence*, &c. As for that little which is material in this Paper, it is already satisfied, and I do not love needless Repetitions. And therefore to begin and end in a Word with this Answerer; If he has any Thing remarkable, it is, in my Opinion, his Ill Language; and that I can both pity and despise.' *April* 25.

There were several Pamphlets published on this Occasion, against and in Defence of this Proceeding, but these are sufficient to shew the Nature of the Controversy.

In *July* following, Mr. *Cook* and Mr. *Snatt* were brought to the Court of *King's-Bench*, and the Proceedings against them are thus briefly related in *Comberbach's Reports*, *p.* 382.

Sitting in Middlesex, *coram* Holt, *Chief Justice*, 2 July, 1696.

Rex *versus* Shadrach Cook & Will. Snatt, *Clericos*.

Indictment for absolving Traitors.

"UPON an Indictment setting forth, that Sir *John Friend* and Sir *William Perkins* being attainted, and about to be executed at *Tyburn*, for High Treason, &c. the Defendants conspiring and intending (as much as in them lay) to justify, or at least to extenuate and lessen their Crimes, and to induce his Majesty's Subjects to believe that they died rather as Martyrs than as Traitors, and to incite the King's Subjects to commit the like Treasons, they did take upon them to absolve, and did pronounce a Form of Absolution of them the said Sir *William Perkins* and Sir *John Friend*, without any Repentance, or any Signs of Repentance by them given.

"It was proved, that the Defendants asked the Criminals the several "Questions directed by the *Rubrick* in the Office of *Visitation of the Sick*, "and Mr. *Cook* pronounced the Words of Absolution of one of the Traitors; Mr. *Snatt*, and one Mr. *Collier*, (who is not now indicted) laying "their Hands upon his Head; and after the Words pronounced, saying, "*Amen*; and Mr. *Collier* pronounced the Words as to the other Traitor, "they all three laying on their Hands, &c. It was proved, that the Defendants were earnestly requested by Sir *William Perkins* and Sir *John* "*Friend*, to assist them at the Place of Execution; and therefore the Jury "were directed to acquit them of Conspiracy (though the Attorney-General said the Indictment was not for Conspiracy, and *Conspirantes* was "put *adjectively* only to introduce the other Matter, and therefore was not "material): And *Holt* directed the Jury, that this Proceeding of the Defendants was certainly scandalous and irregular; for if the Criminals "had before made a private Confession, the Absolution should have been "private likewise; but if they would give a public Absolution, they ought "to have required as public Confession, and particularly with respect "to those Crimes for which they were attainted, being so notorious, "&c. However, if the Jury were of Opinion they did it only ignorantly, and by Mistake, (in which Case it is properly connusable in the Spiritual Court:) then to acquit them; but if they did it with a Design to "affront the Government and to vilify the Justice of the Nation, then to "find them Guilty: But at the Instance of the Defendants Counsel, it was "directed to be found *Specially*, that *Snatt* laid his Hand on the Head, "and was assistant, while the other pronounced the Words of Absolution, "and afterwards *Snatt* said, *Amen* (it being laid *quod pronuntiaverunt*). "And accordingly the Jury acquitted them of the Conspiracy, and found "*Cook* guilty of the rest, and as to *Snatt*, *ut supra* *.

Pro Rege.	*Pro Defendentibus*,
Attorney-General,	Sir *William Williams*,
Sollicitor-General,	Sir *Fra. Winnington*,
Mr. *Conyers*,	Mr. *Broderick*,
Mr. *Cowper*,	Mr. *Phipps*,
Mr. *Mountagu*.	Mr. *Mompesson*.

When this Special Verdict was argued, or how this Matter ended, does not appear: But at the Sale of the late Earl of *Clarendon*'s Manuscripts, in *Covent-Garden*, *April* 1763, the following Argument was purchased in Manuscript.

The King *against* Cook *and* Snatt.

IT is an Indictment for a Misdemeanor on which a *Special Verdict* is found. I am, by your Lordship's Appointment, Counsel for the Defendants.

The Indictment sets forth, That whereas Sir *John Friend* and Sir *William Perkins* were severally convicted and attainted of High Treason, in conspiring the Death of the King, and adhering to his Enemies, and according to due Course of Law, and Judgment thereon severally given, were drawn to *Tyburn*, to be there put to Death; *Jeremy Collier*, and these two Defendants, well knowing the Premisses, but intending to withdraw the King's Subjects from their Allegiance, and to incite them to commit the like Treasons, at the Gallows, being in the Cart with Sir *John Friend* and Sir *William Perkins*, and immediately before their Execution, conspiring, designing, and intending that execrable, horrible, and detestable High Treason, for which Sir *John Friend* and Sir *William Perkins* were attainted, and then instantly to die, according to due Course of Law, to justify, or at least to extenuate, diminish, or set at nought; and to insinuate into the King's Subjects, and persuade them, that Sir *John Friend* and Sir *William Perkins* were about to die innocent and undeservedly, and rather as Martyrs than Traitors; and to incite the King's Subjects to commit the like Treasons, and unlawfully and contumaciously, as Priests of the Church of *England*, in the Presence and Sight of a great Concourse of People, and in the Hearing of a great many of them, laying their Hands on the Heads of Sir *John Friend* and Sir *William Perkins* in the said Cart, then and there took upon themselves to absolve them, and did pronounce them to be absolved from all their Sins, without any Repentance by the said Sir *John Friend* and Sir *William Perkins*, or either of them, for the High Treason aforesaid first declared.

To this Indictment these two Defendants pleaded Not Guilty: And the Issue being tried before your Lordship, the Jury find this Special Verdict: That *Cook*, *Snatt*, and *Collier* laid their Hands on Sir *John Friend*, and *Cook* pronounced the Absolution, and *Collier* and *Snatt* said, *Amen*: That *Collier* and these two Defendants laid their Hands on Sir *William Perkins*, and *Collier* pronounced the Absolution, and *Cook* and *Snatt* said *Amen*: And that *Cook* and *Snatt* assisted, and assented to the said Absolution.

As to the Conspiracy, they find the Defendants Not Guilty; and as to all the rest of the Indictment, they find the Defendants Guilty; But whether, on the whole Matter, the Defendants, or either of them, be guilty of the Matters and Things charged on them in the Indictment (besides the Conspiracy) or no, the Jury pray the Advice of the Court. And thereupon it now comes before your Lordship. And

I hope, with Submission to your Lordship, as this Indictment is, these Defendants shall be discharged. And to that End I shall crave Leave humbly to lay before your Lordship some Considerations on these three Points:

First, Whether what is laid in this Indictment will amount to an Offence?

Secondly, If it be an Offence, I shall humbly submit it to your Lordship, Whether the Examination of it doth not belong to another Jurisdiction? And,

* 5 *Modern*, *p.* 363. reports the Case thus:

Term Mich. 9 *W.* III. *B. R.* 1697. Rex *versus* Cook, Snatt & Collier.

"They were found Guilty upon an Indictment for the following Crime, *ff.* Sir *John Friend* and Sir *William Perkins* were convicted for High Treason, in conspiring the "Death of the King; and the Defendants, being present with them at the Place of Execution, did, *all* of them, lay their Hands on Sir *John Friend*, who shewed no Repent- "ance for the Crime for which he was about to die; and *Cook* pronounced the *Absolution*, and *Snatt* and *Collier* said, *Amen*.

"That they *all three* likewise laid their Hands on Sir *William Perkins*, who was likewise impenitent of this Crime; and *Collier* pronounced *the Absolution*, and *Cook* and "*Snatt* said, *Amen*; and that they *all* assisted and assented to the said Absolution.

"The Jury made a Special Conclusion in their Verdict, Whether the laying on the Hands of *three*, and but *one at a Time* pronouncing the Absolution, makes them *all* "guilty of the whole Matter? *Adjourn'*.

Thirdly,

Thirdly, If it should be an Offence, and punishable in this Court, yet there can be no Judgment given against them on this Indictment.

But before I come to these Points, I must crave Leave to explain what I take to be the Meaning of one Expression in the Indictment, and that is, *Absque aliqua pœnitentia per eos pro alta proditione prædicta prius declarata.* By *pœnitentia*, though it usually amongst the Canonists signifies *Penance*, and sometimes *Repentance*, Absolution and Penance, yet in this Place I take it for Repentance only. And by the Words *pro alta proditione prædicta prius declarata*, is meant publickly declared for that particular Offence. For on the Evidence it appeared, there was a general Repentance of all their Sins; and there might have been a private, particular Repentance of this very Treason to the Priests, whilst they were in the Prison, according to the Rule of the Canonists, *Posse in una die confessionem audiri, et in altera injungi pœnitentiam:* As I find it cited by the greatest Casuist and best Author I have met with on this Occasion, *Valerius Reginaldus de Requisitis in Confessione*, l. 8. n. 11. fol. 230. But when this was objected at the Trial, the King's Counsel answered, The Repentance ought to be as public as the Absolution. Therefore, to reduce it all to a Case on this Indictment, I take it, these Gentlemen (especially Mr. *Cook*, for Mr. *Snatt*'s Case doth somewhat differ) did publickly absolve Sir *John Friend* and Sir *William Perkins*, as they were about to be executed for High Treason, without their particular Repentance publickly declared for the Crimes for which they suffered. And I shall humbly submit it to your Lordship, whether this be any Offence in these Gentlemen, or in either of them. They were Persons, that by Order, at least by Leave of the Court when Sir *John Friend* and Sir *William Perkins* were attainted, were permitted and appointed to officiate with the condemned Criminals to prepare them for another World, when they were about to leave this by the Judgment of our Law. Accordingly they officiated, and were several Times with the condemned Criminals in the Prison; where we may very well presume, that they brought their Penitents to a particular Confession and Repentance, though we could not prove it at the Trial; because the Penitent was dead, and the Absolver the Person indicted.

And besides, the Absolver was not obliged to discover the Confession; nay, it is expressly forbidden by the 113th Canon of our Church, made by the Convocation in the Year 1603, which was called by the King's Writ, and confirmed under the Great Seal, according to the Form of the Statute 25 *H.* VIII. *c.* 19. as my Lord *Vaughan* tells us in his Reports, *fol.* 329. And the King or Convocation, but certainly both of them with their joint Power, may make Orders and Ordinances, which shall bind all the King's Subjects, but more especially the Clergy, as may plainly be inferred from the Statute 25 *H.* VIII. *c.* 19. And so are our Books, 21 *E.* IV. 45. *Bro. Abr. Ordinary, pl.* 1, *Moor* 755, 783. 2 *Cro.* 37. *Noy* 100. and 2 *Ventr.* 44. And so hath been the Practice, in the first Volume of the *History of the Reformation*, fol. 225. and the second Volume, fol. 60, 69, and 70. In a Case of this Nature, I must beg Leave of your Lordship to make use of the Writings of Divines and other Authors, and not strictly confine myself to our Books of Common Law: For our Law Books are silent in this Case; and indeed I do not find any other Authors speaking directly to the Point. Therefore, I must be forced to look into the Nature of Absolution, the Power of the Clergy, the Practice of Divines, and other collateral Matters, for some Light herein; which makes me dread growing tedious, and becoming very tiresome to your Lordship's Patience.

And, my Lord, as to this particular Case, these Canons are in some Manner confirmed by Act of Parliament: For the Statute 13 *Car.* II. *c.* 12. sect. the last, which seems to set aside the Canons of 1640, doth establish the Church as it was in the Year 1639; and then these Canons were in Force and practised. For the King who then reigned, at his Coronation, (the first that was after the making of these Canons) did not only swear to maintain to the Church the Laws of St. *Edward*, but likewise to preserve to the Bishops, and Churches committed to their Charge, all Canonical Privileges, 1 *Rushworth's Collection*, fol. 201. And the Power of Secrecy seems to me a Privilege; and these Canons are now received and observed as Laws amongst the Clergy. And, my Lord, neither the Indictment nor Evidence did deny that there was a private Repentance. Now, that a private Confession and Repentance had been sufficient, appears from the Rule of the Canonists, *Non tenetur pœnitens tertio audiente confiteri, quia confessio cum sacerdote fiat in persona Dei omnia exploratissime cognoscentis, excludit omnem testem*, Val. Reg. lib. 6. n. 78. fol. 182. *De Sacramentali Confessione.* Nay, the Confession to God Almighty only is held sufficient: *Exaudi, Domine, preces nostras, et confitentiam tibi. Parce peccatis, ut quos conscientiæ reatus accusat, indulgentia tuæ miserationis absolvat*, &c. as is set down in the *Ordo Romanus de Officiis Divinis*, in the tenth Tome of the *Bibliotheca Patrum*, fol. 30. and is *verbatim* rendered into *English* in our Liturgy, in the *Commination*, and in the Form of Prayer appointed to be used on the 30th of *January*, and in that appointed for our last general Fast. And I shall presume to offer to your Lordship's Consideration some Reasons, why such a private Confession to God Almighty, or to his Minister here on Earth, is sufficient for Absolution. One is drawn from the Nature of the Thing itself. No Man is obliged by Law to do any Act to any other Person, from whom he can receive no Benefit by so doing. And the People cannot absolve, it is only the Priest can do it; and therefore to him alone must be made the Confession and Repentance. And so is *Linwood*, the last Impression, *fol.* 337. on the Words, *Debito caret fructu*, says he, *Fructus igitur sive utilitas pœnitentiæ est absolutio à peccatis, quam quis non consequitur ab eo qui non est suus judex, nec habet potestatem eum ligandi vel solvendi.* And the same Author, speaking concerning Confession, fol. 327. *Verbo confessionis*, hath these Words, *Confessio tripliciter fit, aut in foro animæ interius coram Deo, aut in foro pœnitentiæ exterius coram Dei vicario, aut in foro contentioso coram judice.* And then he adds, *Confessio est legitima coram sacerdote peccatorum declaratio.* And there is not, as I can find, the least Hint of making any Confession or Repentance to the People, but only to the Priest, and that may be in private. But in this Case there was likewise a public Repentance declared, which the Priests might well take for a Repentance of that Offence as well as for any other. That Repentance indeed was general: For Traitors being by no Decree foreclosed Absolution, and no particular Form being prescribed, these Gentlemen followed the Rubrick in the Form there set down for the *Visitation of the Sick*, which may very well be taken to have been designed for all that are in Danger of Death; and so our greatest Divines have taken it. The learned Dr. *Duport*, in his *Greek* Version of our Liturgy, renders this Office by a Word that signifies as well to be in Peril or imminent Danger, or the like, as to be visited with Sickness; which likewise answers the Canonists Description or Denomination of this Sort of Absolution; to distinguish it from the common and sacramental Absolution, they call it *Absolutio in articulo mortis*, without distinguishing between a natural and violent Death, or between the Innocent and Malefactors. And if our Law had designed to have excluded Malefactors from the Benefit of this Office, it would have used the same Caution as it doth against others in the Office for Burial of the Dead, where it says, it shall not be used to those that die unbaptized, excommunicated, or are *Felo de se.* And I do not find Malefactors that suffer by the Hand of Justice excluded that Office, and I think it is often performed for them; why then must this of Visitation of the Sick be denied them? There is no other Office or Form appointed for these Sort of Persons. And then, where there is no Law there is no Transgression; they are left to their own Method and Form, and therefore may use that set down in the Common-Prayer as well as any other. And here the Priests asked Sir *John Friend* and Sir *William Perkins*, if they repented truly of all their Sins, and were in Charity with all the World? The Penitents answering in the Affirmative, the Absolvers advising Forgiveness, did, at the Request of the Penitents, in the Form set down in the Liturgy, pronounce the Absolution, neither of the Criminals signifying that he felt his Conscience troubled with any weighty Matter. And, with Submission to your Lordship, such Signification ought to be previous to the Motion for a Special Confession, for the Words are, *If he feel his Conscience troubled*; which I think is fully explained by the second Homily of Repentance, which condemns Auricular Confession, and then adds, "I do not say but that, if any do find themselves "troubled in Conscience, they may repair to their learned Curate or "Pastor, or to some other godly, learned Man, and shew their Trouble "and Doubt of their Consciences to them, that they may receive at "their Hands the comfortable Salve of God's Word." But it no where enjoins such Confession and Repentance, much less doth it command the Priest to exact them from the Penitent. There is no Order for the Priest to examine whether he doth find his Conscience troubled, if the Penitent doth not intimate it to the Priest. There is no Direction for the Priest to ask him any Question about it. And *Val. Reg. l.* 2. *c.* 2. *n.* 13. out of *Sotus*, gives us this Definition or Description of the Office and Duty of a Confessor in these Words, *Officium quidem Confessarii de se non est interrogare pœnitentem, sed audire confitentem*: And going on, he gives this Reason, *Cum in foro pœnitentiali non procedatur sicut in criminali per vim coactivam ad extorquendam à reo confessionem, sed per spontaneam voluntatem confitentis.* I acknowledge, that in the Church of *Rome*, to make Absolution a compleat Sacrament, a special Confession is required; as is directed by our Church, when the Penitent signifies that he feels a Burthen on his Conscience: But neither in these, nor in any other Cases, wherein special Confession is required, is it any where ordered to be public. It is sufficient that it is made to the Priest alone; and the common Practice in these and all other Cases is to have it private: All other Persons are excluded the sick Man's Chamber. But supposing, my Lord, that the Meaning of the Rubrick should be taken to be, that the Priest should move him to make such a special Confession, this is only directory; it is not compulsatory, any more than the preceding Paragraphs, where the Priest is to admonish the sick Person to make his Will, and declare his Debts, and, if he be of Ability, to give charitably to the Poor. And it would be difficult to maintain an Indictment on any of these Paragraphs against a Priest, for absolving a sick Man without admonishing him to make his Will, declare his Debts, or be liberal to the Poor, who perhaps starved for Want of such Relief. Certainly in those Cases the Rubrick would be looked on to be only directory: And why not so in this? The like Exposition hath been made on other Acts of Parliament. The Statute 21 *Jac.* I. *c.* 4. against vexatious Informers, enacts, That no Information shall be received, filed, or entered of Record, before the Informer hath made Oath that the Offence was committed within the County where it was laid, and, as he believes, within a Year before exhibiting the Information; and this Oath to be entered of Record. Yet I believe, it cannot be shewn that any such Oath hath at any Time been made, nor Informer nor Officer indicted for preferring, filing, entering, or receiving any Information without such Oath; for that Statute hath (as to that Part) been always held to be directory, that the Judge or Officer might require it, if they thought fit; but they are not thereby obliged in any Case to exact it from the Informer, any otherwise than as their own Discretions guide them, 1 *Cro.* 316. But taking the Clause in the Case now before your Lordship to be compulsatory, yet it is not to be universally observed to all Penitents; it is only in some Cases, where the Persons are not qualified without such special Confession, and the Priest is to consider and determine of the Qualifications: For Absolution is purely spiritual, and so left to the Priest, that he is the only Judge thereof. And if it might not be thought improper, I should crave Leave briefly to mention the Opinions of some of the Fathers of the Church on this Occasion.

St. *Chrysostom* says, The Father judges no Man, but hath committed all Judgment to the Son; and the Son, till his second Coming, hath left all Judgment to his Ministers. And St. *Jerom*, speaking of the Priests, hath these Words, *Qui claves regni cœlorum habentes quodammodo ante diem judicii judicant.* And St. *Gregory* the Great says of them, *Principatum superni judicii sortiuntur, ut vice Dei quibusdam peccata retineant, et quibusdam relaxent*; and therefore *Tertullian* calls Excommunication *Præjudicium futuri seculi.* And the learned Prelate *Usher*, in his Answer to *Malone* the Jesuit, saith, "We acknowledge most willingly, that the principal Part of the Priest's "Ministry

" Miniſtry is exerciſed in Matter of Forgiveneſs of Sins." And it farther appears by what I before cited out of *Linwood*, and likewiſe by another Expreſſion in the ſame Book, *fol.* 335. on the Words *Competentis literaturæ*, where he ſays, *Epiſcopus eſt judex tam animarum quam corporum; Preſbyter vero non eſt judex niſi animarum.* And *fol.* 337. the Word *Sacerdotum* is thus explained, *Qui deputati ſunt ad audiendas confeſſiones:* And in the next Paragraph he hath theſe Words, *Verbum Dei dimittit peccata, ſacerdos autem eſt judex.* And, my Lord, what I would infer from theſe Divines and *Linwood*, is, that the Prieſt being the Judge of the State of the Soul of the Penitent, he muſt at his Peril, as he will anſwer it to God Almighty, take care of the Confeſſion and Abſolution; and if he errs, he may perhaps be puniſhed for it in another World, but not in this. We uſually eſteem it a hard Caſe to puniſh a Man for erring in his Judgment, for not being ſo wiſe as he ought to be, or ſo underſtanding as another. No Judge is in any Caſe, at Common Law, to be puniſhed for an erroneous Judgment, either by Action or Indictment, 9 *E.* IV. 3. *a. Pl.* 10. 1 *Len.* 324. *Hut.* 120. And our Divines tell us, that God Almighty will judge us by our Wills, not by our Underſtandings. And therefore, if theſe Gentlemen were miſtaken in what they did, it being only an Error of their Judgments, though it may be deemed an imprudent Action, yet I hope it will not be adjudged criminal. And, my Lord, there may be this farther Reaſon given, why it ſhould be left to the Prieſt to judge of the Repentance, and give the Abſolution when he ſees Occaſion. Suppoſe, my Lord, an innocent Man ſhould be condemned for Treaſon or Felony, as it happened in the Caſe of the Uncle condemned and executed for the Murder of his Niece, mentioned in my Lord *Coke*'s third *Inſtitutes*, 232. And the like Caſe happened in *Glouceſterſhire* between thirty and forty Years ſince, when *Joan Perry* and her two Sons (*See p.* 29, 30.) were executed for the Murder of one *Harriſon*; and after they were executed, the Perſon ſuppoſed to be murdered came into the Country, and *vivâ voce* proved the Innocency of thoſe Perſons that were condemned and executed for that fancied Murder. Now ſuppoſing, in ſuch a Caſe, the Perſon to be executed obſtinately and reſolutely denies the Fact, ſhall the Prieſt refuſe him Abſolution? And becauſe the innocent Perſon will not accuſe himſelf of what he was not ſo much as in Thought guilty, muſt he therefore die the ſecond Death for his other Sins, for which he does repent? For they are ſtill retained by the Prieſt, who refuſes to give him Abſolution. Becauſe ſuch Perſons cannot condemn themſelves for what their Conſciences do not accuſe them, can there be no Forgiveneſs, no Abſolution for them? Will not Charity allow they may be ſaved, and conſequently entitled to Abſolution? Nay, will not Charity extend to thoſe that ſuffer in an ill Cauſe, through a Fault in their Underſtanding? And I hope that the Errors of our Judgments, as well as the Weakneſs of our Memories, may be pardoned amongſt our ſecret Sins; and therefore ſuch Perſons may not always be denied the Benefit of Abſolution. It is no where denied to Traitors; nay, the Canoniſts ſay, *In articulo mortis, omnes ſacerdotes quoſlibet pœnitentes à quibuſvis peccatis et cenſuris abſolvere poſſunt*, Val. Reg. l. 1. n. 58. fol. 9. And he there cites a Council for it, where it was ſo determined. Nor is there any particular Form or Method preſcribed for their Repentance or Abſolution; therefore, methinks, a general Repentance may deſerve a general Abſolution; and perhaps, in ſome of theſe Caſes, the Prieſt had been to blame, if he had denied Abſolution.

And now, with your Lordſhip's Patience, I will look into the Practice of Divines in ſuch-like Caſes; though it cannot be expected that I ſhould bring many Precedents to warrant this, becauſe it is ſeldom that Abſolution is given at the Place of Execution; the Ordinary, or ſome other Divine performing that Office, uſually doing that in private, when they have free Acceſs to the Priſoner: And if it were not ſo done here, it was becauſe, after theſe Divines were appointed to be with the Criminals, and to prepare them for another World, and had been with them, and, as we ſay, received their Confeſſion and Repentance for the Crimes for which they were condemned, and perhaps had thereupon given them Abſolution; yet after this, for two or three Days immediately preceding the Execution, they were kept from them, and not permitted to come to them till they were in the Cart at the Place of Execution: And it may be intended, that the Abſolution that was then given them, was for the Sins which they had committed ſince they ſaw them laſt. Therefore, unleſs the King's Counſel can ſhew me a Caſe with ſuch Circumſtances, they cannot expect from me a direct Precedent to juſtify our Proceedings. But I ſhall crave Leave to mention a few that I think will bear ſome Proportion to the Caſe now before your Lordſhip. I ſhall begin with that of *John Twyn*, who was tried, convicted, and attainted at the *Old-Bailey*, the 20th of *February*, 1663, the Narrative of which was then printed by Authority. He was convicted for printing and publiſhing a treaſonable Libel; and my Lord Chief Juſtice *Hyde*, before whom the Trial was, ſaith, (*State Trials, Vol.* II. *p.* 538.) " I ſhall not " ſpend my Time in Diſcourſe to you to prepare you for Death: I ſee a " grave Perſon, whoſe Office it is, and I leave it to him... Do not think " of any Time here: Make your Peace with God, which muſt be " done by Confeſſion, and by the Diſcovery of thoſe that are guilty " of the ſame Crime with you. God have Mercy upon you; and if you " do ſo, he will have Mercy upon you." Afterwards, and before he came to be executed, the Ordinary preſſed him to Confeſſion of thoſe others concerned with him, which he refuſed; and yet the Ordinary offered to adminiſter the Sacrament to him. From whence I would infer, that it is the Office of the Ordinary to prepare condemned Criminals for another World, and conſequently he muſt be the Judge when they are prepared. And next, though the Chief Juſtice was of Opinion, that God Almighty would not pardon him but on the Confeſſion of his own Fault, and the Diſcovery of his Accomplices, yet the Ordinary tendered him the Sacrament, which comprehends the Abſolution, when he obſtinately refuſed to make any ſuch Diſcovery; (*See* Twyn's *Speech and Behaviour in* State Trials, *Vol.* VIII. *p.* 386, 387.) and yet no Indictment againſt him for it. My Lord *Strafford*, when he was going to be beheaded, being denied to ſpeak with Archbiſhop *Laud*; as he paſſed by his Grace's Lodgings, ſeeing the Archbiſhop at his Window, the Earl of *Strafford* bowing himſelf to the Ground, ſaid, *My Lord, your Prayers and your Bleſſing.* The Archbiſhop lifted up his Hand, and beſtowed both. There was not Time or Opportunity for his Grace to pronounce the Abſolution at large, nor to lay his Hands on the Head of the Penitent, as theſe Defendants did, but he came as near it as he could; he lifted up his Hands, and beſtowed both his Prayers and Benediction, and that without any particular Confeſſion or Repentance. And though his Grace was afterwards proceeded againſt, and, as they then called it, tried for High Treaſon, and all the Dirt thrown on him that *Prynne* and ſeveral others could rake up againſt him, and his whole Life ſearched into, and every particular Action narrowly traced, and even his Reputation, when he was a Scholar at the Univerſity, produced as Evidence againſt him; yet this Bleſſing, this Abſolution was never ſo much as mentioned, though they had often Opportunity ſo to do, when it was urged (as frequently it was) that his Grace and the Earl of *Strafford* were very intimate Friends and Acquaintance, and went hand in hand to deſtroy the Government both in Church and State: And yet this Action was publickly taken Notice of, as we find by the Hiſtorians of thoſe Times, *Ruſhworth* in the Earl of *Strafford*'s Trial, *fol.* 782. *Franklyn's Annals*, 901.

Now, my Lord, Bleſſing and Abſolution in ſuch Circumſtances amount to the ſame. No Man bleſſes the Impenitent. The Form that the Archbiſhop then uſed is not ſet down, nor is it, with Submiſſion to your Lordſhip, any ways material. There are ſeveral Forms of Abſolution, which in Senſe and Virtue are the ſame, as Archbiſhop *Sparrow* has it in his *Rationale on the Common-Prayer*; where he ſhews us, that there are three ſeveral Forms of Abſolution in the Liturgy; as firſt, in the Morning and Evening Prayer, *He pardoneth and abſolveth*, &c. The ſecond is uſed in the Viſitation of the Sick, *By his Authority committed to me, I abſolve thee*, &c. The third is at the Sacrament, *Almighty God*, &c. *have Mercy upon you*, &c. *pardon and forgive you*, &c. The like Form is appointed to be uſed in Caſe of imminent Danger at Sea, and ſtiled an Abſolution. And, ſaith that Reverend and learned Prelate, " All theſe ſe- " veral Forms in Senſe and Virtue are the ſame; for it is all one as to the " Remiſſion of Sins in the Penitent, whether the Prieſt abſolve him after " this Form, *Almighty God, who hath given me and all Prieſts Power to* " *pronounce Pardon to the Penitent; he pardons you*—Or thus, *By Virtue of a* " *Commiſſion granted to me from God, I abſolve you*—Or laſtly, *God pardon* " *you.*"

I muſt now, my Lord, in my Way, crave leave to obſerve, that Criminals, be their Offences never ſo heinous, though they do not confeſs them, or ſhew any Repentance for them, yet they are not kept from the public Service of the Church; nor are they denied or refuſed to be admitted to the bleſſed Sacrament, where they have the Benefit of this third Abſolution, and that in public. What Reaſon then can there be to deny them this Abſolution, for the giving which theſe Gentlemen ſtand now indicted, which hath not, I believe, been at any Time denied to any Malefactors, either in this or any other Part of the whole Chriſtian World? The Emperor of *Germany*, in his Manifeſto againſt thoſe Perſons that killed his Officers and Miniſters at *Prague*, as a great Aggravation of their Offence ſays, they did it without giving them a Moment of Time to repent, or make Confeſſion, or receive the Sacrament, which is never denied to the worſt Offenders, 1 *Ruſhworth* 7.—Without giving them a Moment of Time to repent, or make Confeſſion, or receive the Sacrament---It is in the Diſjunctive, my Lord; and thereby *Confeſſion* and *Repentance* cannot be meant of that particular Fact for which they were then put to Death, for that was the Service of the Emperor their Maſter, and the Manifeſto ſtiles the Authors of their Deaths, *barbarous, cruel, and inhuman Murderers.* But I ſhall proceed to give your Lordſhip another Inſtance, where there hath been a public Abſolution to a Criminal condemned, and that even at the Place of Execution, without any ſpecial Repentance for the Crime for which he was about to ſuffer. And that was in the Caſe of Sir *Thomas Armſtrong*, who, by Judgment of this Court upon an Outlawry for High Treaſon, for conſpiring againſt the King's Life and Government, was executed at *Tyburn* in *June* 1684. In the Court he inſiſted on his Innocency, and ſo he did in a Speech which he likewiſe left with the Sheriff at the Place of Execution; yet, notwithſtanding that, the Reverend Divine that then aſſiſted to prepare him for another World, did in Effect the ſame with theſe Gentlemen that are now Defendants (which I humbly ſubmit to your Lordſhip's Conſideration): For, after a long recommendatory Prayer, he uſeth this Benediction; *The Grace of our Lord Jeſus Chriſt, and the Love of God the Father, and the Fellowſhip of the Holy Ghoſt, be with us, and in a particular Manner with this thy Servant, now in the Minute of Death, and Day of Judgment.* And then ſpeaking to Sir *Thomas Armſtrong*, ſays, *Now, Sir, commend yourſelf to God by your Devotions, make yourſelf ready, and then let that be the laſt Thing you do.* Sir *Thomas Armſtrong* ſays, *Sir, I hope in God my Sins are pardoned, and I do pray for it heartily. I forgive the World all their Offences they have committed againſt me.* Then the Doctor ſays, *I pray God ſhew Mercy to you, as you expreſs Charity to them*; and then immediately followed the Execution. I have dwelt the longer, my Lord, on this Particular, becauſe it muſt needs be of very great Authority, the Reverend Divine that then aſſiſted being (Dr. *Tenniſon*) now Archbiſhop of *Canterbury*. (See *State Trials, Vol.* III. *p.* 985.) And the Circumſtances of that Caſe are much the ſame with ours: In the Indictment the ſame Offence was laid as againſt Sir *John Friend* and Sir *William Perkins*, he ſuffered at the ſame Place, and that Reverend Divine was likewiſe with him in the Cart. There was alſo a Paper delivered by the Criminal to the Sheriff, declaring his Innocency; yet Abſolution was publickly given at the Time and Place of Execution. Not indeed in the ſame Words as theſe Defendants uſed, but in thoſe that are as effectual. I think it is apparent, that no particular Form of Words is requiſite to an Abſolution. Whether we think the Power of the Church authoritative, or only declarative, whatſoever is an Execution of that Power that is given by our Saviour in St. *John*, and denotes the Prieſt's abſolving, or the Prieſt's declaring that God doth abſolve them, or the Prieſt's recommending them to God for Mercy or a Pardon for their Sins, That, with Submiſſion to your Lordſhip, is as much an Abſolution, as

when the Prieſt doth in his own Perſon abſolve them. So it is in our Morning and Evening Service, and in the Communion, and the Service at Sea, as I have before mentioned; and yet the Rubrick ſtiles them Abſolutions. The whole Chriſtian Church, for the firſt ten Ages, uſed that Form of Recommending, and no other; and the *Greek* Church doth ſtill retain the ſame. St. Cyprian *De Lapſis*, fol. 136. the *Oxford* Edition, on the Words, *Pro vobis Deum rogare peſſimus*, the Learned *Oxford* Annotators ſay thus—And I may well ſtile them the Learned Annotators, ſince that great Maſter and Judge of all Learning, the preſent Biſhop of *Worceſter* (Dr. *Stillingfleet*), in his *Vindication of the Trinity*, fol. 155. 164. ſtiles them ſo. Their Annotations are in theſe Words, *Quantumvis nunc temporis formula judiciaria et poteſtativa* (Ego te abſolvo) *quaſi tradita à Chriſto per Apoſtolos feratur, ex adverſo compertiſſimum habetur per decem priora ſecula in uſu minime receptam, imo nec adhuc in Eccleſia Orientali invaluiſſe.* And that Abſolutions, Ordinations, and Conſecrations were in a deprecatory Form, plainly appears from *Morinus*, l. 8. *De adminiſtratione pœnitentiæ*, c. 12. ſect. 7. fol. 397. *Ipſe Domine remitte, dimitte, condona peccata hujus* N. *&c.* And this, he ſays, was the common and vulgar Abſolution in the *Greek* Church. So *Theodorus*, who wrote his *Penitentials* towards the latter End of the ſixth Century, (it was publiſhed *per Jacobum Pettit*, in Quarto, *Anno* 1677, at *Paris*) in the firſt Book, and the firſt Chapter, page 26, is this Abſolution, *Deus omnipotens ſit adjutor et protector tuus, et præſtet indulgentiam de peccatis tuis*; and many others of the like Nature are *ſparſim* through both the Volumes. In the *Roman* Pontifical there is this Abſolution, *Miſereatur veſtrum, omnipotens Deus, et dimiſſis peccatis veſtris perducat vos ad vitam æternam.* And likewiſe in the *Ordo Romanus* I before cited, *fol.* 61. is this, which is ſtiled *Abſolutio ſingularis: Frater* N. *abſolutionem et remiſſionem peccatorum tuorum, per invocationem ſacrati nominis Dei, et per miniſterium noſtrum, percipere merearis hic et in æternum.* And in the ſame Page are ſeveral other Abſolutions plural and ſingular, penned after the ſame Manner, in ſuch a deprecatory Form, and all ſtiled Abſolutions. And in none of theſe Abſolutions do I ſee any Enumeration of particular Offences, nor have I found in any of theſe Penitentials, that Malefactors are excluded from this Abſolution. Mr. *Newland*, who was about two or three Years ſince condemned and executed for the Murder of Mr. *Thomas*, did poſitively deny that he was guilty of that Fact, or of aiding, aſſiſting, or abetting thereunto. Yet Mr. *Stevens* not only gave him the Sacrament, and that three Times, with other Company; but likewiſe gave him Abſolution, as Mr. *Stevens* himſelf hath ſince in Print publiſhed to the World. And what is lawful and juſtifiable at *Newgate* before three or four Perſons, cannot become a Crime at *Tyburn*, though it be done in the Preſence of five hundred People; for the Place or Number of People cannot alter the Nature of the Fact, and make an innocent Action an horrid Crime. I am credibly informed, that in the Caſe of *Anderton* the Printer, who was executed for High Treaſon about four or five Years ſince, there was the ſame Form of Prayer uſed for him by the Divine that then aſſiſted, (*State Trials*, *Vol.* VIII. *p.* 71.) and that at this very Place of Execution. In the Caſe of Mr. *Aſhton*, who was likewiſe executed for High Treaſon, though he expreſſed no Sorrow for his Crime, and left a Paper behind him juſtifying the Fact for which he died, (*Vol.* VIII. *p.* 482.) yet the ſame Form of Prayer, the very ſame Abſolution, and at the ſame Place of Execution, with all the Circumſtances of the preſent Caſe, were uſed and performed for him; and inſtead of any Reprimand for ſo doing, the Sheriff of *Middleſex* ſaid thus to the Abſolvers, as I had it from one that was then preſent, and ſet it down in Writing; *Gentlemen, I thank you for performing the laſt Offices ſo decently.* And, my Lord, my Clients do inſiſt on it, that on theſe Precedents and this Encouragement, they were induced to act as they did at the Execution of Sir *John Friend* and Sir *William Perkins*. I have, my Lord, looked into the Treatiſes of ſome Divines upon this Occaſion; and though I find a mighty Stir about Auricular Confeſſion, whether the Church doth require that or no, yet I cannot perceive that it is by any inſiſted on, that there muſt be in any Caſe a public Confeſſion or Repentance, no, not even in thoſe Caſes where public Penance is enjoined, unleſs in ſome few, where the Eccleſiaſtical Court hath made it Part of the Penance. Mr. *Prynne*, in his *Canterbury's Doom*, fol. 192, 3. tells us, that one Mr. *Adams* preached at St. *Mary's* Church in *Cambridge*, *Anno Domini* 1637, and maintained ſpecial Confeſſion to the Prieſt to be neceſſary; for which being ſummoned before the Vice-Chancellor, he and ſeveral other Doctors ordered Mr. *Adams* to make a Recantation of that Doctrine, and declare it was only requiſite in thoſe Caſes where People could not quiet their own Conſciences; and likewiſe to declare, that it is againſt true Chriſtian Liberty, that a Man ſhould be bound to the enumerating of his Sins, as hath been uſed heretofore in the Times of Ignorance and Popery. There were indeed ſome Doctors that did oppoſe this Recantation, and juſtified Mr. *Adams*, inſiſting it was needful to make ſuch Confeſſion to the Prieſt; but none pretended it was in any Caſe requiſite to be made to the People. But, as I ſaid before, the Vice-Chancellor, and the major Part of the Doctors, ordered the aforeſaid Recantation, and well they might; for it is *verbatim* taken out of the ſecond *Homily* of *Repentance*, which Book of Homilies was compoſed by many eminent Prelates of our Church, and the Reading of it enjoined by the Rubrick, which is Part of the Act of Uniformity. And that Homily doth further ſay, that it is moſt evident and plain that Auricular Confeſſion hath not its Warrant from God's Word; and it cites St. *Auſtin*, who ſays, *What have I to do with Men, as though they were able to heal my Diſeaſes?* And if a Penitent be not compelled by the Laws of God or Holy Church to make a particular Confeſſion of his Sins to the Prieſt, who gives that Abſolution, much leſs is he any ways obliged to ſatisfy the Curioſity of the People, by enumerating of his Offences, or publickly declaring a Repentance for his Sins. Nor do they any where diſtinguiſh the Caſe of condemned Criminals from others: But the Rules concerning it are general, *Et generaliter dictum generaliter intelligendum eſt.* Whatever I find ſpoken concerning Abſolution is expreſſed indefinitely, which falls under another Maxim, *Indefinitum æquipollet univerſali.* And, my Lord, one Reaſon why I take it to be lawful to pronounce Abſolution to condemned Malefactors, is, that be their Crimes never ſo great, the Sword of Juſtice doth not ſtrike deeper than the Grave, and there is ſtill Room for a *Deus miſereatur animæ ejus*, a Lord have Mercy on his Soul.

Thus I have, with all Humility, ſubmitted to your Lordſhip's Conſideration what I have to ſay, why the Fact, of which theſe Gentlemen ſtand accuſed, ſhould in itſelf be no Offence. Neither can it be made a Crime, with Submiſſion to your Lordſhip, by any ill Intention that can be ſuggeſted to be adherent to it: For the Actions of Men ſhew their Hearts; and if their Works are not evil, you cannot from them *in foro humano* prove their Minds corrupt. Omitting the Reaſon given by my Lord Chief Juſtice *North*, on the Reverſal of the Judgment in the Caſe of *Barnardiſton* and *Soame*, (*State Trials*, *Vol.* VII. *p.* 441, 442, *&c.*) I ſhall trouble your Lordſhip but with two Caſes, and the Reaſons of them, to prove the Truth of this Aſſertion. The one is *Elliot's* Caſe, in the laſt Impreſſion of *Croke's Charles*, fol. 608. where my Lord Chief Juſtice *Vaughan* ſays, it is clear and undoubted Law, that whatſoever is in itſelf lawful cannot have an unlawful Intent annexed to it; for then the moſt innocent Act of a Man's Life would be liable to ſevere Cenſures. And he inſtances in this, that a Man might then be indicted for High Treaſon, for drinking Water with a Deſign to leſſen and deſtroy the Cuſtoms and Revenue, thereby intending to dethrone the King. The other Caſe that I would mention is in *Dyer*, f. 296. pl. 19. in theſe Words: "A "Subject of this Realm, being a Merchant of *London*, departed out of "this Realm without Licence of the Queen, only to the Intent that he "might live there free from the Laws of this Realm, and out of his due "Obedience to the Queen, and not upon any Account of Merchandizing; Whether ſuch a Departure were any Offence or Contempt to the "Queen, or not? And by the Opinion of almoſt all the Juſtices, ſuch "a Departure, before an expreſs Prohibition or Reſtraint by Proclamation, or Writ of *Ne exeat regnum* awarded by the King or Prince, is "not any Offence or Contempt; for it is a Thing indifferent to depart "the Realm, and the Purpoſe and Cauſe, which is ſecret in the Heart, "is not examinable." That is the Reaſon given in the Book: And *Jenkins*, a Man much for Prerogative, in his ſecond Century, *cap.* 70. *fol.* 88. agrees this Caſe to be Law; and ſays, that the Common Law doth not allow an Intent to be iſſuable or triable, and gives this Reaſon for it, *Cor hominis eſt inſcrutabile.* Now, my Lord, thoſe that will not allow Abſolution to be a very good Act, muſt grant that it is at leaſt indifferent. And then the Cauſe, Purpoſe, End or Intent of it being ſecret in the Heart, is not examinable, and therefore cannot be juſtly ſaid to be done for raiſing a Rebellion, or cauſing a Diſturbance in the Kingdom. And I do not know that in any Caſe a Man is puniſhable for an ill Intent, except in one Species of Treaſon, the Compaſſing the King's Death; and in that Caſe the Intention muſt be proved by ſome Overt-Act directly tending to the Fact deſigned.

2. But I come now to the ſecond Point, That if this ſhall be deemed an Offence, yet it is not enquirable nor puniſhable in this Court. I muſt humbly ſubmit it to your Lordſhip's Judgment, whether the Power of Abſolution, which is given to the Apoſtles and their Succeſſors by the Author and Eſtabliſher of all lawful Power, both Eccleſiaſtical and Civil, in theſe Words, in the twentieth Chapter of St. *John*, *v.* 23. *Whoſe-ſoever Sins ye remit, they are remitted; and whoſe-ſoever Sins ye retain, they are retained*, be not an Authority far above all ſublunary Juriſdictions; and theſe Gentlemen, the Succeſſors of the Apoſtles, not to be called to an Account for what they did in the Execution of that Authority, but by Him alone who delegated that Power to them. But ſuppoſing it ſhould be examinable here on Earth, with Submiſſion to your Lordſhip, it is only in that Court, by thoſe Perſons, or that Sort of Men, who conveyed to theſe Gentlemen that Power given by our Saviour. And this I ſhall endeavour to prove, Firſt, From the Nature of the Thing itſelf. Their Commiſſion for it is their Ordination, which Laymen cannot give. Nor is it to be tried by the Common Law; for Profeſſion in Religion, or *infra ſacros ordines*, is only triable by the Ordinary, *Co. Lit.* 132. *b.* 2 *Inſt.* 492.

That very learned Prelate, the preſent Biſhop of *Worceſter*, in his Charge to his Clergy, *fol.* 43. tells us out of *Cajetan*, *Officium curæ animarum eſt præcipuum ac ſpiritualiſſimum Dei donum.* And the Biſhop is ſubſtituted by our Saviour to give the Ordination, which he doth in theſe Words, *Receive the Holy Ghoſt now committed unto thee by the Impoſition of our Hands. Whoſe Sins thou doſt forgive, they are forgiven; and whoſe Sins thou doſt retain, they are retained.* Now, methinks, a Man muſt naturally infer from hence, that ſince this Authority is derived from our Saviour by the Biſhops; if any Perſons on Earth can viſit and reform the Errors or Abuſes in the Execution of this Power, it muſt be thoſe who are intruſted to give the Ordination: And of Things of this Nature their Courts have uſually had the Conuſance Nay, the Privileges of the Clergy in old Times went much further; for our pious and devout Anceſtors, following the Directions of the Son of *Sirach*, *Eccleſiaſticus* vii. 29, 31. *Fear the Lord, and reverence his Prieſts*, thought they could not pay ſufficient Reſpect and Honour to the Clergy, unleſs they exempted them from all Temporal Juriſdiction. So that even in Temporal Offences, and thoſe of almoſt the higheſt Nature, Murder, and Felony of courſe, and even in Sacrilege, if the Ordinary would demand the Priſoner for his Clerk, he was immediately taken from the Temporal Court, and ſubjected to the Ordinary's Juriſdiction, *Stanford's Pleas of the Crown*, 123. and 3d *Inſtitut.* 114. And *Horn*, in his *Mirror of Juſtice*, c. 3. ſect. 4. aſſerts, that if, in a Temporal Court, a Clerk accuſed of any Caſe criminal or mortal, pleads that he is a Clerk, the Judge hath no farther Conuſance of the Cauſe; for the Church is ſo enfranchiſed, that no Lay Judge can have Juriſdiction over a Clerk. And the Abridgment of the Book of *Aſſizes*, Tit. *Coronæ*, fol. 74. ſays, that if a Clerk will not pray the Benefit of his Clergy, yet if the Judge knows him to be ſo, he will not give Judgment of Death againſt him, as againſt a Layman. And theſe Privileges would have remained to this Day, if Acts of Parliament had not altered them. And if the Clergy were exempted from the Temporal Juriſdiction for Offences of ſo high a Nature, if the Argument

à majori ad minus holds good, they must certainly have been exempted from being punished in Temporal Courts for all their lesser Crimes; and must still be so, where no Statute Law interposes, and that will lie on the other Side to shew.

And so far of late Years have the Clergy been thought and esteemed to be exempt from the Secular Power, that on the Treaty of the *Spanish* Match, it was agreed, that the *Infanta*, who was then designed to be our Queen, should have her Popish Clergy, and a Superior over them. And the 14th Article runs thus, "That if any Secular Judge shall apprehend "any Ecclesiastical Person for any Offence, he shall forthwith cause him "to be delivered to the aforesaid superior Ecclesiastick, who shall proceed "against him according to the Canon Law." These Articles were then sworn to by the King, Prince, and Privy-Council; and therefore we must believe it to be done on very good Advice. This is taken Notice of by Mr. *Rushworth*, in his first Volume, *fol.* 87. And although how far and in what Cases Spiritual Persons were formerly out of the Reach of the Secular Power, may admit of some Debate; yet nothing is more plain than that Spiritual Causes cannot be determined by the Civil Power. *Judex secularis de rebus spiritualibus cognoscere non debet*, says *Fleta*, l. 6. c. 37. f. 429. There is (as the incomparably learned Bishop of *Worcester* has it, in his Charge to his Clergy, fol. 35.) a Common Law Ecclesiastical, which, although in many Things it may be the same with the Canon Law that is read in Books, yet hath it not its Force from any Papal or Legatine Constitutions, but from the Acceptance and Practice of it in our Churches. And such a Law, my Lord, is coeval with the very Government itself. The learned *Selden*, in his Notes on the 17th Chapter of *Fortescue*, says, That in Time of Paganism the *Druids* were the Lawyers, and determined Controversies; the same Persons were their Priests and Judges. And Sir *Henry Spelman*, in his Discourse of Law-Terms, tells us, that in the Infancy of Christianity the Bishops and Clergymen did hear and determine all Causes amongst the Christians. And how those Matters were settled, when Christianity came to be established amongst us, Sir *Thomas Smith* will acquaint your Lordship, in his Treatise *De Republica et Administratione Anglorum*; a Book I have often heard cited in this Court, not only at the Bar, but by very learned Judges on the Bench. In his third Book, the 11th Chapter, are these Words: *In quatuor potissimum caujarum generibus Archiepiscopi Episcopique peculiarem jurisdictionem sortiuntur, in testamentis et legatis, in decimis et mortuariis, in nuptiis, adulterio aut fornicatione, et in iis demum omnibus quæ ad ordinem & decus Ecclesiasticum conservandum et religionem constabiliendam pertinent; nam majores nostri rempublicam primo ordinarunt, postea fidei Christianæ nomen dederunt, et politiam sic constitutam, cum ea quam Apostoli, doctores theologique religionem invexerunt, semper retinuerunt; quicquid ad conscientiæ forum pertinebat, illis utpote peritioribus, et ob vitæ sanctimoniam morumque probitatem laudatissimis, quibusque confidebant, maxime delegabant.* I shall not take up your Lordship's Time to prove, out of *Magna Charta*, and other old Laws, that the Clergy have Rights, Liberties, Privileges and Immunities; but taking that for granted, shall proceed to examine, whether this Case doth any way, and how, concern their Rights and Privileges. It cannot be denied, but that to be exempt from the ordinary and common Jurisdiction is an Immunity, and to have Conusance of Causes is a Liberty and Privilege: But the Question still is, if the Clergy are in Cases of this Nature exempt from the common Jurisdiction of the King's Temporal Courts, and the Ecclesiastical Judges have Conusance of the Offence (if an Offence it be) of which these Gentlemen stand accused? My Lord *Coke*, in his 5th Report, in the Cause of the King's Ecclesiastical Law, fol. 9. says, "As in Temporal Causes the King, by the Mouth of "his Judges of Justice, doth judge and determine the same by the Tem-"poral Laws of *England*; so in Causes Ecclesiastical and Spiritual, as "namely, Blasphemy, Apostacy from Christianity, Schisms, Ordering, "that is, (Ordination), Admissions, Institutions of Clerks, Celebration of "Divine Service, and others, the Conusance whereof belongs not to the "Common Law of *England*, the same are to be determined and decided "by Ecclesiastical Judges, according to the King's Ecclesiastical "Laws of this Realm." In the Case of *Holt* and *Dighton*, in the twelfth of King *James* the First, (it is reported 1 *Rolle's Rep.* 410.) who were brought up into this Court by *Habeas Corpus*, the Return whereof was, that they were committed by the High Commission Court, and the Cause of their Commitment was, that they were demanded by the High Commission Court if they would conform themselves to the Custom of the Church of *England*, and receive the Sacrament kneeling; and for that they would not give a direct Answer to it, they were committed; and though it was moved by Serjeant *Harvey* to have them discharged, yet *Coke* and *Doderidge* said, that the High Commission Court had Jurisdiction of Schisms and Heresies, and in that Case they were accused of a Schism, and therefore they had Jurisdiction of the Cause; and so the Court remanded them.

Now, my Lord, within all and every one of these Descriptions of Spiritual Causes comes this that is now before your Lordship; for, according to that of Sir *Thomas Smith*, this concerns Orders or Ordination, for it was by Virtue of their Ordination that they did it. It relates to the Decorum of the Church, and concerns the Establishment of Religion; for the Indictment says, it was done to the Scandal of the Protestant Religion now by Law established. And that it is Matter of Conscience, is in itself apparent. The Case comes likewise within my Lord *Coke*'s Description of Spiritual Causes; for it concerns Ordering and the Celebration of Divine Service; for the Question is, Whether they performed it as they ought to do? And the Indictment itself shews it; which not only stiles the Defendants Clerks, but says they did it *ut Presbyteri Ecclesiæ Anglicanæ*; which intimates it was done in celebrating Divine Service. And if kneeling at the Sacrament be a Matter of Ecclesiastical Conusance, and out of the Reach of the Temporal Courts; though the Rubrick is much more plain and express in that than in our Case; yet if that Nonconformity be called a Schism, it is only examinable in the Spiritual Courts, whether ours be so or no. And the rather, my Lord, shall the Bishop's Court, or the Bishop himself, judge this Matter, for that, by the Common Law Ecclesiastical, the Bishop is appointed the Visitor of all that enter into Holy Orders, and he is to see if they live and act according to their Ordination, and to punish them that do amiss. And Absolution is one of the great Ends of Ordination; and for this Purpose doth the Bishop make his frequent Visitations. Now, my Lord, where the Law doth appoint a particular Visitor, he alone is to look to that Charge, and no one else to interfere: And that is the Reason why a *Mandamus* did not formerly go out of this Court to restore a Monk or Friar, nor at this Time for a Fellow of a College, a Proctor of *Doctors-Commons*, or the like. And, I think, on that Point the Cause of *Exeter* College was adjudged against Dr. *Berry*, in the House of Lords. To this I must crave Leave to add, that where the Ecclesiastical Court hath Conusance of any Cause, all other Things that are incident or relating to it are likewise within their Jurisdiction: *Cognitio principalis trahit ad se accessorium.* And the Books are so full of Instances thereof, that I need not mention any. And if any inferior Officer transgresses in acting or doing that which belongs to Ecclesiastical Conusance, the Archbishops and Bishops are to punish it, and the Temporal Judge is not to interfere. Exactions and Extortions look more like Temporal Offences, than what these Defendants stand now convicted of; for those in their own Nature tend to stir up the People to Sedition and Rebellion; yet these Offences, when committed by Spiritual Men or in Ecclesiastical Affairs, by the Common Law our Courts could not meddle with them. Mr. *Prynne*, in his Animadversions on my Lord *Coke*'s fourth Institutes, *fol.* 233. cites this Record out of the Petitions in Parliament, *Anno* 18 *E.* I. *Homines de London' conqueruntur de officialibus et ministris Ecclesiæ de multimodis vexationibus et exactionibus nimis onerosi, per quas plus extorquent de populo quam omnes curiæ laicales; et petunt quod Rex opponat remedium festinanter, ne destruatur populus in occulto.* The Beginning of the King's Answer is somewhat doubtfully penned. Mr. *Prynne* gives it in a distinguishing Character: *Si curia Regis possit emendari, faciat.* But the rest of the Answer is direct; *Cancellarius emendet in temporalibus, Archiepiscopus faciat in spiritualibus.* But these Oppressions and Extortions, it seems, continued; and some Attempts there were to punish them by Indictments at Common Law; but such Indictments were thought illegal: For in the Close Roll of * 16 *E.* III. *par.* 2. *mem.* 12. *dorso*, I find a special *Supersedeas processibus omnibus & singulis coram justiciariis nostris inchoatis seu factis contra viros Ecclesiasticos, cujuscunque conditionis aut status fuerint, super extorsionibus et excessibus per ipsos in nostri ac jurium coronæ nostræ prejudicium in exercitio jurisdictionis Ecclesiasticæ factis:* And that there should be no more new Indictments against them before the next Parliament. And in the Close Roll 17 *E.* III. *par.* 1. *m.* 24. *dorso*, is the like Writ to the Justices of *Oyer* and *Terminer* for the County of *Hereford*, in which there is a *Supersedeas* to stay the Proceedings at Common Law against some particular Persons for those Offences. And in the Close Roll of 18 *E.* III. *m.* 14. *dorso*, (Sir *William Dugdale* is mistaken in the Year, when he calls it the 17th) is the Summons to Parliament, the next Parliament after the aforesaid Writs; and the Summons runs thus: *Quia pro quibusdam arduis et urgentibus negotiis, honorem Dei, et decus et defensionem ecclesiæ Anglicanæ, et salubre regimen populi et regni nostri Angliæ summe contingentibus, ordinavimus parliamentum nostrum*, &c. At which Parliament there was an Act made, which is in the printed Statutes 18 *E.* III. *c.* 6. in these Words: "Whereas Commissions be newly made to divers Justices to make Inqui-"ry upon Judges of Holy Church, Whether they made just Process or "excessive in Causes Testamentary, and other, which notoriously "pertaineth to the Conusance of Holy Church; the said Justices "have inquired, and caused to be indicted Judges of Holy Church, "in blemishing the Franchise of Holy Church, that such Commis-"sions be repealed, and from henceforth defended." And so the Officers of the Ecclesiastical Courts went on with their Oppressions and Extortions, and the Temporal Courts could not lay hold of them for those Offences, as appears by several Petitions and Answers in the Parliament Rolls, 21 *E.* III. *n.* 51. 1 *H.* V. *n.* 23. till the Statute, 21 *H.* VIII. *c.* 5. brought them within the Conusance of the Courts of Common Law. And if the Archbishops and Bishops can alone, (the Statute being out of the Case) exclusive of all Secular Power, look after and punish the Irregularities of their Commissaries, though they tended to the Prejudice of the King and his Royal Prerogative, their Power must be full as great over all Ecclesiasticks, and in an eminent Manner over the Clergy, in all Matters relating to their Function, and especially in all Things which concern the Discipline of the Church, of which the Bishops are Judges, as well as of the Doctrine. *Bracton*, in his fifth Book, *De Exceptionibus*, *c.* 2. *fol.* 401. *a.* treating concerning the Jurisdiction of Courts, hath this Expression: *Clericus in nullo conveniendus est coram judice seculari, quod pertineat ad forum Ecclesiasticum, sicut in causis spiritualibus, vel spiritualitati annexis, ut si pro peccato vel transgressione fuerit pœnitentia injungenda, & quo casu Judex Ecclesiasticus habet cognitionem; quia non pertineat ad Regem injungere pœnitentias, nec ad judicem secularem, nec etiam ad eos pertinet cognoscere de iis;*

* Rot. Claus. 16 Ed. III. par. 2. mem. 12. dorso, in Turri London. *Rex dilectis et fidelibus suis Hugoni de Courtney, Comiti Devon', et Sociis suis, Justiciariis nostris ad diversa transgressiones, oppressiones et extorsiones, damna, gravamina et excessus nobis et populo nostro illatâ in Com' Devon' audiend' et terminand' assignat' salutem. Cum in nullo concilio nostro apud Westm tento, ad requisitionem Prelator' regni nostr' Angliæ concessimus, quod processibus omnibus et singulis coram Justiciariis nostris inchoatis seu factis contra viros Ecclesiasticos, cujuscunqe conditionis aut status fuerint, super extorsionibus et excessibus per ipsos in nostri ac jurium coronæ nostræ prejudicium in exercitio jurisdictionis Ecclesiasticæ factis, ad exigend' in ipsos hijs occasionibus promulgand' usque ad proximum parliamentum nostrum supersedeatur; et quod inquisitiones super extorsionibus et excessibus hujusmodi contra eos per Justiciarios citra dictum parliamentum nullatenus de novo fiant; Vobis mandamus, quod omnibus processibus coram vobis in com' prædict' inchoatis cessas quicunque viros Ecclesiasticos, pro extorsionibus et excessibus per ipsos in nostri et jurium coronæ nostræ prejudicium in exercitio jurisdictionis Ecclesiasticæ factis, usque ad proximum parliamentum nostrum superseder faciatis; et Vic' nostr' com' prædict' detis in mandatis, quod exigend' in ipsos vel eorum aliquem p missis occasione promulgand' usque ad dictum parliamentum nostrum supersedeat; ac vos inquisitionibus super extorsionibus et excessibus hujusmodi contra dictos viros Ecclesiasticos citra parliamentum prædict' de novo capiend' similiter supersedeatis, juxta promissionem nostram prædict'. (T. prefato Custode apud Kenynton, 15° die Novembris.*

Per Concilium.

Eodem modo mandatum est Thomæ de Berkele, et Sociis suis, Justic' ad diversa transgressiones, &c. in com' Som. (T. ut supra.)

And there is a Space in the Roll, supposed to be left for entering of other Writs of the like Nature, that were then issued forth.

ſunt quæ ſpiritualibus annexa. And if the Temporal Courts cannot hold Plea *de pœnitentia injungenda*, certainly they cannot puniſh *pro pœnitentia non declarata.* Beſides, I think it cannot be denied, that Abſolution is Spiritual, *vel ſaltem ſpiritualitati annexa.* More Inſtances I could produce, if I thought it neceſſary, to prove that where the Eccleſiaſtical Court hath Conuſance of the Celebration of Divine Service or other Spiritual Matters, it muſt hold Plea of what is incident or belonging to it; and therefore of the Mind, Intention, and Deſign with which any Spiritual Office is performed, if ſuch Mind can be fathomed, and Intention puniſhed. And I preſume, my Lord, there will be no Occaſion to prove that all the Rights, Liberties, Privileges and Immunities, that the Clergy lawfully enjoyed in the Time of Popery, do ſtill belong to the preſent Church of *England*, unleſs they are taken away or altered by Act of Parliament; for though the Errors were corrected, and Abuſes reformed in Matters of Doctrine and of foreign Juriſdiction, yet the legal Rights of the Church, and Power of the Clergy, were not ſhaken or invaded by the Reformation.

3. And now, my Lord, I come to the third and laſt Point I propoſe to ſpeak to; and that is, ſuppoſing what theſe Gentlemen ſtand accuſed of is an Offence, and that this Court hath Conuſance of it; yet, with Submiſſion to your Lordſhip, there is no Judgment to be given againſt us on this Indictment. I believe the King's Counſel cannot ſhew me any Rule at Common Law concerning Abſolution. So that, if we are guilty of any Offence, it is for not obſerving the Rubrick. If we have acted according to the Letter and Intent of that, no Indictment will lie againſt us for the Fact we are now accuſed of: And if we have deviated from the Rubrick, then the Indictment ought to have been framed on the Act of Uniformity. It is a Rule laid down in our Books, That where a Statute makes that an Offence which was not ſo before, an Indictment for that Offence muſt conclude *contra formam ſtatuti.* So is 1 *Saunders* 249. 2 *Rolle's Abr.* 82. 1 *Cooke* 449. and *Jones* 379. And I could inſtance in many Precedents that are drawn accordingly. I ſhall mention ſome few on this very Act of Parliament: They are all in the ſame Term, *Mich.* 15 & 16 Q. *El.* in this Court, and againſt the ſame Perſon, *Robert Johnſon*, of St. *Clements Danes*, Clerk. One of the Indictments is *for ſpeaking againſt the Book of Common-Prayer*, contra formam Statuti: Another againſt him, *for omitting the Litany, Epiſtle and Goſpel, in ſaying the Divine Service:* Another againſt him, *for chriſtening a Child, and not ſigning him with the Sign of the Croſs:* Another againſt him, *for marrying a Couple without a Wedding-Ring:* Another againſt the ſame Perſon, *for ſaying Morning and Evening Service without a Surplice.* And though the Preamble and Inducement to every one of theſe Indictments make an heavy Complaint againſt the Perſon that is ſo indicted, as if he intended to deſtroy the Proteſtant Religion by Law eſtabliſhed, and overthrow the Government, yet they all conclude *contra formam ſtatuti.* Now, my Lord, according to the Rule and Precedents I have cited, this Indictment that is now before your Lordſhip ſhould have ſet forth, that the Defendants did not move Sir *John Friend* and Sir *William Perkins* to a ſpecial Confeſſion of their Sins, but without it gave them Abſolution, *contra formam ſtatuti.* But ſuppoſing, my Lord, it ſhould be anſwered, that the Indictment is rather for the ill Intention of the Defendants, than for not obſerving the Rubrick; with humble Submiſſion to your Lordſhip, if ſuch an Indictment may be brought, yet this before your Lordſhip is not rightly framed, but is inſufficient and incertain in relation to that very Intent: For the Indictment ſays, Theſe Defendants conſpiring, intending, and deſigning the execrable, horrible, and deteſtable Treaſon, for which Sir *John Friend* and Sir *William Perkins* were then juſt going to be executed, to juſtify, or at leaſt to extenuate, diminiſh, and undervalue, *&c.* did abſolve them. Now, my Lord, *non conſtat* which they aimed at, Juſtifying or Undervaluing; and they cannot be found guilty of all: For though the Verdict be general as to this, yet it is according to the Indictment, which is in the Disjunctive, *Et in disjunctivis ſufficit unum verificari.* Therefore our Common Law doth always require Certainty, but eſpecially in Indictments; they ought to be certain to every Intent, that a certain Judgment may be given on them. Where a Man in pleading ſets forth his Title by a Conveyance, in which are the Words *give, grant, releaſe, confirm, bargain, ſell*, &c. he muſt ſhew which of them he makes Uſe of, and which he applies to his Purpoſe, or elſe his Plea is naught, 1 *Ventr.* 109. The Return of a *Habeas Corpus* ſets forth the Commitment, *Et hæc eſt cauſa captionis ſeu detentionis*, adjudged an ill Return, 1 *Ventr.* 324. In *Trinity* Term laſt, in this Court, there were ſeveral Indictments againſt *Baker* and others for exerciſing the Trade of a Rope-maker, *exiſtens miſterium infra regnum Angliæ vel Walliæ*; and there, altho' the Offence was the ſame whether it were a Trade in *England* or *Wales*, yet for the Incertainty which the Disjunctive made, the Indictment was quaſhed. And in the laſt Term (*H.* 9. *W.* III. *B. R.*) *Sanky* and another Quaker were brought up by *Habeas Corpus*, and the Return ſet forth a Commitment by two Juſtices, by Virtue of the Statute 27 *H.* VIII. *c.* 20. reciting a Certificate from the Commiſſary, that a Cauſe of Subtraction of Tythes or other Eccleſiaſtical Duty was depending in the Eccleſiaſtical Court, to which the Defendants refuſed to anſwer. In that Cauſe, though the Words of the Act of Parliament are ſtrictly purſued, which gives the ſame Remedy where the Fact is for other Eccleſiaſtical Dues as it does for Tythes, yet becauſe the Certificate on which the Return was grounded, did not ſet forth in particular for what the Suit was commenced in the Eccleſiaſtical Court, but only in the Disjunctive, for that Reaſon the Commitment was held inſufficient, and the Parties diſcharged. In Mr. *Rowe's* Caſe, *Bendlow*, fol. 60. in Replevin, the Plaintiff claims Common appurtenant to a Manor or a Meſſuage called *Curſall Grange*, by Preſcription, and they were at Iſſue on the Preſcription; but in Arreſt of taking the Inqueſt, it was ſhewn to the Court, that the Preſcription was uncertain for the Common, to wit, To the Manor or Meſſuage: where he ought to have claimed it to one only. And the Court adjudged them to re-plead, though the Place itſelf was expreſly and certainly named, and called *Curſall Grange.* In the ſame Book, *fol.* 177. *pl.* 39, an Ejectment *de una acra terræ ſive prati* adjudged ill; and ſo is the ſame Caſe reported, *Dyer* 264. *pl.* 39. and 1 *And.* 31. *pl.* 73. An Inquiſition on a *diem clauſit extremum* finds, that a Man was ſeized *de uno meſſuagio ſive tenemento*, was held void and inſufficient, *Ley.* 9. 13 *Rep.* 48. So an Ejectment *de uno meſſuagio ſive tenemento* is ill, even after a Verdict, 1 *Rolle's Rep.* 7. 334. 2 *Rolle's Abr.* 80. 3 *Lennard* 228. *Ley.* 43. 2 *Cor.* 621. 1 *Siderfin* 295. 1 *Cro.* 188. and many other Books. And in *Noy*'s Reports, on the like Occaſion, it is ſaid, that a Writ in the Disjunctive is void. And in *Popham*, fol. 203. it is held, that an Ejectment *de burgagio ſive tenemento* is naught. Though indeed in Serjeant *Hardreſſe*'s Reports, fol. 173. in the Caſe of *Danvers* verſus *Willington*, it was held, that an Ejectment *pro uno meſſuagio ſive burgagio in* Hay infra Muros was good enough; but the Reaſon given was, becauſe *meſſuagium et burgagium* ſignify the ſame Thing in a Borough. There was a Cauſe (*Paſch.* or *Tr.* 8. *W.* III.) about two Years ſince in this Court, it was an Indictment againſt *Stoker*, for that he *fabricavit, ſeu fabricari cauſavit*, a certain Bill. Exception was taken to it, becauſe it was in the Disjunctive, whereas it ought to have been poſitive and particular. And I think the Counſel for the Proſecutor could never get over that Exception; and, to the beſt of my Remembrance, there was but one Anſwer that was aimed at, and that was, that the Offence and Fact were the ſame; for he that cauſed it to be counterfeited, might be truly ſaid to counterfeit it: But I think that was not held a good Anſwer to that Exception. But in our Caſe that cannot be pretended: *Juſtificare* and *Vilipendere* are of a very different Signification. The very Indictment doth inſinuate as much; *Juſtificare, vel ſaltem extenuare, diminuere, et vilipendere.* The *vel ſaltem* doth ſhew, that the ſubſequent Words are not of ſo great Force as thoſe precedent. And indeed almoſt oppoſite they are; for he that juſtifies, denies that it was an Offence; whilſt he that diminiſhes or undervalues it, ſays truly, it was an Offence, but not ſo great as is pretended. And, my Lord, by reaſon of this Uncertainty, the Court muſt be in Doubt what Judgment to give; for it is evident, he that would juſtify Sir *John Friend*'s Offence would deſerve a greater Puniſhment, than he that ſhould only leſſen it, and ſay it was not ſo great an Offence as *Charnock*'s. Such an Invaſion is not ſo horrid and villainous, nor of ſo deep a Dye, as that barbarous Aſſaſſination that was intended. After ſuch a Manner, methinks, a Man might lawfully extenuate an Offence, when it would be highly criminal to maintain and juſtify the Fact. Beſides, *Vilipendere* may be taken to vilify, contemn, and condemn the Fact; and muſt that be thought a Crime? And the *necnon* afterwards, with thoſe other Aggravations that are there added, cannot mend the Matter: For all that Harangue of perſuading Perſons that Sir *John Friend* and Sir *William Perkins* were innocent, and the inciting the People to Treaſon and Rebellion, depend purely on the Juſtification or Extenuation of the Crime; for, if the Fact were juſtified, People would be ſooner induced to follow their Example, than if it were acknowledged to be an Offence, but the Heinouſneſs of it leſſened, diminiſhed, or vilified. And which of theſe the Defendants aimed at, was doubtful to him that drew the Indictment, doubtful to the Jury, and therefore I hope the Court will give no Judgment on it. Beſides this, my Lord, there is, I preſume, another Exception that may prove fatal to this Indictment; and that is, the inſufficient ſetting forth the Attainders of Sir *John Friend* and Sir *William Perkins*, in not ſhewing when, where, or before what Judges they were attainted, which, with Submiſſion to your Lordſhip, ought of Neceſſity to have been done. I acknowledge that a bare Inducement requires not much Certainty: But when it is ſuch a Matter, on which the whole doth ſo depend that you can make nothing without it, and when it is traverſable, then it is Subſtance, and muſt of Neceſſity be certainly expreſſed. For Inſtance, if *J. S.* be accuſed, either civilly or criminally, of an Offence, which is not ſo but with relation to a Fact of *J. D.* there the Fact of *J. D.* muſt be certainly expreſſed. As in *Hetley* 73. 3 *Cro.* 752. *Plowman*, a Conſtable, was indicted for ſuffering one, who was arreſted *pro quadam felonia antea facta*, to eſcape; and becauſe it was not ſhewn what Felony it was, and when done, he was diſcharged. So in this Caſe, if it be an Offence to abſolve Traitors, whether they are attainted or no, then the Treaſon ought to be ſpecially and particularly ſet forth, and when and where it was committed: But if it be not an Offence to abſolve Traitors, unleſs they are attainted, then that Attainder ought to be as fully and plainly expreſſed as the Time and Place where thoſe Traitors were executed, which in this Indictment is carefully ſet forth. And that this Indictment is faulty in this Particular, I ſhall endeavour to prove, as well by Precedents, as by the Opinions and Judgments in our Books of Law. But inaſmuch as this Indictment is *primæ impreſſionis*, I muſt treſpaſs on your Lordſhip's Patience, whilſt I refer to other Precedents in which Records are mentioned and recited, and from a Parity of Reaſon reduce them to the preſent Caſe. I ſhall begin with Precedents of Declarations. If an Action of Debt be brought againſt a Sheriff for the Eſcape of one in Execution, the Time and Place, and the Court in which the Judgment was obtained, is always mentioned, *Hern.* 74. *Robinſon* 311. *Brown's Entries*, 1 *par.* 18. 2 *par.* 15. *Brownlow's Lat. Rediviv.* 33. *Thompſon* 122. and *Vidian* 193, 197. and ſeveral other Books.

So againſt a Sheriff for not taking one in Execution that was in his Preſence, ſets forth the Judgment, and out of what Court, when and where the Execution iſſued. *Upper Bench Precedents* 79. *Aſhton* 57. 2 *Brownlow* 35, 36.

An Action for maliciouſly indicting the Plaintiff for Felony ſets forth, when, where, and before whom the Indictment was. *Vidian* 145. *Hanſard* 24, 25, and 53.

An Information againſt one for taking and carrying away the Goods of a *Felo de ſe*, ſets forth the Inquiſition, and before whom it was taken. *Old Book of Entries*, 225. *b.*

An Information for intruding into Lands which came to the King's Hands by Attainder, ſets forth the Record of Attainder, where, when, and before whom. *Raſtall's Entries* 387, 412. *Plowden's Commentaries* 547. *Aſhton* 181.

And ſo, my Lord, in all good Precedents, where Records of Attainder are mentioned, the Time, Place and Court are always ſet forth. So is *Wiat*'s Attainder, *Co. Entries* 79. *Raſtall* 413. *b.* *Plowden's Com.* 449.

So is *Littleton*'s Attainder, *Co. Entries* 422. *b.* And *Truſſel*'s Attainder, *Co. Entries* 246. *b.* the Duke of *Somerſet*'s Attainder, *Co. Entries* 481. and the Attainder of *John Bary*, in the ſame Book, *fol.* 699.

So if the Maſter of the *Crown-Office* takes an Inquiſition concerning the Eſcape of any Priſoners of this Court, according to the 39th of *H.* VI. *c.* 33. the Record on which they were committed is fully taken Notice of, as I have ſeen a Precedent, *Mich.* 4 & 5 *El. rot.* 7. In the Caſe of Mr. *Braddon* and Mr. *Speake*, the Indictment doth not only ſay that my Lord *Eſſex* did murder himſelf at ſuch a Time and Place, but adds further, *as by Inquiſition taken at the* Tower *of* London *aforeſaid, upon View of the Body of the ſaid* Arthur *Earl of* Eſſex, *and now in this Court remaining of Record, does more plainly appear* (State Trials, Vol. III. p. 855). So the Indictment againſt *Taſborough* and *Price*, for ſuborning *Dugdale* to retract his Evidence that he had given againſt the Popiſh Recuſants, *&c.* (*Vol.* II. *p.* 1017.) ſets forth the Record, where and before whom ſuch Convictions were. So in the Caſe of *Thompſon*, *Pain* and *Farewel*, for printing and publiſhing a ſcandalous Pamphlet relating to Sir *Edmondbury Godfrey*'s Death (*Vol.* III. *p.* 505.) the Information doth not begin like this Indictment, *Whereas* Green, Bury, *and* Hill *were attainted of Murder*; but ſets forth, That it was in ſuch a Court, in ſuch a Year and Term, with the Indictment and Attainder at large, and where the Record is to be found.

I could inſtance in many more Precedents of the like Nature; but I fear I have tired your Lordſhip's Patience too much already, and therefore ſhall conclude with one that will lead me to the Opinions and Judgments in our Books of Law, which I hope will be of Uſe to fortify the Precedents I have cited to prove this Indictment vicious. It is in *Keilway* 193. An Inquiſition that finds the Attainder of one *Bays*: The Record is large, and therefore I ſhall not recite it, nor make any other Obſervations on it than what are in the very Report, which are in theſe Words: "*Memo-*"*randum.* This Inquiſition was drawn by good Advice, that is to ſay, "by the Council of King *Henry* the Seventh; yet the Inquiſition which "entitled the King to the Land, by reaſon of the Attainder of the ſaid "*Bays*, doth not make any Mention of the Indicters, nor of the Names of "the Juſtices of Peace who took the Indictment, but only the Day of "the Indictment taken, and the Day of his Attainder, without ex-"preſly mentioning what Kind of Felony, but *pro quadam felonia*, and "the Names of the Juſtices before whom he was attainted." Theſe are the Words of the Reporter: And, my Lord, that this Caſe is of general Concern, appears by the next Caſe in that Book, *Keilway* 194. An Indictment was found on the Eſcape of certain Perſons convict, without ſhewing before what Juſtices the Conviction was; and after the Matter was conſidered at the Bar and the Bench, the Indictment was held inſufficient: But ſays that Caſe, "The Names of the Juſtices of Peace be-"fore whom the original Indictment was taken is not material, nor the "ſpecifying of the Felony, *prout patet ſupra* in the Caſe of *Bays*; for "where the Court is inſtructed to whom to write to certify the Record, "all the Special Matter ſhall come in by the Certificate: And although "the Juſtices of Gaol-Delivery, or other Juſtices, before whom the Con-"viction or Attainder is, do not certify the Original, it is not material, "ſo that they certify the Body of the Record of the Attainder or Con-"viction." Theſe are the Words of that Book: And, my Lord, it muſt be on the ſame Reaſon, that where a Man pleads a Conviction of Recuſancy, he muſt ſhew before whom it was, *Noy* 89, 97. And ſo are the Precedents in *Winche's Entries* 522, 523, 524. 2 *Brownl.* 15. *Hern.* 503. So in an Action for maliciouſly indicting a Man for Treaſon, it is not ſufficient to ſay he did indict the Plaintiff; nay, if he adds *coram* ſuch Perſons, Juſtices of the Peace, and omits *ad gaolam deliberand' aſſignat'*, it is ill, 2 *Cro.* 357. And in an Action for maliciouſly indicting a Man of Perjury, he muſt ſet forth the Indictment, and ſhew that it was preferred before one that had Conuſance of ſuch Matters. And that is not all; he muſt likewiſe ſhew, that the Cauſe in which he ſwore was *coram judice*, 3 *Cro.* 725. He that pleads a Preſentment in a Court Leet, muſt ſet forth the Day when the Court was holden, 2 *Saunders* 290. 1 *Ventris* 107. And therefore to plead that at *quandam curiam* he was amerced, is ill, *Modern Rep.* 75.

An Indictment of Maintenance *in quodam placito coram Domino Rege pendente*, not mentioning where the *King's-Bench* ſat, was held fatal in Arreſt of Judgment, 1 *Ventr.* 302.

An Indictment for a ſecond Offence, where the Puniſhment is greater than for the firſt, ought to recite the former Conviction, 1 *Lennard* 295. So it was done in *Roger Booth*'s Caſe, *Mo.* 666. *pl.* 913. In 3 *Keble* 737, an Indictment for a ſecond Offence of Printing did ſet forth the firſt, but did not ſay where it was; therefore *Twiſden* held the Indictment naught. And if there be a Neceſſity of ſetting forth ſo preciſely the firſt Conviction, to make the ſecond Offence the greater, methinks, in Reaſon, it muſt as certainly be ſet forth, where it gives the very *eſſe* to the Offence. And if ſuch a general Way of referring to Records ſhould be allowed in Indictments, it would not only overthrow all the Precedents and other Authorities I have cited, but the Defendants muſt needs lie under ſeveral Inconveniencies. They would then be cut off from the Privilege of pleading *Nul tiel Record*, or traverſing it, as was done in *Bays*'s Caſe before-mentioned: For, although ſuch a Traverſe might amount almoſt to the General Iſſue, yet comprehending Matter of Law, the Defendants may plead it ſpecially, *Hobart* 127. And if the Defendants plead the General Iſſue, how ſhall they know where to go to find out the Record, to ſee whether a true Copy be produced againſt them? And it cannot be a ſufficient Anſwer to ſay, that the Indictment ſets forth that *debite et legitime* they were convicted and attainted; it muſt be ſhewn after what Manner they were attainted, that the Court may judge whether it was legally done or no. In *Patrick Harding*'s Caſe, in the firſt Year of this King and the late Queen (it is reported in 2 *Ventr.* 316.), the Indictment againſt him was for High Treaſon, and did ſet forth that he adhered to the King's Enemies. The Jury found, that he liſted and ſent Soldiers to the *French* King, then an Enemy to our King and Queen: But the Court held the Indictment too ſhort there, becauſe it mentioned *hoſtibus et inimicis* generally; whereas it ſhould have ſet forth who thoſe Enemies were, that the Court might take Notice whether they were Enemies, as the Law intended.

In the Caſe of *Woodly* and *Bezly*, 2 *Cro.* 291. *Yelverton* 213. 1 *Brownlow* 114. In Debt for Rent upon a Leaſe for Years, the Plaintiff derives his Title by the Grant of the Reverſion by way of Bargain and Sale in Fee from the firſt Leſſor, and declares, that by Indenture of ſuch a Date, one grants, bargains and ſells for Money to him the Reverſion in Fee, which Indenture was inrolled ſuch a Day *ſecundum formam ſtatuti*; and on *nil debet* pleaded, there was a Verdict for the Plaintiff: Yet Judgment was arreſted, becauſe the Plaintiff had not ſhewn in what Court the Indenture was inrolled; though it might have been, and undoubtedly it was alledged, that it was but a Conveyance to the Title, and an Inducement to the Action, and *ſecundum formam ſtatuti* ſhews it was *debite et legitime*. So in *Ailen* 19. *King* againſt *Somerland*. In Debt for Rent, the Plaintiff declares on a Leaſe for Years made by a Stranger, who bargained and ſold the Reverſion *per indenturam debito modo inrotulat' in Curia Cancellaria*. After a Verdict for the Plaintiff, on *nil debet* pleaded, it was moved in Arreſt of Judgment, that he had not alledged the Inrollment to be within ſix Months, nor *ſecundum formam ſtatuti*; and though it were ſaid to be *debito modo*, yet that would not mend the Matter, nor aid the Incertainty, and therefore Judgment was arreſted. So in the ſame Book and Folio, *Colman* againſt *Painter*. In an Action by the Leſſee againſt his Leſſor, on a Covenant for peaceable Enjoyment, he aſſigns for Breach a former Leaſe to *J. S.* The Defendant pleads, that the Leaſe to *J. S.* was with Condition of Re-entry for Non-payment of Rent, and that before the Leaſe made to the Plaintiff, the Rent was behind, and *legitime demandat' ſecundum formam indenturæ*, and upon Non-payment he re-entered, and made the Leaſe to the Plaintiff: And upon Demurrer it was reſolved, that the Demand was inſufficiently alledged; for, ſays the Book, he ought to ſet forth certainly, when and where it was made, that it might appear to the Court to be legal.

I ſhall trouble your Lordſhip but with one Caſe more to this Point; it is in 3 *Lennard* 72. A *Quo Warranto* was brought by the Queen againſt Sir *John Conſtable*, who claimed certain Wreck in the County of *York*. The Defendant pleaded, that *Edward* Duke of *Buckingham* was ſeized of ſuch a Manor, to which he had Wreck appendant, and that he was *de alta proditione debito modo attinctus*, and that found before the Eſchеator; and ſhewed further, that *that* Manor deſcended to Queen *Mary*, who granted the ſame to the Earl of *Weſtmoreland*, who granted the ſame to the Defendant: Upon which it was demurred; and Exception was taken to the Plea, becauſe the Attainder is not fully and certainly pleaded. It was argued by *Plowden*, Counſel for the Defendant, that the Attainder was certainly pleaded, *ſcilicet*, *debito modo attinctus*: For, ſays he, it is ſhewn that the Wreck is appendant to the Manor, and then if he hath the Manor, he hath the Wreck alſo: And if he had the Manor, it is not material to the Queen how he hath it; for the Queen doth not claim the ſame, but impeacheth the Defendant for uſing there ſuch a Liberty. But he there grants, that if the Heir of the Duke had demanded the Manor there againſt him, the Attainder ought to have been pleaded certainly. And if ſo much Certainty be required in pleading an Attainder that makes a Title to an Eſtate, that Attainder muſt needs be as fully, as clearly, and as certainly ſet forth; that is the Ground-work and Foundation of an Indictment for that which is called a very great Offence, which is not for abſolving two Perſons in the Pariſh of *Paddington*, nor for abſolving two impenitent Traitors, *but for abſolving two Perſons attainted of High-Treaſon, who did not repent of that Treaſon of which they were attainted.*

There are, my Lord, I think, ſome other Faults in the Indictment. It mentions, That Sir *John Friend* and Sir *William Perkins* were attainted for High-Treaſon, in compaſſing the King's Death, and adhering to his Enemies; which were two Treaſons in each of them, and conſequently four in all. Yet afterwards the Indictment ſays, That theſe Defendants intending to juſtify the horrid Treaſon aforeſaid (in the Singular Number). So in the Concluſion, that the Abſolution was given *abſque aliqua pœnitentia pro alta proditione prædicta prius declarata*, without ſhewing which Treaſon in particular was unrepented of; and each of them was not obliged to repent of all the Treaſons, for they were not all his own. And is like the Caſe this very Term in this Court, where a Reſcous was returned againſt two Perſons, that they had reſcued *J. S. prædict'*, without ſhewing which, and there was *J. S.* ſenior, and *J. S.* junior before-mentioned; and for this Incertainty that Return was quaſhed. And it ſeems to me to bear ſome Reſemblance to the Caſe of *Tindall* and *Cobbs*, 3 *Lennard*, fol. 9, 10. In an Action of Waſte, the Declaration ſhews the Demiſe of the Manor of *Wolverton* and other Lands, and aſſigns the Waſte *in quodam boſco vocat'* Wolverton Wood, *parcel' præmiſſor'*; and it was held inſufficient, for that it could not be Parcel of the Manor and other Lands alſo.

I muſt likewiſe humbly ſubmit it to your Lordſhip, whether the Fact itſelf be ſufficiently ſet forth, *et eos abſolvi pronuntiaverunt*, pronounced them to be abſolved: Whether it does not refer to ſomewhat to be done hereafter, and ought not rather to have been, *eos abſolutos pronuntiaverunt*.

The Proclamation for Evidence before the Jury is ſworn, which ought to be after, and ſeveral other Informalities in the Indictment and Proceedings, I ſhould have ſpoken to; and have juſtified and maintained the Impoſition of Hands, from the Doctrine and Practice of our Church; and likewiſe have ſaid ſomewhat to the Matter that is ſpecially found, to prove that theſe Defendants are thereby acquitted of the whole: But theſe Things will (I doubt not) be much better done by ſuch other Counſel as your Lordſhip ſhall pleaſe to hear for the Defendants. I am ſenſible I have already been too tedious, for which I humbly beg Pardon of your Lordſhip, and pray your Judgment for the Defendants.

NUMBER IX.

A List of the Lords for and againſt Sir JOHN FENWICK's Bill.

IN Sir JOHN FENWICK's Trial, (*Volume* V. *Page* 136.) read as followeth:

After the Diviſion of the Houſe of Commons, on paſſing the Bill of Attainder, the Bill was carried up to the Houſe of Lords, who paſſed the ſame; when the following Lords voted for and againſt the Bill, which is omitted in *State Trials*, *Vol.* V.

Biſhops for the Bill *.

Canterbury,
Litchfield,
Sarum,
Cheſter,
Ely,
Oxon,
Norwich,
Peterborough,
Glouceſter,
Briſtol,
Lincoln,
Chichеſter.

Lords Temporal.

Prince *George*,
Norfolk,
Southampton,
Richmond,
St. Albans,
Bolton,
Schomberg,
Newcaſtle,
Oxford,
Derby,
Suffolk,
Bridgewater,
Bolingbroke,
Manchеſter,
Rivers,
Stamford,
Sunderland,
Sandwich,
Eſſex,
Macclesfield,
Radnor,
Portland,
Monmouth,
Montague,
Marlborough,
Scarborough,
Warrington,
Bradford,
Romney,
Tankerville,
Abergavenny,
Delawarr,
Berkley,
Morley,
Ewre,
Wharton,
Sidney,
Lovelace,
Howard,
Raby,
Vaughan,
Ward,
Culpeper,
Lucas,
Rockingham,
Berkley,
Cornwallis,
Oſborn,
Oſſulſton,
Cholmondley,
Aſhburnham,
Weſton,
Herbert,
Haverſham.

In all 66

Biſhops againſt the Bill.

London,
Durham,
Winton,
Rocheſter,
Exeter,
St. David,
Hereford,
Bath and *Wells*.

Lords Temporal.

Leeds,
Pembroke,
Somerſet,
Ormond,
Northumberland,
Devonſhire,
Hallifax,
Normanby,
Lindſay,
Dorſet,
Kent,
Huntington,
Northampton,
Briſtol,
Winchelſea,
Kingſton,
Carmarthen,
Thanet,
Scarſdale,
Bath,
Craven,
Burlington,
Feverſham,
Suſſex,
Berkley,
Nottingham,
Rocheſter,
Abington,
Carliſle,
Torrington,
Hereford,
Weymouth,
Longueville,
Willoughby of Ereſby,
Ferrers,
Fitzwalter,
Willoughby of Brook,
Chandos,
Hunſdon,
Brooke,
Leigh,
Jermyn,
Byron,
Clifford,
Granville,
Arundel,
Dartmouth,
Guildford,
Godolphin,
Jefferies,
Lemſter,
Pawlet.

In all 60

NUMBER X.

The CASE, with the PROCEEDINGS againſt Major JOHN BERNARDI, Mr. COUNTER, Mr. BLACKBURN, Mr. CASSELS, Mr. CHAMBERS, and Mr. MELDRUM, on Account of the Aſſaſſination-Plot, in King *William*'s Reign.

Wrote by Major John Bernardi, *in* Newgate, *after he had been there near thirty-three Years a Priſoner, (though in the Hiſtorical Part abridged) without any Allowance from the Government, and who could never be admitted to Bail, or take his Trial* †.

MAJOR *John Bernardi* was the Son of *Francis Bernardi*, deſcended of an ancient Noble Family, Counts of the Holy Empire, *&c.* This *Francis* was ſent to *England* by the Serene Republick of *Genoa*, with Credentials from the Duke and Governors of that State, in the Character of Agent, and afterwards of that of Reſident, from 1651, untill after the happy Reſtoration of King *Charles* II. We find, that on *Tueſday*, *Sept.* 16, 1651, on a Report from the Speaker,

It was reſolved by the Parliament to receive *Francis Bernardi*, Agent from the Commonwealth of *Genoa*, according to the Rule for receiving Agents.

Henry Scobell, Cler' Parliament'.

And on the 22d of *June*, 1660, Signior *Francis Bernardi* was appointed Reſident from the ſaid Commonwealth to *England*, to congratulate his Majeſty on his happy Return to his Kingdoms. But about two Years afterwards the Republick ſent over another Perſon to ſucceed the ſaid Signior *Francis Bernardi*; and as he was born in *England*, at the Time when his Father Count *Philip de Bernardi* was here alſo in Embaſſy, and loving the Country as the Place of his Nativity, he lived and died in this Kingdom, having ſpent near thirty thouſand Pounds in Hoſpitality, and in indulging a particular Taſte in Gardening, being the moſt famous Gentleman in the Kingdom of his Time for fine Gardens. He lived ſome Time near *Windſor*, when firſt out of his Miniſtry; but removed afterwards into *Worceſterſhire*, to be more remote and unknown. Here his Son *John* began to entertain Thoughts of getting from under his Father's Diſcipline, who uſed him with great Severity; ſometimes confining him like a Criminal in a little dark Room for Trifles, allowing him only Bread and Small-Beer; and whilſt ſo confined, Nobody durſt relieve him, or let him out. Thus this *John Bernardi* was unhappily deſtined to Confinement in his Youth by an unkind Father, and in his Old Age to undergo the like rigid Fate by unprecedented Acts of Parliament, without ever being heard, or proved criminal by any Court in the Kingdom.

Accordingly *John Bernardi* eſcaped from his Father in the Year 1670, leaving him aſleep in his Bed; and going out of his Gate, he kneeled down on the Ground, proteſting and praying, that he might never return whilſt his Father lived. He began his Journey towards *Coventry*, and, though purſued, had the good Luck to eſcape, and got to Sir *Clement Fiſher*'s Seat at *Packington*, near that City, whoſe Lady was the heroick Mrs. *Jane Lane*, who protected and conducted King *Charles* II. after the Battle of *Worceſter*, (ſo often mentioned in the Hiſtory of thoſe Times) and who was very intimate with young *Bernardi*'s Father: But Sir *Clement* and his Lady were gone to *London* two Days before, whither young *Bernardi* followed them. On hearing his Caſe, they did not perſuade him to return; but recommended him by Letter to Captain *Littleton Clent*, a Relation of her Ladyſhip's, then in Garriſon at *Portſmouth*, and equipped him with Neceſſaries and Money for his Journey. On his Arrival at *Portſmouth* the Captain received him very obligingly, and entered him in his own Company, and taught him all the Duty and Exerciſe of a Soldier. This Life young *Bernardi* was very fond of, and paſſed through various Poſts (in *Holland*) in the Army; for he had ſeven Commiſſions in all, five of which were conferred on him by his Highneſs the Prince of *Orange*, the ſixth by the States-General and the Prince of *Orange*, and the ſeventh by King *James* II. before the Revolution. He attained the Rank of a Captain at twenty-ſeven Years of Age. At the Siege of *Maeſtricht* he loſt an Eye, and was ſhot through one of his Arms, the Bones of which were daſhed to Splinters; after wrapping his Arm in the Flap of his Coat, he crowded back to the Breach, and fell down to the Bottom amongſt the Dead, (the Ground being covered with them;) when a Soldier under

* See *Hiſtorical Account of Trials and Attainders*, Vol. II. p. 282.

† As many People are unacquainted with the Reaſons why thoſe Perſons, ſuſpected of being concerned in the Aſſaſſination-Plot, lay ſo long in *Newgate*, without being either bailed, tried, or diſcharged; this Account, wrote by Major *Bernardi*, (one of thoſe taken up and confined) will explain the Cauſe of it.

his Command seeing him fall, jumped after him, took him up in his Arms, and ran to the Trenches with him, where Surgeons are always waiting on those Occasions; and thus saved his Ensign from bleeding to Death. The Prince of *Orange* hearing of it, immediately promoted *Bernardi*, and ordered him, with the other wounded Officers, to be conducted to *Bois-le-duc*: But *Bernardi* not being able to endure the jolting of the Carriage, was laid on the Ground, till his Servant went to get Men to carry him back to the Hospital. When he was pretty well recovered, he went with his Arm in a Sling to *Utrecht*: But not being able to do Duty for some Time in his Regiment, he made his Addresses to a Maiden Lady, well born and bred, but near twice as old as himself, he being then about twenty; but her Fortune being considerable for one in so low a Post, he married her in *April* 1677, and lived with her eleven Years. In 1687, when King *James* II. demanded the six Regiments he had lent the *Dutch*, and they refused to return them, about sixty Officers quitted that Service; amongst whom was Captain *Bernardi*, who thinking it his Duty to obey the Commands of his Prince, came to *England*. In 1688, when the Prince of *Orange* landed in *England*, and succeeding in his Enterprize, King *James* II. after many Difficulties and Dangers risqued by him, got privately away from *Rochester* over into *France*; when Major-General KIRK was sent by the Prince of *Orange* to all the Regiments then in *England*, with an Association to be signed by all the Officers, the Contents of which were to bind them under their Hands to stand by and defend the Prince against all Persons whatsoever, and all the Officers that refused to sign it, were ordered to quit their Commands. Captain *Bernardi* refused to sign such Association, and quitted his Employ, went to *London*, and sollicited for the Prince of *Orange*'s Pass for himself and Family, being six in Number, to go out of the Kingdom, the only Favour he desired, which was granted him; those Persons that went without a Pass being in Danger of their Lives, or being plundered by the Mob. Captain *Bernardi* got safe to *Calais*, and found many *English* Gentlemen arrived there before him, some of whom were his Acquaintance, and in great Distress for want of Money to bear their Charges to *Paris*, having been stripped of all they had by the Tumults in *England*. *Bernardi* having got to the Value of above one hundred Pounds in Cloaths, Linen, Tent and Field-Equipage, pawned them all to a Broker for less than half their Value, to assist some of those Gentlemen; whereby he lost his Goods, not having an Opportunity of redeeming them in Time. Captain *Bernardi* arriving at *St. Germain's*, King *James* II. told him, that he was just going to *Ireland*, and had then about twenty-three hundred of his Subjects arrived at *St. Germain's*. The *French* King granted Orders for them to march to *Brest*, where the late Earl of *Dover* was ordered to meet and receive them: In the mean time King *James* went to *Brest*, where the *French* King had ordered a large Fleet, of about thirty-five Sail, to receive him and his Soldiers, and land them in *Ireland*; and in getting thither was the famous Battle with Admiral *Herbert* in *Bantry-Bay*. But King *James*'s Affairs growing bad in *Ireland*, he sent Major *Bernardi* (made a Major in *Ireland*) to *Scotland*, to accompany the Earl of *Seaforth*, then going to raise Men for King *James*: But receiving the News of King *James*'s being defeated at the Battle of the *Boyne*, the Earl of *Seaforth* dismissed his Forces, and sent them to their Places of Abode, without consulting his Uncle, his Officers, *&c.* who were greatly exasperated: Whereupon Major *Bernardi* desired to go to *England*, which Major-General *Buchan* approved of, and sent for the Laird of * *Glencoe* to come with forty of his Vassals to receive *Bernardi* at *Invergary*, and to conduct him to the Braes of *Monteth*, which was performed in the Night-time, for Fear of the Garrisons that lay in the Way.

Bernardi proceeded on his Journey from the Braes of *Monteth*, under the Conduct of a Guide appointed him by Colonel *Graham*, and arrived at *Edinburgh* in the Month of *November* 1691. The Rulers of that City having heard that some Gentlemen were come from the Highlands, ordered their Gates to be shut, and a general Search to be made for them. *Bernardi*'s Landlord getting Notice of it, conducted him out of Town, but half an Hour before that Order was put in Execution; otherwise his Journey at that Time had terminated in the *Tolbooth*, or some other Prison in *Edinburgh*; but escaping that and other Dangers, he travelled on from thence to *London*, meeting with no more Difficulties at that Time, than those of a long Winter Journey. But Misfortunes may be compared with evil Habits, it being no easy Task to get out of either, when once unhappily fallen into the Road of them. And this proved to be *Bernardi*'s Case; for, having finished his Affairs in *London*, by disposing of some Effects he had left with a Friend when he went out of *England*, and by selling his *Scotch* Horses, he purposed to go over into *Flanders*; and meeting with two Gentlemen of his Acquaintance ready to go out of Town, in order to make the same Voyage, he went with them to *Colchester*, where they were recommended to a Master of a Ship, who was in a short Time to carry over a Lady of great Quality to *Ostend*; but the Wind happening to be fixed in the East, the Lady ordered her Trunks to be put on Shipboard, and then went to a Gentleman's House about five Miles off, charging the Master to send for her as soon as the Wind came fair. *Bernardi* and his two Friends met with two other Gentlemen, who were Strangers to them, and also unknown in the Town, who were come thither to get a Passage over in the same Ship. They joined Company, and lodged all together for some Nights at Mr. *Cook's*, then Post-master in *Colchester*; but having Notice of some busy People's Inquisitiveness about them, *Bernardi* and his two Friends went to a Gentleman's House, about a Mile out of the Town, and the other two Gentlemen went to the Master of the Ship's House. The second Night after *Bernardi* and his two Friends went into the Country, Intimation was given to them, that Sir *Isaac Rebow*, a Justice of the Peace, had issued out his Warrant to apprehend them, and bring them before him; and the Wind coming fair the same Night, they went directly to the Master of the Ship's House, in order to go on board. The Master of the Ship told them, that he had sent a Messenger for the Lady two Hours before, and expected her in an Hour more; and sent one of his Men to conduct them on Ship-board, and said he would follow them, with the other two Gentlemen at his House, as soon as the Lady came. A Message came from the Lady, that she could not possibly come before the next Day in the Afternoon. *Bernardi* and his two Friends continued on Ship-board to avoid the Justice's Warrant. The next Day towards the Evening, came a Company of Train-Bands, with five hundred Mob, to the Quay, where the Ship lay dry, at Low Water, about two Miles from the Town. This Captain of the Train-Bands commanded his Men to go on board, and to bring all the Persons they found in the Ship to him. These Orders were obeyed; and *Bernardi*, and the two Gentlemen with him, were seized and carried directly to *Colchester* Gaol, where the other two Gentlemen and the Master of the Ship had before been made Prisoners. The Lady had set out in order to go on board, but being told what had happened, she returned back, and never appeared; upon which six Justices assembled to break open and search her Trunks, exposing even her foul Linen to the View of Hundreds of People; but their Worships could not discover who she was, neither had *Bernardi* or any of the other four Gentlemen the least Knowledge of her, but by Name and Title, which was the Countess of *Errol*; having never seen her. When the six wise Men had finished their Search of the Lady's Goods, they strictly examined and searched their five Prisoners separately, and charged them with having treasonable Papers and Pamphlets, though no such were found about them, neither had they any; but some such Things were found amongst the Lady's Goods. These Justices sent an Account of their Proceedings to the Earl of *Nottingham*, then Secretary of State, and thereby represented Major *Bernardi* and the other four Gentlemen to be Accomplices with the said Lady, and committed them to the County Gaol at *Chelmsford*; from hence they writ to their Friends, and got themselves removed by *Habeas Corpus* to *London*, and gave Bail before a Judge, to appear in the Court of *King's-Bench* the then next Term. Before the Term Two of the Five went off, either by Composition or Bilking their Bail; but *Bernardi* and his two Friends appeared, in Hopes and Expectation of being discharged by the Court: But the Attorney-General opposed their being discharged, having Instructions from the Secretary of State so to do, alledging that they were guilty of Treason. The Court ordered them into Custody of a Messenger, where they remained confined near seven Months. *Bernardi* having for many Years been well known to my Lord *Romney*, who was the other Principal Secretary of State, writ a Letter to his Lordship; and, by his Favour, they all three were admitted to Bail again upon the first Day of *Michaelmas* Term, to appear on the last Day of the same Term. They appeared accordingly; but the Attorney-General still went on with his Charge against them, and affirmed to the Court, that the treasonable Papers found in the Lady's Trunk, together with such other Evidence as would be produced in *Essex*, was sufficient to bring them to their Trial; and therefore he moved the Court to bind them over to *Chelmsford* Assizes, and they were bound over accordingly, twelve of their Friends giving five hundred Pounds Security each for their Appearance; and in order to their Defence, they applied themselves to four eminent Counsel in *London*, and gave them Breviates and large Fees to plead their Cause, and provided Coaches to carry them down, and to attend and bring them back again. The Day before the Assizes began, they went down with their Counsel, Sir *Creswell Levinz*, Sir *Bartholomew Shower*, Counsellor *Dolben*, and another whose Name the Author hath forgot. The six prosecuting Justices were got there before them, with their subpœna'd Witnesses, who were all heard by the Grand Jury the next Day, upon an Indictment preferred against them; but for want of sufficient Evidence to find the Bill, the Grand Jury rejected it, and gave in their Verdict *Ignoramus*; whereupon they were discharged in Court by Proclamation; and the six Justices galloped Home to *Colchester* in all Haste, as soon as they heard that the Grand Jury had thrown out the Bill of Indictment. This Prosecution, under close Confinement sometimes, and under Bail at other times, continued about a Year and a half, which put Major *Bernardi* to the Expence of some Hundreds of Pounds, and his two Fellow-Sufferers to as much.

Major *Bernardi*, soon after he was discharged, went over to *Holland* with the Earl of *Nottingham*'s Pass, and returned again within the Time limited by the Pass, and appeared at the Secretary's Office as he was enjoined, that my Lord might know he had not exceeded the Time prescribed him to return in; and by so doing he obtained some Favours from his Lordship afterwards. Not long after his Return from *Flanders*, he judged it to suit best with his Circumstances at that Time to retire into the Country, to be out of Harm's Way, and less liable to Company and Expence; for his five hundred Miles Journey from the Highlands of *Scotland* to *London*, with the undeserved Imprisonment and Prosecution which he suffered by the officious Justices, had very much impaired his Substance. And although nothing less than his Life was aimed at by the *Essex* Justices, yet his Sufferings then were but Flea-Bites, in comparison to the unprecedented Hardships laid upon him soon after. He returned from a pleasant Country-House near *Brentford*, where he had resided about a Year and a half, and where he employed much of his Time, and some Expence, in improving and beautifying the Gardens there; but the Premises being made over to Doctor *Ward*, Prebend of *Salisbury*, in Part of his Lady's Portion, *Bernardi* was obliged to quit the House on that Account, and came to *London* at *Christmas* 1695: A fatal Remove from a quiet Country-Abode to a Sea of Troubles, which in great Measure is to be imputed to his Misfortune in meeting with one Captain *Rookwood* by Accident at a Tavern! Captain *Rookwood* was then lately come from *France*, and had been an Acquaintance of *Bernardi*'s of about seven Years standing, though they had not seen each other for some Years then last past. *Rookwood* frankly told *Bernardi*, that he was quite tired out in foreign Service, that his Brother had a good Estate, and

* This Laird of *Glencoe* was a little while afterwards, with his Lady and Vassals, barbarously murdered. See Bishop *Burnet's History of his Own Times*, Vol. II. p. 88, 89. for an Account of this cruel Affair. See also a Quarto Pamphlet, intituled, *Murder will out*. The *English* Parliament voted this *a barbarous Massacre*.

Interest

Intereſt enough to obtain Leave for him to come Home; and that he was come over to that End, but kept himſelf a little private, until his Brother had gained him a Licence to appear; it being then made criminal by a Law, for any Subject to come from *France* without Leave from the Government. Within two Months or thereabouts after *Bernardi*'s Arrival in Town, a horrid Conſpiracy to aſſaſſinate and murder his late Majeſty King *William* was diſcovered, and many Proclamations came forth, offering a thouſand Pounds Reward for ſecuring each Man inſerted in thoſe Proclamations. Several were taken up on the firſt, and more were apprehended daily upon the repeated Proclamations. Captain *Rookwood* came to *Bernardi* on a *Saturday*, ſoon after the horrid Plot broke out, and his Countenance and Behaviour ſeemed to diſcover him to be under ſome Diſturbance of Mind. *Bernardi* thereupon aſked him, if any Evil had happened to him? To which he anſwered, No; but ſaid, that if any body ſhould be ſo malicious as to give Information of his being come over at that Time, he ſhould certainly be taken up. But it ſeems his Name was in a Proclamation, which came out upon that very Day, to ſeize him as one of thoſe who were concerned in the ſaid Aſſaſſination-Plot, though *Bernardi* had not then heard any thing of the Matter, and *Rookwood* concealed it from him, intending, as appeared by his Behaviour afterwards, to ſpend that Evening with *Bernardi*; but *Bernardi* told him, that he was under a Promiſe and Engagement to ſup that Night at a Tavern on *Tower-Hill*. Captain *Rookwood* thereupon earneſtly replied, that if the Meeting there was not upon private Buſineſs, he deſired he might be one of the Company; with which *Bernardi* readily complied, and he and *Rookwood*, with other Company, ſupped there accordingly; and making it too late to go Home to their Lodgings, *Rookwood* and *Bernardi* ſtayed all Night at the Tavern, and went to Bed together there. The next Morning, being *Sunday*, ſome Conſtables and other armed Men came into the Houſe, and entered the Room where *Bernardi* and *Rookwood* were in Bed, and producing their Warrant to ſearch for and ſeize them, they demanded Submiſſion thereto. *Bernardi* and *Rookwood* readily yielded to their Authority, not making the leaſt Reſiſtance, and got up and dreſſed themſelves as ſoon as poſſibly they could; but the Conſtables Orders being to carry them, and all the People belonging to the Tavern before the Recorder of *London*, who was then gone to Church, they were obliged to remain in the Tavern until Noon, guarded by twenty Men. This Delay gave *Bernardi* Time and Opportunity to make ſome Inquiry into the Cauſe of all that Hurly-Burly. The ſenior Conſtable told him, that a Neighbour's Servant-Maid came to the Tavern the Night before, and ſeeing ſome Gentlemen at Supper, ſhe aſked a Drawer who they were? And he making her a ſurly Anſwer, ſhe went with her Brother, a Journeyman Shoemaker, directly to the Recorder, and gave Information, that ſome evil-minded Men were at the Tavern, and that the People of the Houſe refuſed to diſcover who they were; and therefore it was reaſonable to believe, that they might be ſuch Perſons as the Government then ſought for, by divers Proclamations. It was then near the latter End of *February*, and the before-mentioned horrid Conſpiracy was diſcovered about the Middle of the ſame Month. The Conſtables having Notice of the Recorder's being at Home, they carried *Bernardi* and *Rookwood*, with all the Tavern Family before him, who examined them very ſtrictly and ſeparately, and told them that he could do no leſs than commit them at that diſturbed Time, though he found no other Cauſe than Suſpicion for ſo doing; and therefore, as a Favour, would ſend them to the two Compters, and not to *Newgate*, that they might with leſs Difficulty and Expence obtain their Liberty, when the Storm was blown over. He ordered the Tavern Family to give Bail the next Day. *Bernardi* and *Rookwood* remained quiet under their reſpective and different Confinements near a Month, without any Communication with each other, either by Letter or Meſſage, in all that Time. Captain *Charnock*, *King* and *Keys*, were taken up on the firſt Proclamation, which came forth on or about the 22d Day of *February*; and were tried and convicted of High-Treaſon *March* 11, 1695-6, and were all three executed on the 18th of the ſame Month.

Upon the 23d of *March* came forth another Proclamation, in which *Bernardi*'s Name was inſerted, and a Reward of a thouſand Pounds was thereby offered to apprehend him. Captain *Rookwood* repoſing an entire Confidence in the Friendſhip of one Mr. *George Harris*, intruſted him with the Knowledge of his and *Bernardi*'s being Priſoners in the Compters, as before related. And here it is to be obſerved, that although Captain *Rookwood* was in a Proclamation, which came forth but the Day before he and *Bernardi* went together to the Tavern on *Tower-Hill*, and of which, without Doubt, he had been appriſed at the Time of his firſt coming to *Bernardi*, who then knew nothing of the Matter; yet Captain *Rookwood* thought fit to conceal the ſame from the Knowledge of *Bernardi* as long as he could, and judging it conducive to his Safety, he changed his Name, and prevailed on *Bernardi*, by earneſt Intreaty, to do the like; but without acquainting him with the Proclamation, as a Reaſon for his ſo doing. Captain *Rookwood* was often viſited in the Compter by his Minion the ſaid *Harris*, to whom he had communicated theſe Particulars: And as ſoon as the Proclamation of the 23d of *March* came forth, which was the laſt that was publiſhed to apprehend Conſpirators, and was publiſhed at ſome Weeks Diſtance from the reſt, *Harris* went and diſcovered Captain *Rookwood* and *Bernardi* for the Reward, and they were taken out of the Compters by a Detachment of the Guards, in the Night of the 24th of the ſame Month of *March*, and were carried to the Tilt-Yard Guard, and examined by the Lords of the Council the next Day, and committed *March* 25, 1696, cloſe Priſoners to *Newgate*, loaded with heavy Irons, and put into ſeparate, diſmal, dark and ſtinking Apartments, not being allowed to ſpeak to each other from the Time of their being taken out of the two Compters. *Bernardi* did never ſee *Rookwood* afterwards, who was ſoon after tried and condemned, and was executed at *Tyburn* with *Cranburne* and *Lowick*, on the 29th Day of *April* following.

It may be here demanded, How came *Bernardi* not to undergo the like Fate with *Rookwood*? To which he anſwers, That it was not by Favour, but for want of Evidence to hang *Bernardi*; though to have taken away his Life at that Time without Proof, had been tender Mercy, compared to the Cruelty of the ſevere and long Confinement he has ſince endured. None of the Diſcoverers of the ſaid horrid Plot, who were about ten or twelve in Number, ever ſo much as mentioned *Bernardi*'s Name, unleſs *Harris* might make ſome Mention of him *, who had no other Knowledge of him, but by ſeeing him and his Friend *Rookwood* ſometimes together; in which Caſe he might ſpeak Truth with reſpect to *Bernardi*, but no farther. *Harris*'s View was the two thouſand Pounds Reward, which he received, and which muſt, no doubt, with him have been a Conſideration highly preferable to Captain *Rookwood*'s Friendſhip, though the Captain had been a true Friend to *Harris* for many Years, and, according to all Accounts, as kind to him as a good Father could poſſibly be to a beloved Son. Captain *Rookwood* was proved, by one of the chief Diſcoverers of the Conſpiracy, to have been one Night in their Aſſembly and Councils, and then unhappily to have given his Conſent to the deſigned bloody Act againſt King *William*, which coſt him his Life. Had or could *Bernardi* at that Time have been drawn into their vile and pernicious Councils, with reſpect to that horrid and moſt diſhonourable Deſign, his Rank and long Service muſt neceſſarily have rendered him a welcome Gueſt amongſt the Conſpirators, and conſequently he muſt have ſhared Captain *Rookwood*'s Fate, without any poſſible Means of eſcaping it. Thoſe who ſuffered Death upon the Account of the Aſſaſſination-Conſpiracy, were eight in Number, namely, Captain *Charnock*, *King* and *Keys*, Major *Lowick*, Captain *Rookwood*, and *Cranburne*, and Sir *William Perkins* and Sir *John Friend*. Sir *John Fenwick* ſuffered for another Species of Treaſon, as ſhall herein after be particularly related and explained. The nine before-mentioned being executed, there ſtill remained many cloſe Priſoners in *Newgate* upon that Account; but Evidence being wanted to convict any more of them, the *Habeas Corpus* Act was ſuſpended for nine Months, to prevent them from gaining their Liberty by Law; and this was done with a View of finding out Evidence againſt them within that Time. The Suſpenſion of the Act expiring, ſeveral of them entered their Prayer at the then next Seſſions and Term, to be tried and admitted to Bail. The firſt who entered ſuch their Prayer were three Gentlemen who were Brothers, and related to the Earl of *Bath*, Captain *Stow*, Captain *Walbank*, and Mr. *Blackburn*, and ſome others, and they were all bailed out and diſcharged, though they were taken by Proclamation, and a thouſand Pounds Reward was paid for each of the firſt five Perſons. The remaining Number in Confinement then, were only *Bernardi*, Captain *Counter*, Mr. *Caſſels*, Mr. *Meldrum*, and *Chambers*; and they being locked up cloſe in ſeparate diſmal Parts of the Gaol, and moſt of them unknown to each other, could neither communicate or do any Thing for themſelves in order to their Liberty, nor could know what had been done for others: But the good Succeſs of thoſe before-mentioned cauſed their Friends abroad officiouſly to enter Prayers for them at the ſecond Seſſions after the *Habeas Corpus* Act came in Force; whereupon they were all of them taken out of their cloſe Holes, and were carried to the *Old-Bailey*, in order to be tried or bailed. Mr. *Conſtantine Phipps*, (who was afterwards Lord Chancellor of *Ireland*) was appointed their Counſel to move for them, and aſked *Bernardi*, If any Application had been made to the Sollicitor of the Treaſury? *Bernardi* anſwered, No; alledging, that as there was no Law to keep them any longer confined, their Friends judged it needleſs to apply to any body for Favour; little dreaming that an Act of Parliament would be obtained to ſecure and continue their further Confinement, a Practice never known or heard of before. As ſoon as they were produced in Court in order to be tried or bailed, the Sollicitor of the Treaſury ſtood up and whiſpered the Judges upon the Bench: And though that Seſſions, being a Seſſions of Gaol-Delivery, could not lawfully be determined without either trying or bailing theſe State-Priſoners, the Judges being obliged by Law to deliver the Gaol; yet, upon the whiſpering Motion of the Sollicitor of the Treaſury, the Judges adjourned the Court for a Fortnight, and immediately after a Bill was brought into Parliament, and an Act paſſed within that Time to confine them for a Twelvemonth, on a ſuppoſed Probability ſtill of finding out ſome Evidence againſt them in that Time †. But how came it that the ſame prudent Precaution for the Safety of the State, and to bring vile Conſpirators to condign Puniſhment, was not made Uſe of againſt thoſe that prayed their Trial at the Seſſions before, and thereby obtained their Diſcharge, and ſome of whom were committed upon the Oath of one Witneſs? It will not ſure be difficult to ſolve this Queſtion. Mr. Sollicitor of the Treaſury neither ſpoke aloud nor ſoftly againſt them; and why he was ſo good-natured may be eaſily underſtood, having, no doubt, been properly talked with by them; which was a very unfortunate Omiſſion in the Conduct of *Bernardi* and his Fellow-Sufferers, in not properly beſpeaking Mr. Sollicitor's Favour for them. And here a very ſingular and deplorable Paſſage happened, relating to Mr. *Blackburn*, who being bailed out and diſcharged, with thoſe who had

* Captain *Harris*, in his Evidence at *Rookwood*'s Trial, Vol. IV. p. 636. ſays, He met *Rookwood*, *Blackburn*, *Bernardi*, *Counter*, and others; and with two or three of them talked of going to *Turnham-Green*, and attacking the Prince of *Orange*.

† By an Act 8 *W.* III. "to attaint ſuch of the Perſons concerned in the late horrid Conſpiracy to aſſaſſinate his Majeſty's Royal Perſon who are fled from Juſtice, unleſs they render themſelves to Juſtice, and *for continuing ſeveral others of the ſaid Conſpirators in Cuſtody*;" in the laſt Clauſe of which are theſe Words:

"And whereas the Perſons hereafter named, *viz.* —— *Counter*, *John Bernardi*, *Robert Caſſels*, *Robert Meldrum* *James Chambers*, and *Robert Blackburn*, have been committed, and are ſtill in Cuſtody in *Newgate*, for the ſaid Conſpiracy and Treaſon: Be it enacted by the Authority aforeſaid, That the ſaid —— *Counter*, *John Bernardi*, *Robert Caſſels*, *Robert Meldrum*, *James Chambers*, and *Robert Blackburn*, and ſuch other Perſons who ſhall hereafter render themſelves, or ſhall be apprehended, and againſt whom there ſhall be Evidence upon Oath of their being concerned in the ſaid barbarous and bloody Conſpiracy of aſſaſſinating the Perſon of his Sacred Majeſty, ſhall be detained and kept in Cuſtody, without Bail or Mainprize, until the firſt Day of *January* 1697, unleſs they ſhall be ſooner bailed by Order of Council, ſigned by ſix of his Majeſty's Moſt Honourable Privy-Council."

firſt

first entered their Prayers to be tried, was taken up again upon the same Account, and, without any fresh Charge or Information against him, put into the Custody of a Messenger, at the Time when the House of Commons were passing the Bill for continuing the Confinement of the five last-mentioned State-Prisoners; and the Bill being carried up to the House of Lords for their Concurrence thereto, Mr. *Blackburn* was added to the said fatal Number in the Lords House, by way of Amendment to the Bill, and sent again to *Newgate*. Mr. *Chambers*. another of the last-mentioned State-Prisoners, who had also entered his Prayer at the Term with the first to be tried or bailed, was brought up to the Court of *King's-Bench* by *Habeas Corpus*, in order to be bailed; but one of his Bail refusing to swear himself worth five hundred Pounds, *Chambers* was remanded back to *Newgate*, where he remained, with the rest, under the Parliament's Confinement, till released by Death. The first Act expiring, a second (9 *W.* III. *c.* 4.) was soon passed to continue them in Prison another Year; unless, as in the former Act, they should sooner be bailed or discharged by Order of Council, signed by six Privy-Councillors. And at the End thereof, all Prospect of finding out any Evidence against them seeming to be entirely vanished, a third Act (10 & 11 *W.* III. *c.* 13.) was passed, confining them during the Pleasure of his late Majesty King *William*. And even some of the Members of that Parliament afterwards told *Bernardi*, and others of the Number so miserably confined, that the very Intention of that Act was purely to lay them under dutiful Obligations to King *William* for their Liberty, and thereby also at the same time to pay his Majesty a Compliment; and that the Members did not in the least doubt of his Majesty's Clemency to them, but that in a little Time he would set them free. King *William* was afterwards accordingly applied to in their Favour, not long before his Death, by the late Earl of *Burlington*; and his Majesty was graciously pleased to promise his Lordship, that he would deliver them in a short Time. But the King's Illness and Death following soon afterwards, and before any Order was given for their Discharge, the good and gracious Design of his Majesty for the Deliverance of these unhappy Men (if he really intended it) was most unfortunately frustrated and prevented. The Act for their Confinement, by the Demise of King *William*, being determined, (as they were advised) they entered their Prayer at the next Sessions to be tried or bailed, but were opposed by the Attorney-General, and neither was granted. Afterwards another Act of Parliament (1 *Ann. st.* 1. *c.* 29.) was procured to be passed, confining them during the Pleasure of Queen *Anne*. Her Majesty was graciously pleased to release Captain *Counter*, the first named in the said Acts of Confinement. Major *Bernardi* thereupon petitioned the Queen for his Liberty, and prevailed upon his Grace the late Duke of *Buckingham*, then Lord President of the Council, to deliver his Petition to her Majesty; which was so done at the Intercession of her Grace the Dutchess of *Buckingham* his Consort, and her Lady-Mother the late Countess of *Dorchester*, both of them being so very good as strenuously to move his Grace to undertake it, urging that such Acts of Compassion and Charity were generous and excellent in Persons of Quality, and well becoming a good and great Man in high Station. The Queen was graciously pleased, upon the Duke's Motion, to consent to *Bernardi*'s Liberty; but his Grace afterwards cautiously laying the Petition before the Privy-Council, it was by them referred to Sir *Edward Northey*, the then Attorney-General, which might give him an Opportunity to obstruct the Queen's intended Clemency, for politic or other Reasons. Upon this Reference, it took up some Time and Expence to attend and solicite the Dispatch of Mr. Attorney's Report, which, when made, nevertheless appeared to be in *Bernardi*'s Favour. The Lord President called for the Report, in order to have the Sentiments of all the Lords in Council, how and in what Manner *Bernardi* should be delivered and discharged; but the late Earl of *Oxford*, then Lord Treasurer, at the same Time took the Opportunity to move that Mr. *Blackburn* might have his Liberty as well as *Bernardi*; and thereupon his Grace the President, and his Lordship the Treasurer, differed in Council about the respective Discharges of *Bernardi* and *Blackburn*, whereby both their Pretensions to their Liberty, though so near succeeding (to all Appearance) dropped, and never could be revived again to the Queen's Death. How far those two great Statesmen were sincere in attempting the Liberty of *Bernardi* and *Blackburn*, or either of them, or played Booty, God alone knows; the Windings, Turnings, and Labyrinths of Politicians not being easily traced and found out by a well-meaning, honest Man. The Earl of *Oxford* afterwards was often applied to in their Behalf, and sometimes by Persons of greater Honour and Quality than himself; and his Lordship made more Promises than he had Buttons upon his Coat, Waistcoat, and Cloak, and some of them upon his Honour, that these Prisoners should soon be set at Liberty, if they would but have a little more Patience; but all his Lordship's Promises were by him either forgot, or, through his most refined Policy, neglected to be performed.

By the Demise of the Queen they had again Liberty, by Virtue of the *Habeas Corpus* Act, to pray for their Trial or to be bailed; and in order thereunto they entered their Prayer accordingly, at the first *Old Bailey* Sessions, and were by that Court referred to *Michaelmas* Term following. They retained three or four eminent Counsel at Law, and fee'd them to move and plead for them. Seven or eight Motions were made that Term, at different Times, in their Behalf, and several Rules of Court were obtained at great Expence, before they could bring the then Attorney-General, Sir *Edward Northey*, to appear and defend their Motions. At last the then Lord Chief Justice *Parker* told Serjeant *Webb*, (one of the Counsel for the Prisoners) that the Court consented to their being brought to the Bar by *Habeas Corpus* on the *Monday* following, being the last Day of the Term, in order to admit them to Bail, bidding the Serjeant in the mean time to direct his Clients to give in the Names of such substantial Men as they intended to bring into Court to bail them. This glimmering Favour proved only as a little enlightening before Death, as will appear by the Sequel. The Prisoners were accordingly brought up by their Keepers from *Newgate* to the Court of *King's-Bench*, the last Day of the Term, when the Chief Justice before-named, having Notice of their being there, was pleased to ask Serjeant *Webb*, their Counsel, if they had Bail ready in Court? And being answered in the Affirmative, his Lordship was pleased to reply, That Wonders were to be done presently; Wonders indeed, and such as were never heard of before! The Prisoners were called and brought into Court, and thereupon the same Gentleman made an Harangue against them of above an Hour long; and although towards the End of his very bitter and invective Speech against those helpless Wretches, who were obliged to receive all his Fire and Huffs, he was so ingenuous as to declare, that he had never heard of any Evidence charging them with the Crime they were committed for; yet he was pleased also to declare, that he was very well satisfied of their Guilt, by the Proceeding of the first Parliament against them, and would therefore remand them back to *Newgate*, which accordingly he did. At the Meeting of the next Parliament Matters were so ordered, that another Act (1 *Geo.* I. *st.* 2. *c.* 7.) was prepared and procured to pass both Houses very expeditiously, to continue them in Prison during his late Majesty King *George*'s Pleasure. If it was intended still to debar these unhappy Men from the Benefit of the Law, it would have been Charity to have told them so, when they entered their Prayer to take their Trial or be bailed at the Demise of Queen *Anne*, and not to have drilled them on with Hopes of Relief all that long Term, when none was intended them; impoverishing them at the same time by great Expence of Counsel's Fees, and otherwise, in attempting it, to the reducing and bringing them into a starving Condition in Gaol. Several Petitions were afterwards delivered to his late Majesty King *George* in the Name and Behalf of these Wretches, imploring his Sovereign Compassion, and setting forth, as an Instance of his great Mercy, upon another Occasion, his pardoning many condemned for actual Treason against his Majesty's Person; whereas these had been long miserably confined as Prisoners of State, purely upon bare Suspicion only of being concerned in a Conspiracy against a deceased Monarch, of which the least Proof could never be made out against them; yet their Petitions were not minded. The Court of *England* hath the least Regard to Petitions of any Court in *Europe*, and so it hath been for many Reigns past; which Neglect is chiefly to be imputed to the Prime Ministers and other great Men: His Majesty having a Petition put into his Hand, generally gives it to one of the Lords near him, where it is too often thrown aside, and never heard of more. In most other Courts particular Days are appointed to read Petitions, inserting in the Margin of each Petition, to the Effect following, *viz.* Consented to, or not consented to; and an Office is settled wherein to lodge Petitions, where the Deliverers take them out, and by that Means all Petitioners soon know how far they are, or are not, to prevail upon such their submissive and most humble Application.

By the Demise of his late Majesty King *George* the First, which happened at *Hanover*, on or about the 11th Day of *June*, 1727, *Bernardi* and his two Fellow-Sufferers, being all the Survivors of the said miserable State-Monuments, had again Liberty by Law to pray for a Trial or to be admitted to Bail; whereupon *Bernardi*, on the 16th Day of *June*, 1727, moved the Court of *King's-Bench* by his Counsel for an *Habeas Corpus* to bring him up, in order to be tried, bailed, or discharged, according to Law; such Counsel at the same Time apprising the Court, that *Bernardi* had, so long ago as the 25th Day of *March*, 1696, been committed to *Newgate* by the late Duke of *Shrewsbury*, then Secretary of State, on Suspicion of being concerned in a horrid Conspiracy to assassinate his late Majesty King *William* III. but without any Proof, there not being so much as the Oath of one single Witness made against him, nor was it specified in his Commitment that he was charged upon Oath; and no Proof at any Time afterwards ever appearing against him, to induce the bringing him to a Trial, several Acts of Parliament had been made to keep him in Prison, and by the last of them he was confined during the Pleasure of his said late Majesty King *George* I. by whose Decease *Bernardi* was become intituled to his Liberty, there being no Law then in Force to detain him in Prison; and the Court then made a Rule for such *Habeas Corpus* accordingly; though the Motion was strongly opposed by the Attorney-General Sir *Philip Yorke*, who, though a young Man, had sprung up quickly to that great Post in the Law, through the early Favour and Countenance of the before-mentioned Chief Justice, and his own shining Merit, built upon so nursing and advantageous a Foundation. Mr. Attorney-General (but sure he was only in Jest) objected in particular to the Motion as not proper or regular, without producing the original Commitment, which, for Want of due Care in keeping and preserving the Records of *Newgate*, after upwards of one-and-thirty Years, and the Change of the several Keepers within that Time, was not then to be had; but that weighty Objection was over-ruled by the Court. Afterwards Sir *John Fortescue Aland*, then one of the Judges of the Court of *King's-Bench*, and now one of the Judges of his Majesty's Court of *Common-Pleas*, declared in Court, that the same Matter had been moved upon the Demise of Queen *Anne*, when the Chief Justice *Parker* before-mentioned declared his Opinion, that the Court had a discretionary Power either to bail or discharge the Prisoners, then brought up to the Court of *King's-Bench* by *Habeas Corpus* in the like Case; yet nevertheless, at the same Time, he remanded them back to *Newgate*. *Bernardi*'s Counsel thereupon waved the *Habeas Corpus*, and desired to take nothing by his Motion, as conceiving the Expence only certain, (which *Bernardi* was ill able to bear) and the Success doubtful; and besides the Judges Commissions were not then renewed, who of themselves could not subsist longer than six Months from his present Majesty's Accession to the Crown. It was therefore thought expedient and more adviseable for *Bernardi* to seek Relief by petitioning the King for his Royal Favour and Clemency, than to make any farther Trial to be discharged or bailed by the Court of *King's-Bench*. A Bill was soon after brought into Parliament, and speedily passed into an Act (1 *Geo.* II. *st.* 1. *c.* 4.) to continue his Imprisonment, with his other two Fellow-Sufferers, *Blackburn* and *Cassels*, during his present Majesty's Pleasure. A printed Case was delivered to all the Lords and Commons against the Bill, while the same was under the Consideration

ation of the Two Houſes, as is herein after ſet forth. And *Bernardi* preferred ſeveral Petitions to the King and Queen, both before and after the ſaid laſt-mentioned Act paſſed; the Tenor or Purport of which Caſe and Petitions are as followeth, *viz.*

The moſt ſad and deplorable Caſe of Robert Blackburn, John Bernardi, *and* Robert Caſſels, *humbly offered againſt the Bill now depending in Parliament for continuing their Impriſonment, after a Confinement worſe than Death by them already undergone, of upwards of one-and-thirty Years in* Newgate.

IN *March* and *April* 1696, they were committed: The Crime they were charged with in their reſpective Commitments was High Treaſon, in conſpiring the Murder and Aſſaſſination of his late Majeſty King *William* III. but without Proof, there being not ſo much as the Oath of one ſingle Witneſs made againſt any of them, nor is it ſpecified in their Commitments, that they were charged upon Oath: That no Proof appearing againſt them whereby to bring them to a Trial, ſeveral Acts of Parliament had been made to keep them in Priſon, the laſt of which left them to his late Majeſty's Pleaſure, and then by the Demiſe of the King they were become intituled to their Liberty: That the Perſons charged with this moſt horrid and deteſtable Crime were originally Six, namely, *James Counter*, *Robert Meldrum*, *James Chambers*, *Robert Blackburn*, *John Bernardi*, and *Robert Caſſels*: *Counter* was ſet at Liberty by Queen *Anne*, and *Meldrum* and *Chambers* died in Priſon; ſo that there were then remaining only the laſt Three of theſe miſerable, wretched and moſt unfortunate Priſoners, who ſolemnly diſclaim, and from their Hearts ever did and do abhor and deteſt, the ſaid villainous Crime ſo laid to their Charge as aforeſaid: And although their Number was then reduced to Three as before-mentioned, yet nevertheleſs by that Bill they were intended to be further confined: That they were reduced to extreme Miſeries by their ſaid tedious Confinement of one-and-thirty Years and upwards, in a melancholy, diſmal, and loathſome Gaol, and by their great Age, Infirmity, and Poverty; and though they had been confined cloſe Priſoners of State in *Newgate* for upwards of one-and-thirty Years as aforeſaid, yet they had never had one Penny Allowance from the Government.

Wherefore, and in regard to the unprecedented and unparalleled Hardſhips of their Caſe, it was humbly hoped the ſaid Bill ſhould not paſs. Subſcribed,

Robert Blackburn.
John Bernardi.
Robert Caſſels.

Newgate,
July 5, 1727.

Copies of Commitments follow, whereby it plainly appears that none of the ſaid three Priſoners were committed upon Oath.

THESE are, in his Majeſty's Name, to authoriſe and require you to receive into your Cuſtody the Body of ——— *Bernardi*, herewith ſent you for *High Treaſon*, in conſpiring the Aſſaſſination and Murder of the King; and you are to keep him ſafe until he ſhall be delivered by due Courſe of Law; and for ſo doing this ſhall be your Warrant. Given at the Court at *Whitehal*, the 25th of *March*, 1696.

To the Keeper of Newgate, *or his Deputy.* SHREWSBURY.

(*Vera Copia*, *examinat. per* James Fell.)

N. B. The Commitments of Mr. *Blackburn* and *Caſſels* are to the ſame Effect with *Bernardi*'s.

None of the ſaid ſix Priſoners were committed upon any Oath, except *Counter*, who was charged upon the Oath of one Witneſs, as may appear by the following true Copy of his Commitment:

Middleſex.

RECEIVE into your Cuſtody the Body of *John*, alias *James Gunter*, alias *Counter*, alias *Rumſey*, herewith ſent you, charged before me, upon the Oath of *George Harris*, Gent. for *High Treaſon*, in conſpiring to aſſaſſinate his Majeſty, and to procure an Invaſion of this Kingdom by the *French*, being the Perſon mentioned in his Majeſty's Proclamation, and there called *Counter*, alias *Rumſey*; and in order to a further Examination, you are him ſafely to keep, until he ſhall be diſcharged by due Courſe of Law; and for ſo doing this ſhall be your Warrant. Given under my Hand and Seal, this 29th Day of *May*, 1696.

S. LOVELL, *Recorder.*

(*Vera Copia*, *examinat. per* James Fell.)

A Copy of the Keeper's Certificate, ſetting forth that none of the ſaid three Priſoners were committed upon Oath; which Certificate was annexed to one of *Bernardi*'s Petitions to the King.

WHEREAS *James Gunter*, alias *Counter*, alias *Rumſey*, *James Chambers*, *Robert Meldrum*, *Robert Blackburn*, *Robert Caſſels*, and *John Bernardi*, were committed to *Newgate* in 1696, for conſpiring to aſſaſſinate his late Majeſty King *William* the Third, as appears by Copies of their ſeveral Commitments, ſigned by *James Fell*, the Keeper of *Newgate*, and by his Head Turnkey *Bodenham Rouſe*, which I have ſeen and examined:

I hereby certify, that none of the before-named Perſons are charged upon any Oath ſpecified in the ſaid Copies of their reſpective Commitments, except the aboveſaid *Counter*, who ſtands charged in his Commitment for the ſaid Crime, upon the Oath of one *George Harris*, Gent. Given under my Hand this 15th Day of *Auguſt*, 1727.

THOMAS ALLEN.

True Copies of Petitions to the King and Queen, and of an Affidavit of two eminent Surgeons, are herein after ſet forth as followeth:

To the KING's *Moſt Excellent Majeſty.*

The moſt humble Petition of Major John Bernardi,

Sheweth,

THAT your Petitioner now is, and for upwards of one-and-thirty Years laſt paſt has been a State-Priſoner in *Newgate*, committed the 25th of *March*, 1696, by the then Earl of *Shrewſbury*'s Warrant, as Secretary of State, and therein charged with *High Treaſon*, in conſpiring the Murder and Aſſaſſination of his late Majeſty King *William*; but without any Proof, or ſo much as any Information upon the Oath of one ſingle Witneſs, that your Petitioner could ever hear of: Neither hath, in all the ſaid Time of thirty-one Years and upwards, any Proſecution been had againſt your Petitioner for the ſaid horrid ſuppoſed Crime, which your Petitioner doth diſclaim, and from his Heart ever did and doth abhor and deteſt.

That by two Acts of Indemnity, the one in the third, and the other in the ſeventh Year of the Reign of his late Majeſty your moſt gracious Father King *George* the Firſt, the Crime alledged againſt your Petitioner in his Commitment is pardoned; but by the ſaid Acts the Impriſonment of your Petitioner was continued during his late Majeſty's Pleaſure.

That your Petitioner is adviſed, that by the Demiſe of his ſaid late Majeſty, your Petitioner became intituled to his Liberty, and ought not to be detained in Priſon by any Law now in *Being*; and has very lately applied to your Majeſty's Judges of the Court of *King's-Bench* to be diſcharged from his Confinement, but without Succeſs.

That your Petitioner, by his ſo long Impriſonment, is reduced to great Straits and Want, and great Infirmity of Body; and his Life is in Danger by his cloſe Confinement in *Newgate*, as by Affidavit of two eminent Surgeons, herewith produced, and ſworn before one of your Majeſty's Judges of the *King's-Bench*, and filed in the ſaid Court, may appear. And your Petitioner is now upwards of ſeventy Years of Age, great and the beſt Part of which Time has been very uncomfortably worn out by your Petitioner, in a melancholy, diſmal, and loathſome Gaol, where it has coſt your Petitioner above ſeven hundred Pounds for his Lodging.

That in regard to all ſuch your Petitioner's ſad and deplorable Circumſtances, and advanced Old Age, your Petitioner moſt humbly hopes he may be deemed a fit Object of your Majeſty's Charity and Clemency, and more eſpecially at this Juncture of your Majeſty's Acceſſion to the Throne.

Wherefore your Petitioner doth moſt humbly beſeech your Majeſty, that he may, for the preſent, for the Benefit of his Health, and to ſave Expence, be removed from *Newgate* to the *King's-Bench* Priſon, till ſuch Time as your Majeſty ſhall graciouſly ſee Cauſe to order your Petitioner's abſolute Diſcharge.

And your Petitioner ſhall ever pray, *&c.*

Ex Parte Johannis Bernardi *Ar' in* Banco Regis.

JOHN WHEELER the Elder, and *John Wheeler* the Younger, his Son, both of the City of *London*, Surgeons, jointly and ſeverally make Oath, That Major *John Bernardi*, who now is, and for upwards of one-and-thirty Years laſt paſt, as theſe Deponents have been informed, and verily believe, hath been a State-Priſoner in *Newgate*, hath frequently had very ill Fits, occaſioned by a miſerable Lameneſs and Swelling in his Arm, by Humours flowing to an old Wound. And theſe Deponents further ſay, That they have attended him many Times in ſuch Illneſs, for about twelve Years laſt paſt, as his Surgeons, laying his Arm often open to the Bone by large Inciſions, which have continued open and running Wounds for ſeveral Months after every ſuch Operation; and his Torments occaſioned thereby have frequently brought Fevers upon him, to the endangering his Life. And theſe Deponents further ſay, That in theſe Deponents Judgment, the Cauſe of contracting ſuch ſharp and groſs Humours hath proceeded, and doth proceed from the Length and Cloſeneſs of his Confinement; which, if continued, will ſtill endanger his Life, in theſe Deponents Judgment; and the rather by reaſon of his advanced Old Age, he being now, as theſe Deponents have been informed, and do believe, upwards of ſeventy Years of Age.

JOHN WHEELER.
JOHN WHEELER, jun.

Jurat' apud Serjeants-Inn, *in* Chancery-Lane, 15° *Die* Junii, 1727, *coram* JA. REYNOLDS.

To the KING's *Moſt Excellent Majeſty.*

The humble Petition of Major John Bernardi,

Sheweth,

THAT your Petitioner, by an Act of Parliament lately made, being intirely left to your Majeſty's moſt gracious Pleaſure, after having ſuffered near thirty-two Years cloſe Impriſonment in *Newgate*, on Suſpicion of being concerned in a moſt horrid Conſpiracy againſt his late Majeſty King *William*,

That your Petitioner hath always prayed and petitioned to be tried, as often as he could do it by Law, to be acquitted or condemned; yet he could never be heard or brought before any Court, to have his Guilt or Innocence proved.

That your Petitioner was not charged upon any Oath, of his being a Conſpirator in that horrid Plot, which is evident by his Commitment: No Man ever being taken up for *High Treaſon*, and ſo charged, but the ſame was always ſpecified and expreſſed in his Commitment (as your Petitioner is adviſed). For Inſtance, Mr. *Counter* is only charged upon the Oath of one Evidence; the Diſtinction ſufficiently appeareth by the Copy of his Commitment, and that of your Petitioner, hereunto annexed.

That your Petitioner hath humbly ſet forth his great Age, Infirmity and Poverty, by a former Petition delivered into your Majeſty's moſt gracious Hand; your Petitioner being above ſeventy Years old, ſuffering inſupportable Miſeries by frequent Ulcerations in his Limbs, occaſioned by his long and cloſe Confinement, atteſted upon the Oath of two eminent Surgeons, and annexed to his former Petition to your Majeſty.

Your Petitioner therefore moſt humbly implores and ſupplicates your Majeſty, in your Sovereign Compaſſion and great Goodneſs, to grant that your Petitioner may be removed from *Newgate* to your Majeſty's *Bench* Priſon for the preſent, for the Benefit of more Air, and leſs Expence, until your Majeſty may be graciouſly pleaſed to grant your Petitioner entire Liberty.

And your Petitioner ſhall ever pray, *&c.*

To the QUEEN's *Most Excellent Majesty.*

The humble Petition of Major John Bernardi,

Sheweth,

THAT your Petitioner hath been a close Prisoner of State in *Newgate* near thirty-two Years, and is now destined to a longer Confinement, by an Act of Parliament lately made to that End, leaving your Petitioner to his Majesty's most gracious Pleasure.

That your Petitioner was not committed upon the Oath of any Evidence, as appeareth by the Copy of his Commitment annexed to his Petition, delivered also to his Majesty's most gracious Hand this Day.

That your Petitioner and the rest had their Case delivered to the Members of both Houses of Parliament, whilst the Act for their longer Imprisonment was under their Consideration; a Copy of which is hereunto annexed.

That your Petitioner is one of the oldest Commission-Officers in the Kingdom, having served the States of *Holland* fifteen Years by the King of *England*'s Consent and Approbation; your Petitioner bearing five of his then Highness the Prince of *Orange*'s Commissions in several Stations of Honour, the first of which bears Date above fifty-four Years ago; and your Petitioner hath been much wounded in the said Service.

That your Petitioner's Grandfather and Father were both Counts of the Empire, *&c.* though his said Father and your Petitioner were both born Subjects of this Kingdom.

That your Petitioner hath his before-mentioned Commissions, and the Imperial Patent, to produce in Testimony of the Truth thereof.

That your Petitioner hath already suffered a Punishment a thousand-fold worse than a present or violent Death, and never could obtain the Favour to be brought before any Court of Justice, to have his Guilt or Innocence proved; kept in Prison near thirty-two Years, by Methods never heard of before; and is now nigh worn out with Old Age, Decrepidness, and Poverty.

Your Petitioner therefore most humbly implores and beseeches your Majesty, in your Sovereign Compassion and Pity, to move the King to grant the Prayer of your most miserable Petitioner, which is but one Prison for another, until the King of Kings, in his Divine Providence, shall deliver your Petitioner out of this changeable World, or that his Majesty may be graciously pleased to grant him more Liberty in it.

And your Petitioner shall ever pray, *&c* *.

To the QUEEN's *Most Excellent Majesty.*

The humble Petition of Abigail Bernardi, *Wife to the most unfortunate Major* John Bernardi, *who hath for upwards of one-and-thirty Years last past been confined a State-Prisoner in* Newgate,

Sheweth,

THAT your Petitioner, on the 25th of *June* last, did deliver to the King's Most Excellent Majesty an humble Petition on the Behalf of the said unfortunate Prisoner, thereby praying, for the Reasons therein contained, that he might for the present, for the Benefit of his Health, and to save Expence, be removed from *Newgate* to the *King's-Bench* Prison, till such Time as his Majesty should graciously see Cause to order his absolute Discharge, as by the said Petition, Reference being thereunto had, more fully may appear.

That in the Reign of his late Majesty, in the Time of the *Preston* Rebellion, many Prisoners under Condemnation and Sentence of Death for *High Treason*, (but reprieved) for the Sake of their Health obtained an Indulgence of a Removal from one Prison to another, where the Closeness of their Confinement endangered their Lives, as is now the Case of the said unfortunate *Bernardi*, who, although he hath already undergone a Confinement worse than Death, was committed only upon Suspicion of a very horrid and most detestable Crime, in conspiring the Murder and Assassination of his late Majesty King *William*, but without any Proof, or as much as the Oath of one single Witness against him; neither hath any Proof been found against him, or he brought to any Trial, in upwards of one-and-thirty Years Time; and as he hath been always ready and desirous to take his Trial, he hath, from Time to Time, regularly entered his Prayer to be tried.

Your Petitioner therefore doth most humbly beseech and supplicate your Majesty, in your Sovereign Compassion and great Goodness, to intercede with the King's Most Excellent Majesty for the Removal of your Petitioner's unfortunate Husband, the said Major *John Bernardi*, from *Newgate* to the *King's-Bench* Prison.

And your Petitioner shall ever pray, *&c.*

To conclude this Point, it is manifest by the before-recited Copies of Petitions, Cases and Certificates, and distinct Allegations of the said Major *John Bernardi*, that he was not guilty even of as much as Misprision of Treason, having never had, directly or indirectly, any Knowledge of the said horrid Conspiracy.

Here are two Passages to be curiously inquired into; the first of which is, How *Bernardi* came to be put into a Proclamation? The Answer to this is not at all difficult. Undoubtedly it was by reason of *George Harris*'s Information of his being then in the Compter with Captain *Rookwood*; which *Rookwood* was accused upon Oath, though *Bernardi* never was. And this seems to be more unquestionably evident, in regard the Proclamation, wherein *Bernardi* is named, did not come out until the very Morning before *Bernardi* and *Rookwood* were taken out of the Compter by the Guards at Midnight, upon *Harris*'s Information, which was five Weeks after the Discovery of the Plot, and *Bernardi*'s Name was never inserted in any former Proclamation.

The next and second Question is, On what Grounds he was first confined by Act of Parliament? To which *Bernardi* answers, That the Duke of *Shrewsbury* having inserted in his Commitment the following positive Words, *viz. for being concerned in the horrid Conspiracy*, &c. though not a Syllable of any Charge upon Oath, his Grace's Word under his Hand was not to be called in Question by the Parliament, in Favour of a poor, inferior, supposed Enemy to the Government: And how *Bernardi*, or any other Man, could have the Confidence to set forth so positively, by Petitions to the King, and a Case to the Parliament, that he was never charged upon Oath, if he had ever known or heard of any Evidence against him, and in which (if the contrary had been fact) he might easily have been contradicted, is not to be accounted for. He affirms, and with great Truth, that he never lay under the Odium of being guilty of any base or dishonourable Act in the whole Course of his Life, until the Commencement of his present deplorable Sufferings; which may gain some Credit from his several Promotions in Commission from Time to Time, both Abroad and at Home: And laying aside all true Notions of Honour, no Man in his Senses, having Capacity or common Sense enough to judge of his own Interest, could sure be so infatuated as to engage in so horrid an Action; because no Prince upon Earth, being a Christian, could or would ever countenance such a Man afterwards, though what he did might turn to such Prince's Service. We have an Instance of it at Home, of one Sir *Paul Whitford*, who murdered *Dorislaus*, *Oliver Cromwell*'s Ambassador at the *Hague*. This base and wicked Act might tend to the Service of King *Charles* II. when in Exile; however the King, after the Restoration, never suffered *Whitford* to appear in his Presence, though he had been a Favourite before; and if his Majesty allowed him any Thing, it was done so privately, that Nobody knew it, and he lived and died in a remote Part of the Kingdom.

Bernardi quitted to the Amount of about five hundred Pounds a-Year, which he had coming in by Employs, and by his Wife's Fortune, upon King *James*'s demanding his Subjects Home from the *Dutch* Service; and it may be therefore reasonable to believe, that *Bernardi* was in some Esteem with the King as long as his Majesty lived; and nothing but a Fool or a Madman could be so stupid as to forfeit such an Advantage, by engaging in a vile, wicked, and most dishonourable Action, which neither King nor Subject could justify.

It may not be improper here, for manifesting and clearing up *Bernardi*'s Innocence beyond all Contradiction, to give a particular Relation of what passed before the Lord Chief Justice *Holt*, upon the Evidence given before his Lordship, upon *Bernardi*'s being suspected to be concerned in the said horrid and detestable Conspiracy, the Witnesses and Discoverers of which were Captain *George Porter*†, Mr. *Le Rue*, Captain *Blair*, Captain *Fisher*, Mr. *Ubank* or *Hewbank*, Mr. *Bertram*, Captain *Boyce*, and some others, whose Names have escaped the Author's Memory: They were all

* To *Blackburn*'s Petition, to the same Effect, was added the following Certificate:

Middlesex, ff. THESE are to certify, That upon Search made amongst the Records of the Sessions of Gaol-Delivery of *Newgate*, held for the County of *Middlesex*, it appears by the said Records, that on the 2d Day of *April*, 1696, *Robert Blackburn* was committed to the said Gaol of *Newgate*, by the Right Honourable the Duke of *Shrewsbury*, Principal Secretary of State, for High Treason, in conspiring the Assassination of the late King. And I do further certify, That at the Sessions of Gaol-Delivery of *Newgate*, held for the said County, at *Justice-Hall* in the *Old-Bailey*, in the Suburbs of the City of *London*, on the 9th Day of *September*, 1696, the said *Robert Blackburn* was delivered to Bail by the Court, for his personal Appearance at the next Sessions of Gaol-Delivery, to be held for the said County, to answer to all such Matters, as on his said late Majesty's Behalf should be objected against him; and not to depart the Court without Licence; and in the mean time, to be of his good Behaviour; that then, *&c.* At which said next Sessions of Gaol-Delivery, to wit, at the Sessions of Gaol-Delivery of *Newgate*, held for the said County, at *Justice-Hall* aforesaid, on the 14th Day of *October*, 1696, the said *Robert Blackburn* personally appeared in open Court; and was by the said Court discharged of his Recognizance. And I do hereby further certify, That it appears by the said Records, That on the 7th Day of *January*, 1696-7, the said *Robert Blackburn* was committed to the said Gaol of *Newgate*, by Sir *William Trumbull*, Knight, one of his late Majesty's Most Honourable Privy-Council, Principal Secretary of State, for High Treason, in conspiring the Murder and Assassination of the said King. Dated this 10th Day of *August*, 1708, in the seventh Year of our Sovereign Lady *Anne*, by the Grace of God Queen of *Great-Britain*, &c.

S. HARCOURT, Clerk of the Peace, and Gaol-Delivery of *Newgate*, for the County of *Middlesex*.

It appears, by the foregoing Certificate, that *Robert Blackburn* was committed the 2d of *April*, 1696.
That on the 9th of *September* following, he was admitted to Bail.
The 14th of *October*, 1696, he was discharged.
The 7th of *January* committed again for the same Fact; though taken up at the *Buoy and Nore*, by one Captain *Nash*, for attempting to go to *Flanders* without a Pass. By Captain *Nash* left in Custody of a Messenger nine Weeks. Then committed by Sir *William Trumball*, Knight, to *Newgate*, and never examined, or any Oath against him, that ever he heard of; and then detained till an Act passed to imprison *Counter*, *Meldrum*, *Chambers*, *Bernardi* and *Cassels*, who were all Strangers to, and never seen by *Blackburn*, till in *Newgate*; and then he was inserted in the amended Bill, which came down from the Lords to the Commons.
He has been now almost thirty-three Years in Prison, and no Allowance from the Government, though a State-Prisoner.
He was not one of those, for whom the thousand Pounds was offered.

These several Allegations have been reported true, by Sir Edward Northey, *and Sir* Robert Raymond; *therefore he hopes to have his Majesty's Relief.*

† This *George Porter*, the principal Evidence in the Assassination-Plot, and against Sir *John Fenwick* and the rest, was tried for the Murder of Sir *James Hacket*; and his Trial is here inserted.

The Trial of George Porter, *Esq. for the Murder of Sir* James Hacket, *of* Scotland, *Knt. at the Sessions of the Peace,* Oyer *and* Terminer, *held at* Justice-Hall *in the* Old-Bailey, London, *on* Wednesday, Thursday, Friday, *and* Saturday, *the 10th, 11th, 12th, and 13th Days of* December, 1684, *before the Honourable Sir* James Smith, *Lord-Mayor of the City of* London, *Sir* Thomas Jenner, *Knt. one of his Majesty's Serjeants at Law, and Recorder of the aforesaid City; together with other Justices of* London *and* Middlesex.

JURY.

Ralph Box, Esq.	*Walter Coventry*,	*John Palmer*,	*John Easton*,	*Roger Attley*,	*Francis Smith*,
William Moyer,	*Jacob David*,	*Ralph Izzard*,	*John Fauster*,	*Thomas Harrison*,	*William Drinkwater.*

GEORGE PORTER, of *London*, Esq. was indicted for killing Sir *James Hacket*, in the Parish of *St. Bride's*, *London*, on the 11th of *October*, 1684, in the thirty-sixth Year of his Majesty's Reign. The Case and Circumstances appearing on the Trial were, That the Deceased and the Prisoner, being at the *Duke's Theatre* in *Salsbury-*

all ordered to assemble at the said Lord Chief Justice's Chambers in *Serjeants-Inn* in *Chancery-Lane*, which they did, and were there examined upon Oath by his Lordship, in order to the Trials of Major *Lowick*, Major *Bernardi*, Captain *Knightly*, and Captain *Rookwood*, which Four were designed to be tried next after the Condemnation and Execution of Captain *Charnock*, Mr. *King*, Mr. *Keys*, Sir *William Perkins*, and Sir *John Friend*, for being concerned in the said vile and villainous Plot. Captain *Boyce* deposed upon his Examination, that he had known Major *Bernardi* a Captain in the *Dutch* Service, where he bore a very good Character, but that he had not seen him in five Years then last past. Mr. *Le Rue* deposed, That he also knew Major *Bernardi*, but could lay nothing to his Charge; and that the last Time he was in his Company, to the best of his Remembrance, was at least two Years before the Assassination-Plot was discovered. Captain *Porter* and the rest declared, that they never had any Knowledge of Major *Bernardi*. Thereupon Major *Bernardi* was struck out of the Number or List of the Four designed for Trial, and Mr. *Cranburne* was appointed to be tried in his room, to make up Number Four. They were all Four tried accordingly, and condemned. Three of them, *viz.* Major *Lowick*, Captain *Rookwood*, and Mr. *Cranburne*, were executed soon after. Captain *Knightly*, who pleaded guilty, was by great Intercession reprieved, and some Time after pardoned upon the Terms of Banishment. Now followeth a Remark upon a mistaken Notion frequently broached and argued abroad, to the great Prejudice and Wrong of Major *Bernardi* and his two remaining Fellow-Sufferers, *Blackburn* and *Cassels*; viz. That there was one Evidence against them, and only one to be come at, they having artfully spirited away and decoyed out of the Kingdom one other Evidence, who could have proved them concerned in the Fact; which was the Ground and Foundation of the Parliament's passing the first Act for their Confinement. Major *Bernardi* takes upon him positively to deny that Fact, and to affirm that nothing can be more false and untrue: for no one Evidence or Discoverer of that abominable Conspiracy was ever prevailed on to abscond or quit the Land, or ever absented himself, while the Government had any Use or Occasion for him. Mr. *Goodman* indeed, the Stage-Player, had been a Copartner Evidence with Captain *George Porter* against Sir *John Fenwick*, who was charged by them with being concerned in a different Species of Treason, with other Persons of Quality, by endeavouring to procure an Invasion from *France*, two Years before the Assassination-Plot broke out, though Sir *John Fenwick* was not accused by *Goodman* and *Porter* till that Time. True it is, that the said *Goodman* was soon after influenced by a Bribe and fair Promises (as is supposed) to quit the Kingdom, thereby to prevent Sir *John Fenwick*'s being convicted of *High Treason* by the Common Law; which occasioned the Parliament's passing a Bill of Attainder against him, which took away his Life. But that was not the Case, in any respect, of *Bernardi*, *Counter*, *Meldrum*, *Chambers*, *Blackburn*, and *Cassels*, or any of them: Neither was *Goodman* ever so much as mentioned or charged with the Knowledge of, or of being in any Manner concerned in, the Assassination-Plot; so that he neither was, nor could be an Evidence against any one upon that Account.

Providence was so gracious, merciful and indulgent to Major *Bernardi*, in the Midst of his Miseries and Afflictions in *Newgate*, as to provide him a second virtuous, kind and loving Wife, in the Year of our Lord 1712, who hath proved to him a true Helpmeet, having by her good Management and Industry, and great and kind Care of him, contributed much to his Support and Comfort, and to the keeping of his Heart from breaking, under the worst of his Hardships, Difficulties and Distress. And by her he hath had, during his Confinement in *Newgate*, Ten Children, who, in respect of Charge and Expence under his strait and narrow Circumstances, and under his Immurement, or being buried alive, have been no small Burthen to him; yet he esteems them great Blessings bestowed upon him by Almighty God, at whose Tribunal, after this miserable and wretched Life ended, he knows he shall appear innocent of the heinous and monstrous Crime laid to his Charge; and for the bare mistaken Suspicion of which, he hath in three Reigns (and for near a Year and three Quarters in a fourth) been so severely treated: And then he shall, if not sooner delivered by any King upon Earth, God Almighty's Vicegerent here below, be delivered from the *English* Bastile (vulgarly called *Newgate*) by the great and merciful God himself above, the King of Kings, and only Ruler of Princes. It may not be improper here to distinguish our said *English* Bastile from that in *France*, and to shew in what Circumstances they materially differ. To which End know, candid Reader, that a State-Prisoner in the Bastile in *France* pays not, nor is squeezed out of any Thing for his Lodging, Meat, Drink, or Ease, nor is loaded with Irons, nor put in Dungeons, or otherwise ill used in Prison; but he is always handsomely provided for, and allowed a liberal Subsistence by the Government, according to his Rank and Degree: But in our said *English* Bastile no State Prisoner has any Allowance made him from the Government, and in case he hath not of his own, he must live upon Charity, if he can be so happy as to meet with it, or starve: And in case he hath any known Substance, he must expect to be squeezed out of a great Part of it, or he shall have much worse Lodging than many a tolerable Dog-Kennel of a kind good-natured Country 'Squire would make, be loaded with Irons, and used worse than a Dog. And all this is permitted or connived at, under a Government, the Voice of whose People is almost perpetually boasting of *Liberty* and *Property*; the Words *Liberty* and *Property* being ever uppermost, and at their Tongues End, and they constantly exclaiming against *Arbitrary Power*: But God alone knows the Sincerity and Soundness, or the Hollowness and Deceitfulness of Men's Hearts. Can it be accounted for, that so much Oppression should be suffered to be practised in a free and Christian Nation (as *England* is); and, on the contrary, that so much Humanity and Relief should be shewn and used to State-Prisoners in Distress in *France*, under an absolute and arbitrary Government? Sure it cannot proceed from the *French* being more honest, more polite, more humane, less malicious and revengeful; or of a more generous and Christian Temper, than the *English*. For my Part, I am so far from asserting it, that I will not so much as think it. But this I will affirm, that what I have before observed with respect to the different Usage of Prisoners, in the two several Bastiles of the different Nations, is not more strange than true. And now I have nothing more to add hereunto, but my Hope and earnest Desire, that such as, out of Curiosity or otherwise, shall give themselves the Trouble to read this small Tract, will be pleased to judge favourably of me; to which Intent I was chiefly moved and induced to the Pains of writing it in my Old Age, and to prevent an infamous and odious Character of me from being wrongfully and injuriously handed down and transmitted to Posterity; the very Thoughts of which have been more grievous to my Mind, and more piercing and wounding to my Spirit, than all the rest of my Hardships and Sufferings, which will ever be the Case of a Man well born, having an honest Heart, a Soldier, and a Man of Honour. Such a Man can ill bear Reproach and Disgrace, not having deserved it, and to whom his good Name and Fame must be ever dearer, and by him held in much greater Esteem, than any other Thing in Life, nay, even than Life itself. And the Author being old, as before mentioned, and (as he doth hereby frankly own) unlearned, and not skilled in Letters, having chiefly been trained up in War, and not much in Scholarship, he humbly hopes the same may in some Measure plead his Excuse for such defective Words as may be found in this his short Narrative; and for the Plainness and Uncorrectness of its Stile. Untruths or Misrepresentations there are none in it, to the best of his Knowledge and Memory; nor hath he intentionally, or at all, to the best of his Judgment, herein reflected upon any Person whomsoever in any wise, or upon the Power, Justice, or Wisdom of the several Parliaments, by whose renewed Acts, from time to time, his Confinement in Prison hath been spun out to so great a Length; nor upon the Courts of Justice, and learned Judges presiding therein, who have had the several Opportunities beforementioned of discharging or bailing him according to Law, further or otherwise than as any Reflection upon any of them, from the particular Facts by him herein plainly, truly, and impartially stated, may naturally and unavoidably arise and result.

One very great Misfortune it hath been to the Author, and the last that he will trouble his Reader withal; and which would scarce, in the Case of another, be deemed a Misfortune, but rather on the contrary be esteemed a very great Blessing, *viz.* That he hath lived to so great an advanced Old Age, which most People would naturally desire to do, Life, generally speaking, being sweet, and the very Thoughts of Death abhorrent and shocking to Nature; though Death, when all other Friends fail, is most certainly a kind and sure Friend and Deliverer in Time of Need, from Chains and Goals, an Hell upon Earth: But to explain and make out, that the Author's having lived so long hath been a Misfortune to him, the same is verified in this, that he hath thereby survived almost all his Cotemporaries, Friends, and Acquaintance, who have contributed to his Support. And it is now too late in the Day, and under Confinement, for him to hope or expect to make any new Acquaintance or Friends, whereby he may reap any Advantage or Assistance under his present difficult Circumstances, unless this his little Tract may perchance make him some Friends among the good-natured, generous, and charitable Part of Mankind, who shall not be void of all Sense, Notion and Fellow-Feeling of another's Suffering; nor be perfect Strangers to all Humanity, Pity, Commiseration and Compassion; nor profane that sacred Petition in the *Lord's Prayer*, viz. *Forgive us our Trespasses, as we forgive them that trespass against us*; as it is to be feared many do, by having it in their Mouths, when they themselves, with hardened Hearts, cannot forgive even the Innocent and Guiltless, who have not trespassed against them. And so the Author concludes with bidding his Reader heartily farewel; and in Attestation of the Truth of what he has writ, he takes the Freedom to subscribe his Name.

Newgate,
March 1, 1728. JOHN BERNARDI.

He died at his Chambers in the Press-Yard in *Newgate*, the latter End of *September* 1736, in the 82d Year of his Age, having been a State-Prisoner about forty Years in that Goal, without Trial or any Allowance from the Government.

Salisbury-Court, after the Play ended, a great Crowd happening upon their coming out, and Sir *James* endeavouring to make Way for his Children with his Cane, gently moving it, happened to push Mr. *Porter* on the Back; who asked, *What the Meaning of it was?* But Sir *James*, as he designed him no Affront, took no Notice of what he said; and still pressing for more Room, accidentally hit Mr. *Porter on the Nose or Mouth, and made it bleed*; upon which the Prisoner supposing himself to be affronted, and jostled or brushed by the Deceased, (who had the Cane still in his Hand) *drew his Sword*, and, without further Consideration, *run the Deceased into the Thigh*, so that the Weapon appeared both Ways, cutting likewise his Fingers, whilst he struggled to draw it forth; whereupon the Prisoner recovered his Sword, (the Deceased at that Time sinking down) but had no further Opportunity to push at Sir *James*, ere it was seized by a Gentleman present; whereat the Prisoner expressed much Indignation, and getting it once more at Liberty, stood upon his Guard, saying, *He had served one already as he had deserved*, or to that Effect; yet the Deceased, after the Wound received, went Home in a Coach, and lived till the 26th following, and then died in the Parish of *St. Martin's in the Fields*.——The Defence the Prisoner made, was, That he had received a Push in the Mouth, as he verily believed, from the Deceased, and by that Means became so rashly unfortunate, as to run him through the Thigh; adding, That he knew not the Person that fell through this Occasion, and therefore could have no premeditated Malice against him, *&c.* whereupon the Jury returning their Verdict, found him guilty of Manslaughter only; by which Means he was not found guilty upon the Statute of Stabbing; upon which Statute he was charged with a second Indictment: But the next Heir brought an Appeal. At the next Sessions, held the 16th and 17th of *January*, 1684, Mr. *Porter* prayed the Court, that he might be admitted to his Clergy; but was answered, That an Appeal being already brought and allowed, it could not be granted. Then he desired he might have his Prayer recorded; but that not being practicable in such Cases, he was only admitted to Bail, himself entering into a Recognizance of 1000 *l.* and his Sureties 500 *l.* each; and ordered to move it by his Counsel the succeeding Term, at the *King's-Bench* Bar. Though at the next Sessions held at the *Old-Bailey*, the 25th of *February* following, Mr. *Porter* pleaded his Majesty's most gracious Pardon for killing Sir *James Hacket*, which was read and allowed, and he discharged †.

This Captain *Porter*, as a Reward for giving Evidence against *Charnock*, *King*, and *Keys* (his Servant), Sir *John Friend*, Sir *William Perkins*, Brigadier *Rookwood*, Mr. *Cranburne*, Sir *John Fenwick*, &c. had a Pension settled on him of 260 *l. per Annum*, which he enjoyed till about *June* 1728: For the Probate of the Will of this *George Porter*, late of the Parish of *St. James's*, *Westminster*, Esq. was granted in the Prerogative-Court of *Canterbury*, *July* 4, 1728, unto *Elizabeth Porter*, his Widow and Executrix; so entered in the Pension-Office Books, and in Auditor *Harley*'s and Auditor *Foley*'s Office, *July* 1728. Captain *Fisher* had likewise a Pension of 260 *l. per Annum* for being an Evidence in that Plot, as had others, but less Sums.

† *Captain* Porter, *in* Rookwood's *Trial*, Vol. IV. *p.* 681, *was excepted against by the Prisoner's Counsel, as incapable of being a Witness, standing convicted of Felony, for killing Sir* James Hacket, *Knt.* 36 Car. II. *But having got the King's Pardon, was allowed a legal Witness, though not burnt in the Hand. See* Vol. IV. p. 681, *for* Dangerfield's *and other Cases quoted there.*

NUMBER XI.

Proceedings against William Gregg *, at the *Old-Bailey*, 19th *January*, 1707-8, for High Treason, before Lord Chief Justice *Holt*, and other Judges.

THE Post-Master of *Bruſſels* diſcovered a Correſpondence between Mr. Secretary *Harley*'s Office and the *French*, and communicated his Knowledge to the Government here; whereupon Mr. *William Gregg*, a Clerk in that Office, was taken into Cuſtody of a Meſſenger, and, after ſeveral Examinations before the Council, was committed to *Newgate*; and on the 19th of *January* was indicted of High Treaſon for compaſſing the Death of the Queen, and alſo for adhering to her Enemies. The Indictment imported, "That he had ſent Letters to Monſieur *Chamillard*, one of the *French* King's Prime Miniſters, particularly one dated the 28th of *November* laſt, and others, wherein were "incloſed the Proceedings of both Houſes of Parliament, in relation "to the Augmentation of our Forces; alſo a Copy of a Letter from "the Queen to the Emperor, and Copies of private Buſineſs ſent to "the Duke of *Savoy*, &c." To which Indictment *Gregg* pleaded Guilty; and the Recorder pronounced Sentence of Death upon him †. Whereupon the Houſe of Lords took into Conſideration this Affair, and appointed the following Committee to examine him:

The Duke of *Somerſet*,
The Duke of *Devonſhire*,
The Duke of *Bolton*,
Earl of *Wharton*,
Lord Viſc. *Townſhend*,
Lord *Halifax*,
Lord *Somers*.

Die Jovis 18 *Martii*, 1707.

WE Your Majeſty's moſt dutiful and obedient Subjects, the Lords Spiritual and Temporal in Parliament aſſembled, having been informed, That *William Gregg*, a Clerk in the Office of the late Secretary Mr. *Harley*, had been indicted for High Treaſon, in holding Correſpondence with your Majeſty's Enemies, and betraying to them Secrets of the higheſt Importance; and that upon his Trial he had confeſſed the Indictment, and by that Means had prevented the Examinations, whereby the Public might have been truly informed of the particular Nature and Circumſtances of his Crime; we thought ourſelves indiſpenſibly obliged, in Duty to Your Majeſty, and for the future Safety of the Kingdom, to do all that was in our Power to find out the Riſe and Progreſs of this dangerous Correſpondence.

In order thereto we made our humble Addreſs to Your Majeſty for all Papers relating to the Charge againſt *William Gregg*; and Your Majeſty having been graciouſly pleaſed to give Orders, that the Papers ſhould be laid before us, we referred thoſe Papers to a Committee, and directed them to examine *Gregg*, and to report the ſaid Examination to the Houſe, as alſo what they obſerved upon the Papers, together with ſuch other Matters as they ſhould think proper, upon their Inquiry into the ſaid Affair: And the Report having been made, and taken into Conſideration by the Houſe, we humbly conceive it to be very highly for Your Service to lay the ſame before Your Majeſty ‡.

Report concerning Gregg.

The Houſe having appointed a Committee to examine William Gregg, *who is a Priſoner in* Newgate, *convicted for High Treaſon; and having alſo been pleaſed to refer to the ſame Committee ſeveral Papers, which, upon the humble Addreſs of the Houſe, had been laid before your Lordſhips by Her Majeſty's Command, do humbly take Leave to inform the Houſe, That the Effect of the ſeveral Papers referred to the Committee is as follows.*

I. A Copy of *Gregg*'s Letter, which was intercepted, dated the 28th of *November*, 1707, O. S. ſent to Mr. *Chamillard*, incloſed in a Pacquet from Marechal *Tallard*, directed to Mr. *Robineau*, his Steward, at *Paris*.

In this *Gregg* ſends to Mr. *Chamillard* a Copy of the Queen's Letter, written with her own Hand to the Emperor.

In the ſame Letter, *Gregg* takes Notice of two Letters ſent by him to Mr. *Chamillard*, the one dated the 24th, the other the 28th of *October* laſt, which he underſtood *Robineau* had put into his Hands.

That perceiving by *Robineau*'s Letter to his Maſter, that Mr. *Chamillard* deſired to know the Marechal's Sentiments of *Gregg*, *Gregg* had himſelf written to him.

In Expectation of his Anſwer, *Gregg* flattered himſelf that the Paper then ſent was of that Importance, that there could be no longer Doubt of the Devotedneſs of a *Scottiſhman* for *France*; not to ſpeak of his Zeal for the Service of his Prince, who had found Refuge there.

That the Lines under which he had drawn a Stroke, were the Thoughts of the Lord Treaſurer, which he had added with his own Hand to the firſt Draught of the Letter.

The ſame Letter contained ſome other News.

II. There was a Copy of a Letter, dated the 25th of *November*, O. S. in the ſame Pacquet, ſubſcribed *William Gregg*; in which Notice is taken of what *Robineau* writes to Mr. *Tallard* concerning him, and that he himſelf had written to the Marechal, and deſired *Robineau* to deliver the incloſed according to the Addreſs, as being of great Conſequence.

III. The Copy of a Letter from Marechal *Tallard* to *Robineau*, dated the 10th of *December*, N. S. in which Mr. *Tallard* ſays, That as to the Letters of which *Robineau* made Mention in his of the 25th and 28th of *November*, that he had delivered them according to the Addreſs. Mr. *Tallard* knew nothing of their Contents, but by the ſame Poſt which brought his Letters.

That he was obliged for the Offers, but could make no Uſe of them while he was a Priſoner. When the Peace was made, he would give Proof of his Acknowledgment to him who made the Offers, and would endeavour to engage the Perſon to whom the Letters were addreſſed to do the ſame. In the Interim *Robineau* was to tell the Perſon to whom he delivered the Letters, for whom the Marechal had the utmoſt Conſideration, That he was much obliged to him for deſiring to know his Thoughts, before he would determine what to do; that the Offers made did not ſuit with the preſent Time, at leaſt as to him, *&c.*

IV. An original Letter of the 2d of *December*, 1707, to Mr. *Robineau*, from *Gregg*, to felicitate him for being delivered from an importunate Man, as would appear by Marechal *Tallard*'s Letter, unleſs his laſt to Mr. *Chamillard* had not made him determine otherwiſe.

V. Copy of another Letter of *Gregg* to Mr. *Chamillard*, dated the 23d of *December*, O. S. which was alſo taken in Marechal *Tallard*'s Pacquet, in which he pretends to give Mr. *Chamillard* an Account of what paſſed in Parliament, with the Queen's Anſwer to the Addreſs of the Two Houſes, and his Excuſe for not ſending the Addreſs itſelf.

VI. A Letter of *Robineau* to Mr. *Tallard*, 26th *December*, N. S. from *Paris*, (tranſcribed by *Gregg* in his own Hand) in which he ſays, he was going to *Verſailles* to deliver the Anſwer with which he was charged; that he received every Poſt Letters from the ſame Perſon, and that he took care to deliver them according to the Addreſs.

VII. Another of the 30th *December*, 1707, N. S. that he had been to deliver, as Mr. *Tallard* had charged him, the Anſwer which was deſired of Mr. *Tallard*.

VIII. Another Letter in *Gregg*'s Hand, dated the 30th *December*, 1707, found in *Gregg*'s Cloſet, written to Mr. *Chamillard*, giving an Account of the Intention to ſend Mr. *Palmes* to *Savoy*, and to take ſeveral other *German* Courts in his Way.

IX. A Confeſſion of *Gregg*, delivered to the Lords of the Committee, and ſigned by him.

On *Thurſday* the 12th of this Inſtant *February*, the Committee appointed by your Lordſhips went to *Newgate*, in order to examine *William Gregg*.

They acquainted him with your Lordſhips Order, and told him, That as the Crime of which he ſtood attainted was of the moſt heinous Nature, ſo there were ſome Circumſtances ſo extraordinary, which attended his Caſe, that the Houſe of Lords thought it might be of Service to her

* This Affair of *Gregg*'s having made a great Noiſe in the World at that Time, and many People at this Time quite unacquainted with it, and being quoted by Mr. Juſtice *Foſter* and others, we ſhall give an Account of it from the beſt Authorities.

† "Biſhop *Burnet*, in his *Hiſtory of his own Times*, Vol. II. p. 494—497, ſays, "At this Time Diſcoveries were made very unlucky for Mr. *Harley*: One *Gregg*, a Clerk, "whom Mr. *Harley* had taken into a particular Confidence, without Inquiry into the former Part of his Life, for he was a vicious and a neceſſitous Perſon, who had been "Secretary to the Queen's Envoy in *Denmark*, but diſmiſſed for his ill Qualities. The Lords, who were appointed to examine *Gregg*, could not find much out by him: "He had but newly begun his Deſign of betraying Secrets; and he had no Aſſociates with him in it. He told them, that all the Papers of State lay ſo carelеſsly about "the Office, that every one belonging to it, even the Door-keepers, might have read them all. *Harley*'s Cuſtom was to come to the Office late on Poſt-Nights, and after "he had given his Orders, and wrote his Letters, he uſually went away, and left all to be copied out when he was gone. By that Means he came to ſee every Thing, in "particular the Queen's Letter to the Emperor. The Lords ordered the Report and Examinations to be laid before the Queen in an Addreſs, in which they repreſented "to her the Neceſſity of making *Gregg* a public Example: Upon which he was executed. He continued to clear all other Perſons of any Acceſſion to his Crimes, of "which he ſeemed very ſenſible, and died much better than he had lived."

Judge *Foſter*, in his *Reports*, p. 198, takes Notice, "That the Papers found in Lord *Preſton*'s Cuſtody, thoſe found where Mr. *Layer* had lodged them, the intercepted "Letters of Doctor *Henzey*, were all read in Evidence as Overt-Acts of the Treaſon reſpectively charged on them. And *William Gregg*'s intercepted Letters might in like "Manner have been read in Evidence, if he had put himſelf upon his Trial. For thoſe Papers and Letters were written in Proſecution of certain determinate Purpoſes, "which were all treaſonable, and then in Contemplation of the Offenders, and were plainly connected with them. But Papers not capable of ſuch Connection, while they "remain in the Hands of the Author unpubliſhed, as Mr. *Sidney*'s did, will not make a Man a Traitor. Lord *Hale* (1 *Hale*, p. 119—125.) mentioneth two Circumſtances as "concurring to make Words reduced to Writing Overt-Acts of Compaſſing the King's Death, *That they be publiſhed, and that they import ſuch Compaſſing.*

"Sending Intelligence to Rebels or Enemies, which in moſt Caſes is the moſt effectual Aid that can be given them, will make a Man a Traitor, (except what is done in "caſe of ſuperior Force) though the Intelligence ſhould happen to be intercepted; for the Party in ſending did all he could; Treaſon was complete on his Part, though it "had not the Effect he intended. So ruled by the Judges aſſembled in the Caſe of *William Gregg*, Meſſ. *Tracy*, *Dod*, *Price*, and *Deaton*: and by the Court of *B. R. Trin.* "31 of the late King, in the Caſe of Dr. *Henzey*." *Foſter*, p. 217. And p. 218, adds,

"For *Gregg* was indicted for *Compaſſing the Death of the Queen*, and alſo *for Adhering to her Enemies*; and *Henzey*'s Indictment was in the ſame Form; and ſo was Lord "*Preſton*'s. And the Writing and Sending the Letters of Intelligence, which in the Caſe of *Gregg* and *Henzey* were ſtopped at the Poſt-Office, was laid as an Overt-Act "of both the Species of Treaſon. So that, admitting for Argument's Sake, which is by no Means admitted, that it was not an Overt-Act of *Adhering*, ſince the Letters "never came to the Enemy's Hands, and conſequently no Aid or Comfort was actually given; yet the bare Writing and Sending them to the Poſt-Office, in order to be "delivered to the Enemy, was undoubtedly an Overt-Act of the other Species of Treaſon. In *Gregg*'s Caſe the Judges did reſolve, that it was an Overt-Act of both the "Species of Treaſon charged on him. And in *Henzey*'s, the Court adopted that Opinion, and cited it with Approbation.

"Though the Caſes of theſe Men were in Subſtance the ſame, the Charge againſt them varied in one Particular. *Gregg*'s Indictment chargeth, that the Letters were "ſent from the Place where the *Venue* is laid, *into* Parts beyond the Seas *(in Partes tranſmarinas)* to be delivered to the Enemy. *Henzey*'s, with much greater Propriety, "and agreeable to the Truth of the Caſe, chargeth, that the Letters were ſent from the Place where the *Venue* is laid, *to be delivered* in Parts beyond the Seas to the Enemy. "As the Letters never went abroad, this was undoubtedly the ſafer Way of laying the Charge."

‡ *Die Martis*, 23 *Martii*, 1707. It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Addreſs of this Houſe, and the Reports therein contained, with the ſeveral Examinations annexed, preſented to Her Majeſty Yeſterday, and Her Majeſty's moſt gracious Anſwer thereunto, ſhall be forthwith printed and publiſhed.

Matth. Johnson, *Cler' Parliamentor'*.

her Majesty and the Kingdom, to have all the Beginning and Progress of his treasonable Correspondence fully laid open; that her Majesty, upon the Application of the House, had ordered all former Examinations and Papers concerning him to be laid before them.

They told him farther, That if he, by a true, ingenuous and full Confession, would deserve it, he might have Ground to hope the House of Lords might intercede in his Behalf for Mercy from her Majesty, which otherwise he had no Reason to look for.

He was also told, That being a Man of Understanding, he was not to expect to be asked Questions, but was to give an Account of himself, when, and how he became first employed, when and by what Instigation he was drawn in to correspond with the Queen's Enemies, and how far it proceeded.

He said, That one Mr. *Gregg*, the late King's Resident at *Copenhagen*, was his Kinsman, and sent for him thither, and he continued with him about three Years, till his Death, which happened about two Months before the late King died.

That Mr. *Vernon* was sent Envoy to *Denmark*, and took him, whom he found there, into his Service, in which he continued about two Years and an half, and then he was discharged from his Service by Mr. *Vernon*.

Mr. *Vernon* coming for *England* about his private Affairs, while *Gregg* was in his Service, and staying here some Time, in that Interval *Gregg* received some Letters from Mr. Secretary *Harley*, which gave him Occasion after to apply to him.

The 9th of *December* 1704, *Gregg* came to *England*, and soon made Application to Mr. Secretary *Harley* for Employment, but was not recommended to him by any body.

The 3d of *January* he saw him first at his Office, where he attended often.

The 5th of *February*, 170$\frac{4}{5}$, Mr. *Jones*, the Secretary's First Clerk, came to him, and told him, the Secretary would speak with him. He attended on the Secretary the same Day, who asked him, If he would be willing to be employed in his own Country? *Gregg* said, He was willing to be sent upon any good Errand. Mr. Secretary told him, It was to give an Account of the Proceedings of the ensuing Parliament, which was to be held under the Duke of *Argyle*.

The 6th of *February* he went to the Office, and Mr. Secretary told him, he should be dispatched in a few Days.

To make some Trial of him (as he supposed) Mr. Secretary asked him, If he could give an Account of the Court of *Denmark*? *Gregg* said, He was willing to do it as well as he could; and accordingly, in some Time, he drew up a State of that Court, and it was not disapproved.

He attended daily; and on the 20th of *April* Mr. Secretary *Harley* gave him a Note of 20 *l.* to be paid by his Steward in *Scotland-Yard*.

On the 23d of *May*, 1705, he was ordered to go for *Scotland*, and about a Week after set forwards on his Journey. When he was dispatched, a Note of 30 *l.* was given to him.

Mr. Secretary always amused him, with telling him, he should have Instructions for his Directions in *Scotland*; but at last ordered him to draw up some Queries himself about the State of Affairs in *Scotland*, which he did, and they were approved.

Some of the Queries were, What were the Designs of the several Parties? What Correspondence between the *Highlands* and *St. Germain's*? How affected to the House of *Hanover*? &c.

He was also ordered to form a Cypher of Letters, whereby to design the Great Men there.

The 2d of *June*, 1705, he arrived at *Edinburgh*, and wrote to Mr. Secretary the *Thursday* following, being ordered to direct all his Letters to *Thomas Bateman*, in *Scotland-Yard*.

Mr. Secretary promised the Receipt of his Letters should be acknowledged, and he pressed often for it, to know they came to Hand, fearing his Letters were intercepted, because he was suspected as a Spy in that Country; but though he wrote thrice a-Week, he never heard one Word from Mr. Secretary, or by his Order, during his whole Stay in that Country. Being asked by the Lords, If he was recommended to any body in *Scotland*? he answered, No.

The 15th of *October* he arrived at *London*, and the next Day waited on Mr. Secretary, who thanked him for his Letters, and told him, he had named him to the Queen, upon Occasion of a Paper he had sent: But *Gregg* said, He believed the Queen had never heard of his Name, till this last unhappy Accident.

On the 29th of *October* Mr. Secretary ordered him 25 *l.*

He attended daily, and pressed much to be sent abroad, particularly to go with Mr. *Methuen* when he was sent to *Savoy*, but it was declined.

On New-Year's-Day Mr. Secretary dropped a Word which startled him much: He told him, he would fix him; which *Gregg* understood was bringing him into his Office.

Upon this he presented a Petition, that he might not be in the Office, because the Salary was small; and being in Debt, he could not live on it.

He attended every Day. The Secretary inquired of him, What he knew of Languages? He said, he knew some *French* and *German*, but knew *Latin* better than either.

The 16th of *April*, 1706, he was admitted into the Office, and a Note was given upon Mr. *Jones*, as for one of the Clerks; and Mr. Secretary told him, it was only to keep his Hand in Use, and that he would provide better for him.

The 16th of *May*, copying a Letter sent to Mr. *Vernon*, That he was to consider of Somebody fit to be left behind, *Gregg* thought it to be intended in his Favour, and wrote to Mr. *Vernon* on that Occasion, desiring his Countenance.

But the 28th of *May*, Mr. Secretary writing Word to Mr. *Vernon*, That he had Leave to come at his own Time, but must leave Somebody behind; and this being wrote before any Answer could come from thence, *Gregg* saw nothing was meant for him in the former Letter.

Gregg made Offers of Service to Mr. *Pulteney* when he was to go; but he said, he was provided.

Then he told Mr. Secretary, his Mind was depressed by his Debts, and desired to be thrown abroad, and to go with Sir *Philip Meadows*; but that was refused, and *Strahan* was sent.

Then Mr. Secretary asked, What would make him easy? And he gave in a List of his Debts, amounting to about 35 *l.*

Since that, Mr. Secretary has ordered him at several Times about 20 or 25 *l.* in the whole; the last Sum was 7 *l.* in *October* last, Part of a Bill of 14 *l.* for which Debt he was pressed at that Time.

Being asked by the Lords, If his Debts only made him so desirous to be gone? he said, At the Rate Business was managed in the Office, it was a perfect Drudgery.

Their Business seldom began till about Eleven or Twelve at Night, and they stayed till Two or Three, or later; though sometimes not above two Letters to dispatch, and he thought himself happiest who could get away soonest.

The Method was, First, the Letters were taken in Short-hand, afterwards wrote fair, then sent to Mr. Secretary's House to be signed, and after returned to the Office to be entered; so that they were obliged sometimes to stay till Four o'Clock in the Morning.

He said, That in *April* last, when *Hill* the Messenger was sent to *Turin*, the Pacquet was left to him, though the youngest Clerk, to be made up, and delivered to the Messenger.

In that Pacquet there was a Letter to Sir *John Norris*, and another to Mr. *Chetwynd*, most of the last Letter was in Cypher; *Gregg* entered both those Letters. There was also another Letter to Sir *Cloudesly Shovell*, and Letters from the Lord Treasurer. He put them all up in the Pacquet, and after gave them to *Hill*.

Being asked, If he knew by the Letters what the Design was? *Gregg* said, he understood *Thoulon* was to be besieged: He could not read the whole, but knew enough to find out that. He said, it was wrote in the Cypher of the other Office by Mr. *Harley*, the Earl of *Sunderland* being sick at that Time.

The Queen's Letters *de Cachet* are made up before they are brought to the Office, but the Clerks are trusted to make up other Letters.

The Lords Committees required him to give the whole Relation of his Correspondence, when it began, and how long it had been carried on.

Gregg said, the first Motive of his writing to *France* was in order to get Money, by obtaining a Pass, and that his first Letter was the 24th of *October* last.

From his first entering into the Office, he had always a great Hand in perusing the *French* Prisoners Letters: That convenient Opportunity, and his Poverty, gave him the Temptation.

The *French* Prisoners Letters came under a general Cover, directed to Mr. *Lewis*. Marechal *Tallard*'s Letters are under a flying Seal, the rest of them come always sealed, but are opened at the Office.

Generally Mr. *Lewis* threw them down on the Table, and left the perusing them to the Clerks, to Mr. *Mann* and *Gregg*; and since Mr. *Mann* left the Office, they have been trusted wholly to *Gregg*.

If *Gregg* observed any Thing that he thought material, he made an Extract of it, and shewed it to the Secretary or Under-Secretary. He mentioned a particular Extract he had made out of a Letter of Mr. *Chamillard*'s to Marechal *Tallard*.

Letters came from *Nottingham* every Post; sometimes twenty Letters came to them in a Day from *France*: Those came always sealed. From the Time he came into the Office, these Letters were never perused either by the Secretary or Under-Secretary, which he is sure of, because they were sealed when he looked on them. He cannot for that Reason say, but Mr. *Lewis* might sometimes look in Marechal *Tallard*'s Letter, because that had a flying Seal; but the rest were left sealed, as they came by Mr. *Lewis*, to the Clerks Perusal.

Gregg said, he had a Dispute with Mr. *Lewis* upon the account of these Letters; *Gregg* declaring, he thought it not to be a Business fit for the Under-Clerks to be trusted with.

Mr. Secretary *Harley* wrote a Letter in Answer to one from Mr. *Pontchartrain*, thanking him for his Civility to one *Middleton*.

In transcribing it, *Gregg* found it so ill-turned, and the *French* so bad, that he acquainted the Secretary with it at Eleven o'Clock at Night in *October* last. This Letter was stopped, and lay a Month in the Office; but after Mr. *Lewis* sent it away as it was wrote at first.

The rough Draught of the Queen's Letter to the Emperor, as it was altered by the Lord-Treasurer, was left in the Public Book of the Office, to be entered, the same Night it was to be sent away: There, *Gregg* said, he found it and transcribed it, and any other Clerk of the Office might have done it as well as he.

All the Books in the Office lie in a Press, the Key is always in the Door, and not only the Clerks, but the Chamber-keepers may have Access.

All Letters, except those wrote to the Duke of *Marlborough*, are entered in the Books, but those are only copied in loose Sheets. *Gregg* said, he had copied many of those.

The Draught of the Queen's Letter to the Emperor was prepared by Mr. *Lewis*; it was then written in the Hand of Mr. *Thomas*, Mr. *Harley*'s Domestic Clerk. The Addition was in the Lord Treasurer's own Hand. Mr. *Mann* saw it as well *Gregg*. *Mann* said to *Gregg*, that what was added by the Lord Treasurer, was much the brightest Part of the Letter.

Gregg said, he sent all his Letters to *France* under the Cover to Mr. *Robineau*: He owned he sent the Copy of the Queen's Letter to Mr. *Chamillard* the same Night the Queen's Letter was dispatched to the Emperor.

Gregg said farther, That the Letter in the Queen's own Hand was given to *Gregg* by Mr. Secretary himself about One o'Clock at Night, and he was solely intrusted to put it up in Sir *Philip Meadows*'s Pacquet, after every body had left the Office.

Ribineau, in his Letter to *Gregg*, took Notice, That he had delivered his Letters to Mr. *Chamillard*, and that Mr. *Chamillard* sent to advise with Marechal *Tallard* upon *Gregg*'s Proposal.

Upon this, *Gregg* wrote a Letter to Marechal *Tallard*, of which he said he had no Copy, but pretended to repeat the Words of the Letter to the Lords Committees.

The Lords Committees told *Gregg*, it would be expected by the House, that he should be very clear and particular in declaring by what

Advice or Encouragement he firſt began ſuch a Correſpondence. He ſaid, By none at all: He was tempted to it by the Devil, and the Hopes of getting Money.

He ſaid, That upon hearing a *French* Perriwig-maker was committed to *Newgate* for High Treaſon, he had deſired to be admitted again to the Lords of the Cabinet-Council.

But he would not own that he knew the Man; but ſaid, he had ſince heard his Name was *Valiere* or *Clarke*; he was told ſo by a Gentlewoman who came to ſee him ſince his Condemnation.

He ſaid, he held no Correſpondence in *England*, but only in ſending the Common Letter of the Office, with other printed News-papers, to ſome Gentlemen.

Gregg ſaid, he had been long acquainted with one *Crookſhanks*, who promiſed him, that if he would procure a *French* Paſs, he ſhould have two hundred Guineas; and *Gregg* undertook to procure the Paſs.

The firſt Time he wrote to Mr. *Chamillard* was the 24th of *October* laſt.

Brown a Merchant, Father-in-law to *Crookſhanks*, and one *Bollinger* a Merchant, were acquainted with this Agreement about the Paſs, and they dined together at *Brown*'s Houſe; and *Brown* undertook for the Money, if the Paſs could be procured.

Gregg ſaid, he acquainted *Bollinger* of his having ſent a Copy of the Queen's Letter to Mr. *Chamillard*, at the *Croſs-Keys* Tavern in *Covent-Garden*, and ſhewed him Extracts of Marechal *Tallard*'s and *Robineau*'s Letters. He ſaid alſo that he read the Extracts of their Letters at another Time in *Engliſh* to *Brown* and *Crookſhanks*.

The Lords Committees aſked him, To what End he told *Bollinger* of what he had done, in ſending the Queen's Letter to Mr. *Chamillard?* He only ſaid, It was downright Madneſs.

The Lords Committees aſked him, If any body came to him? He ſaid, one Mr. *Arbuthnot* came to him, and Nobody elſe, and his Buſineſs was to bring him Charity.

The Lords Committees aſked Mr. *Gregg*, If he had no more to acquaint their Lordſhips with? He ſaid, No: And being told by them that it concerned him very much to conſider of it; that the Lords obſerved he had told them nothing but what he knew they had Means in their Hands to be fully informed of, without his ſaying any thing; and how hard it would be for the Houſe of Lords to believe that he would venture upon ſuch a Correſpondence, without ſome Support or Encouragement; he perſiſted in it, that he had no more to ſay.

As the Lords Committees were riſen up, and had called for the Keeper to take Mr. *Gregg* away, he took a brown Paper out of his Pocket, which was ſealed up, and took out of it a Paper, which he ſaid he had prepared againſt the Queen's Birth-day, and deſired the Lords to read it. It purported to be a Petition to the Houſe of Commons. He pretended he knew not how to get it delivered, becauſe he concluded all the Papers ſent by him would be delivered to Mr. Secretary *Harley*.

The Lords finding the Paper to be addreſſed to the Houſe of Commons, told him, It was not proper for them to receive it, and delivered it immediately back to him again.

The Lords Committees, as they went away, told *Gregg*, That if he would recollect himſelf, and ſet down in Writing any thing that he thought might be for his own Service, or of Uſe to the Queen and her Government, he might ſend it to them, and the Keeper ſhould have Directions to convey it ſafely.

The next Morning *Gregg* ſent a Letter to the Lords Committees, which, as ſoon as they had peruſed, they returned to him again by a Gentleman, with the following Meſſage:

" The Lords of the Committee have ordered me to return this Paper " to you, they being of Opinion that it is not material to the Examina- " tion for which they were ſent to you by the Houſe."

The Lords Committees think themſelves obliged to acquaint the Houſe, That they did not obſerve *Gregg* to be under any Diſorder or Terror from the Apprehenſion or Senſe of his Danger.

The Indictment of *Gregg* for his treaſonable Correſpondence with her Majeſty's Enemies, was brought before the Lords Committees, which Indictment he confeſſed upon his Trial, and Judgment was thereupon given againſt him.

The Lords Committees do think it their Duty to acquaint the Houſe, That they having been informed by means of the Keeper of *Newgate*, that one *William Gregg* had been formerly in *Newgate*, and indicted for counterfeiting the Coin of the Kingdom, and that it was talked amongſt the Turnkeys in the Priſon, that this was the ſame Man; they ſent to ſearch the Books in *Newgate*, and found there, That in *May* 1697, *William Gregg* and *Elizabeth Gregg* were indicted for counterfeiting the Coin. Thereupon they ſent for Mr. *Tanner*, who has the Cuſtody of thoſe Records; he brought the Indictment before them, and it appeared that *Elizabeth Gregg* was found guilty and executed, but that *William Gregg* was acquitted; and that *Thomas Holloway* and *Simon Newport* were the Witneſſes at the Trial, who, as was ſaid, are both dead ſince that Time.

But one *Thomas Kinſerley* and *James Biddle* declaring, That they both knew that *Gregg*, who was then indicted, very well, and believed they ſhould know him again if they ſaw him; the Lords Committees ſent them ſeverally to ſee *William Gregg* now in *Newgate*, and they both of them did declare, That they believed, and were confident, that the ſame Perſon now in *Newgate* was the ſame *William Gregg* who was then indicted, and whoſe ſuppoſed Wife was then found guilty, and burnt; and they did both of them voluntarily make Oath to this Effect, and *James Biddle* ſwore, That after the Trial, the Diſcourſe in the Neighbourhood was, that *Elizabeth Gregg* took the whole Matter upon herſelf at the Trial.

Their two Affidavits are laid before your Lordſhips.

After one of theſe Perſons had been to ſee *William Gregg*, *William Gregg* wrote a Letter, directed to the Lords of the Committee, in which he did very poſitively deny that he was the Perſon who had been tried for Coining in *May* 1697.

May it pleaſe your moſt Excellent Majeſty,

WE Your Majeſty's moſt dutiful Subjects, the Lords Spiritual and Temporal in Parliament aſſembled, having entered into a ſerious Conſideration of the ſaid Report, have unanimouſly come to the following Reſolution thereupon:

That it is our Opinion, That the Crime of which *William Gregg* ſtands attainted, is of ſo heinous a Nature, and attended with ſuch extraordinary Circumſtances, that it may prove of very pernicious Conſequence, if he ſhould not be made an Example.

May it pleaſe Your Majeſty,

IT is Your Majeſty's Glory, and the Happineſs of *Europe*, that You are at the Head of one of the greateſt Confederacies that ever was known in Hiſtory; and it is the common Concern of the whole Alliance, that Your Councils ſhould be kept with the ſtricteſt Secrecy: But in the Papers now laid before You, Your Majeſty will be pleaſed to obſerve, That ſome of your Reſolutions of the greateſt Moment, and that required the utmoſt Secrecy, have been ſent to Your Enemies by the ſame Poſt they were diſpatched to the Allies; That all the Papers in Mr. Secretary *Harley*'s Office have, for a conſiderable Time, been expoſed to the View even of the meaneſt Clerks in that Office; and that the Peruſal of all the Letters to and from the *French* Priſoners was chiefly truſted to *Gregg*, a Perſon of a very ſuſpicious Character, and known to be extremely indigent. It is not eaſily to be known what ill Conſequence may have attended ſuch Negligence, but we depend upon it, that theſe Matters being thus plainly laid open to Your Majeſty, we ſhall be ſecured againſt any Dangers of this Nature for the future.

Her MAJESTY's *Moſt Gracious Anſwer.*

My Lords,

I AM ſorry that any who have been employed by thoſe in my Service ſhould have proved falſe to their Truſt, and injurious to the Public.

The Examples you lay before Me, will, I do not doubt, be a ſufficient Warning to keep all Matters of Importance as ſecret as may be, and to employ ſuch only as there ſhall be good Grounds to believe will be faithful.

Gregg lay one hundred Days under Sentence before he was executed: But a few Years after Mr. *Francis Hoffman* (a Perſon of ſome Note) wrote thus in a Pamphlet to the Public *.

" I Was abroad at the Time of Mr. *Gregg*'s Trial which has made ſo much " Noiſe; and the great Eſteem People had of the Duke of *Marlborough* " on account of his glorious Succeſſes, ſoccaſioned them to think very " hardly of the Honourable Mr. *Robert Harley*, then one of the Secre- " taries of State, when they heard his Grace would have laid down, un- " leſs the other was removed; and Mr. *Harley* having been reflected on, " ever ſince he was made a Peer and Lord Treaſurer, on *Gregg*'s Account, " I thought myſelf obliged by *Truth* and *Juſtice*, to give the following " Account, as I received it from Mr. *Lorrain*, a Man of Character; and " Mr. *Lorrain* did, in a moſt ſolemn Manner, declare to me, not only his " being fully convinced of Mr. *Harley*'s Innocence, but told me of ſo " many Endeavours to corrupt *Gregg*'s Conſcience, not only with re- " peated Offers of Life, but of great Preferments and Advantages.

" It is apparent from hence, that ſome Perſons ſtabbed as directly and " villainouſly at Mr. *Harley*'s Life then, as *Guiſcard* did ſince. I have " printed, and cauſed to be publiſhed, a true Copy of a Letter written to " me by Mr. *Lorrain* himſelf of what relates to Mr. *Gregg*, while " he was under Mr. *Lorrain*'s Care, with *Gregg*'s dying Speech, and " am, *&c.*

" FRANCIS HOFFMAN."

A true Copy of the Ordinary of Newgate, *the Reverend Mr.* Paul Lorrain's *Letter to* Francis Hoffman.

" *My good Friend,*

" WHEN you were with me Yeſterday, you know I was in Haſte " to go to *St. Andrew*'s, and could not, for that Reaſon, give you " the Account you then deſired; but promiſed it you againſt this Morn- " ing.

" That I may be as good as my Word, I have (being now engaged " in Buſineſs from Home) left this to refreſh your Memory, in what I " once, and more than once, told you about Mr. *William Gregg*.

" When that unfortunate Perſon was under Sentence of Death for " High Treaſon, I (according to the Duty of my Place) conſtantly viſited " him, prayed with him, examined him, and applied ſuch Directions " and Exhortations to him, as I thought moſt ſuitable for the well- " diſpoſing him, and preparing him for another World.

" I found him to be a Man of Parts, and very ſenſible of his heinous " Crime, which he readily confeſſed, and for which he expreſſed great " Horror, Sorrow and Repentance.

" I often preſſed him to diſcover who (if any) were concerned with " him in that *Treaſonable Fact*.

" And preſſed him alſo, (in an eſpecial Manner, upon his eternal Sal- " vation, and as he ſhould anſwer it at the great Tribunal of God) freely " to tell me, whether Mr. *Harley* did know any thing of it, or was any " ways concerned, or to be concerned in it.

" To which he anſwered me, with the greateſt and ſolemneſt Aſſeve- " ration and Proteſtation imaginable, (he being all the while upon his " Knees, and calling the great God to Witneſs) That *that* Honourable " Gentleman, Mr. *Robert Harley*, knew nothing of it, neither was to " know, nor to be concerned in it.

" Which he having ſaid, and often repeated to me, I then grew jealous " of thoſe People that frequently came to him, who (as he told me) were " ſo far from offering him any thing to quiet his Conſcience, that on " the contrary, they gave a great Diſturbance to it.

" It ſeems that among the reſt, ſome Friends of that Honourable Gen- " tleman's coming to ſee this Priſoner, I then expreſſed ſome Diſlike of

* See *Secret Tranſactions during the hundred Days Mr.* William Gregg *lay in* Newgate, *under Sentence of Death for High Treaſon.*

his

" his being ſo much diſturbed, by Perſons that reſorted to him, even " at thoſe Hours when myſelf was to be at Prayer with him; but I " knew not who thoſe Perſons were that thus came to him, and my " endeavouring to keep them from him, was with no other Deſign than " for the Good of that poor Man's Soul, who did all along expreſs to " me his great Deſire of being in the Chapel, and privately in his Room " with me, as much as poſſible.

" And as he alſo told me, that he was proffered his Life, and a great " Reward, if he would accuſe his Maſter; ſo I muſt own to you, I was " very uneaſy at his frequent Viſitors, eſpecially when I conſidered how " they diſturbed his Mind, and how much they took up of his precious " Moments, and hindered him from his Devotions, and my Aſſiſtances " to him therein.

" I urged him many and many Times and Ways to clear his Con- " ſcience, and not violate it for the whole World; telling him, that it " was infinitely better to die with a good Conſcience, than make Ship- " wreck of it, and ſave his Life here; yea, and gain all the World, by " laying a falſe Accuſation on that Honourable Perſon, or any other he " knew to be innocent, for that would certainly make him miſerable " both here and ever, *&c.*

" With ſuch like Expreſſions and Admonitions (God's Grace inter- " vening) I fixed his (then unſettled) Conſcience, weaned him from the " vain Hopes and Deſires of this Life, and directed his Thoughts and " Affections to far better Things, which I told him it was poſſible for " him to obtain, if he earneſtly and entirely laboured after them.

" He thanked me for my good Advice, and the great Concern I " ſhewed for his eternal Welfare, and ſaid, he would now give the " deaf Ear to the World, and ſo hoped God's Ear would be open to " his Prayers, *&c.*

" At the Place of Execution, he thanked me publickly for all my " Pains with him, which had proved ſo happy to his Soul, praying God " to bleſs me and my Family.

" Then he delivered a Paper into my Hand, for me to publiſh; in " which Paper, he (among other Things) acknowledges God's Mercy to " him, in preventing him from proſtituting his Conſcience to ſave his " Life.

" Now the Reaſon why I did not preſently publiſh that Paper, was " this:

" That it was commanded and kept from me by the then preſent " Sheriffs, Sir *Benjamin Green* (to whom I was then Chaplain) and Sir " *Charles Piers*, even from the Time of its Delivery, which was the 28th " of *April*, 1708, to the 6th of *May*, then next enſuing; at which Time, " having received it again, I waited with it on the Right Honourable " the Earl of *Sunderland*, then one of her Majeſty's Principal Secretaries " of State, who immediately gave me Leave to publiſh it.

" Telling me withal, that I was the propereſt Perſon to authorize " ſuch Papers, as were thus delivered to me.

" Upon this, I forthwith ſent it to the Preſs, and it then appeared " under my Name, as you may ſee by the printed Copy here incloſed:

I am, Dear Sir,

Your very humble, and affectionate Servant,

PAUL LORRAIN."

Chriſt's-Hoſpital, Tueſday Morning, June 13, 1711.

A Copy of William Gregg's *Paper, delivered by him to the Sheriffs of* London *and* Middleſex, *Sir* Benjamin Green *and Sir* Charles Piers, *and* Paul Lorrain, *Ordinary of* Newgate, *at* Tyburn, *the Place where he was executed for High-Treaſon, on* Wedneſday *the 28th of* April 1708. *Printed from the Original, and publiſhed by Authority.*

" THE Crime I am now juſtly to ſuffer for, having made a great " Noiſe in the World, a Paper of more than Ordinary Length will " be expected from the Criminal; who therefore takes this laſt Oppor- " tunity to profeſs his utter Abhorrence, and ſincere Repentance of all " his Sins againſt God, and of the heinous Crime committed againſt the " Queen, whoſe Forgiveneſs I moſt humbly implore, as I ſhall heartily " pray for her Majeſty's long Life and happy Reign over her united " People, and Succeſs againſt her Enemies, with my parting Breath; " this being all the Satisfaction I can make injured Majeſty.

" I declare, in the next Place, the Reparation I would make (were it " in my Power) to thoſe of her Majeſty's Subjects I have wronged in " any kind.

" And particularly the Right Honourable *Robert Harley*, Eſq. whoſe " Pardon I heartily beg for baſely betraying my Truſt. Which De- " claration, though of itſelf ſufficient to clear the ſaid Gentleman, yet " for the Sake of thoſe whom it was my Misfortune not to be able to " ſatisfy in my Life-time, I do ſacredly proteſt, that as I ſhall anſwer it " before the Judgment-Seat of Chriſt, the Gentleman aforeſaid was not " privy to my writing to *France*, *directly* nor *indirectly*.

" Neither I, his unworthy Clerk, any ways acceſſary to the Miſcar- " riage before *Thoulon*, nor the Loſſes by Sea; all which happened before " the firſt of my Letters, which was written the 24th of *October*, 1707.

" As for my Creditors, as I am in no Condition to ſatisfy them; ſo " I earneſtly beg they would forgive me, and I pray God to make up " their Loſſes to them ſeven-fold.

" For my own Part, I do freely forgive all Men, and die in perfect " Charity with them, not without humble Hopes of finding Forgive- " neſs, through the Merits of Jeſus Chriſt, with God, who in Mercy " touched my Conſcience ſo powerfully from the Beginning, as to pre- " vent my proſtituting the ſame to ſave my Life; for which Inſtance of " his Love (to be preferred before Life itſelf) I bleſs and magnify his " holy Name, with unſpeakable Joy and Comfort, at my Death no- " thing near ſo ignominious, as would have been ſuch a Life.

" After this Confeſſion, the Duty of a dying Man leads me to profeſs " the Religion in which I was brought up, and do now die, which is " the *Proteſtant*.

" The Scandal given whereunto, by my enormous Practices, cannot " be better taken away, than by my publiſhing to the World my hearty " Sorrow for thoſe ſenſual Pleaſures which have proved my Bane.

" Wherefore let all that ſhall read this poor Paper, take Warning by " me to ſhun the like youthful Luſts, to which whoever gives up him- " ſelf, cannot tell how far they may (when indulged) carry him, even " to the committing of ſuch Crimes, as he thought himſelf incapable of " ſometime a Day.

" Of which ſad Truth, I (to my woeful Experience) am a melan- " choly Inſtance; but at the ſame Time, I appeal to the great God, " before whom I am now going to appear, that notwithſtanding all the " Pains taken to make me out an old Offender, by faſtening on me the " Crime of counterfeiting the Coin, this is the firſt Fault that ever I " ventured upon, which was not out of Zeal for the Pretender, whom " I not only diſown at my Death, but ſolemnly declare, that in all " my Life I never thought he had any Right to theſe Realms, how " fooliſhly ſoever I may have rendered myſelf obnoxious in this Particular.

" But the only Motive of my mad Undertaking was Money, of " which I never received any, on account of the Ship Paſs, though I " have met with the more juſt Reward of ſuch ſecret Services, in- " tended by

" W. GREGG."

After which Mr. *Hoffman* adds thus: " Here it is evident, that he lay " in *Newgate* after Sentence of Death paſſed on him for High-Treaſon, " in correſponding with her Majeſty's Enemies, from the 19th Day of " *January*, 170⅞, to *April* the 28th, 1708, which was the Day of his " Execution, as a Traitor, at *Tyburn*.

" So that, in the whole, he lay under Sentence of Death, from the " Time of his Sentence to the Day of his Execution, *one hundred Days*.

" All which Time Mr. *Lorrain* laboured very diligently and devoutly " with him, by good Admonitions, and frequent Prayers to God for " him and with him, that he might not violate his Conſcience, nor " betray his Maſter.

" While, on the other Side, *Gregg* often declared to Mr. *Lorrain*, " no Manner of Sollicitations, or Offers of Life, Preferment, and great " Advantages were wanting, to induce him to bring Mr. *Harley*'s inno- " cent Blood on his Head.

" So long a Reſpite from Death, as one hundred Days, was enough " to make any Man ſo unwilling to die, as to make him to do any thing " to ſave his Life, right or wrong; and Mr. *Lorrain* ſaid, *Gregg* ſo " often wavered in his Mind about it, being put ſo much, and ſo often, " in Hopes of living with Splendor by certain Perſons, that he almoſt " reſolved to ſay and do any thing Mr. *Harley*'s Enemies would have " him.

" Againſt which, Mr. *Lorrain* fortified his Mind with all Manner " of upright Induſtry, and at length with final Succeſs. So that *Gregg* " gave a deaf Ear to all their farther Attempts.

" Here was one hundred Days hard Struggle between Life and Death, " *Innocence* and *Party-Malice*.

" Who thoſe Perſons were that offered *Gregg* his Life, with great " Preferments and Advantages (if he would but accuſe his Maſter), may " not uneaſily be gueſſed at; for moſt of the Time he was locked up, " none but People of Note were permitted to come near him, who made " him ſtrange Promiſes, and often repeated them.

" And here it would be worth while to examine how, and why, a " certain Perſon got out of *Newgate*, who was juſtly confined there for " Life, by Act of Parliament.

" Submitting to ſtop *Gregg*'s dying Speech for eight Days only.

" And then, when it was publiſhed by another Hand, for the two " Sheriffs of *London* to ſend Mr. *Lorrain* to the Earl of *Sunderland*, to " aſk Leave to print a dying Speech they had commanded, and kept " from him, till to keep it any longer, or indeed ſo long, was a burning " Shame to them, but of no Manner of farther Service.

" From hence you may conclude, how generous it was to ſay to " Mr. *Lorrain*, " *You are the proper Perſon to give Authority to this Paper,* " *and I will give you my Word, you ſhall come to no Trouble for the printing* " *and publiſhing it.*"

NUMBER XII.

IN STATE TRIALS, Vol. VI. p. 17. after the Execution of the Earl of *Derwentwater*, read as followeth *:

" The Lord *Kenmure* made no Speech, nor delivered any Paper; but " the following Letter of his to a Nobleman, was printed ſoon after his " Death."

A true Copy of a Letter written by the Lord Viſcount Kenmure *to a certain Nobleman, the Day before his Execution.*

My very good Lord,

" YOUR Lordſhip has intereſted yourſelf ſo far in mine and the " Lords my Fellow-Priſoners Behalf, that I ſhould be the greateſt " Criminal now breathing, ſhould I, whether the Reſult of your ge- " nerous Interceſſion is Life or Death, be neglectful of paying my " Acknowledgments for that Act of Compaſſion.

" We have already diſcourſed of the Motives that induced me to take " Arms againſt the Prince now in Poſſeſſion of the Throne, when you " did me the Honour of a Viſit, three Days ſince, in my Priſon here: " I ſhall therefore wave that Point, and lament my Unhappineſs, for " joining with the reſt of the Lords in pleading Guilty, in Hopes of " that Mercy, which the Generals *Wills* and *Carpenter* will do us the " Juſtice to ſay was promiſed us by both of them.

" *Mr. Pigget* and Mr. *Eyres*, the two Lawyers employed by us, adviſed " us to this Plea; the avoiding of which might have given us farther " Time for looking after the Concerns of another Life, though it had

* From the *Hiſtorical Account of Trials and Attainders for High-Treaſon*, Vol. II. p. 315.

" ended

" ended in the ſame Sentence of loſing this, which we now lie under.
" Thanks be to the Divine Majeſty, to whoſe infinite Mercy, as King
" of Kings, I recommend myſelf, in Hopes of Forgiveneſs, though it
" ſhall be my Fate to fail of it here on Earth.

" Had the Houſe of Commons thought fit to have received our Peti-
" tion with the ſame Candour as yours has done, and recommended us
" to the Compaſſion of the Prince now reigning, we might then have
" entertained ſome Hopes of Life; but the Anſwer from *St. James*'s is
" ſuch, as to make us have little or no Thoughts of it.

" Under theſe diſmal Apprehenſions then of approaching Diſſolution,
" which I thank my good God for his holy Guidance I have made due
" Preparation for, give me Leave to tell you, that howſoever I have
" been cenſured on account of the Family of the *Gordons*, which I am
" an unhappy Branch of, that I have ever lived and will die in the Pro-
" feſſion of the Proteſtant Religion, practiſed in the Church, governed
" by Biſhops; and that I abhor all King-killing Doctrines, that are
" taught by the Church of *Rome*, as dangerous and abſurd: And that
" though I have joined with ſome that have taken Arms, of that Per-
" ſuaſion, no other Motive, but that of exerciſing my Loyalty to the
" Perſon called the *Pretender*, whom I firmly believe to be the true Son
" of the late King *James* the Second, and in Defence of whoſe Title I
" am now going to be a Sacrifice, has induced me to it.

" Your Lordſhip will remember the Papers I have left with you, and
" deliver them to my Son. They may be of Uſe to his future Conduct
" in Life, when theſe Eyes of mine are cloſed by Death, which I could
" have wiſhed might have ſtolen upon me by the ordinary Courſe of
" Nature, and not by the Hands of an Executioner.

" But as my bleſſed Saviour and Redeemer ſuffered an ignominious
" and cruel Death, and the Son of God made Fleſh did not diſdain to
" have his Hands and Feet nailed to the Croſs, for the Sins of the
" World; ſo may I, poor miſerable Sinner, as far as human Nature
" will allow, patiently bear with the Hands of Violence, that I expect
" ſuddenly to be ſtretched out againſt me.

" Your Lordſhip will alſo, provided there is no Hopes of a Reprieve
" this Night, make me acquainted with it as ſoon as poſſible, that I
" may meet that Fate with Readineſs, which in a State of Uncertainty
" I expect with Uneaſineſs. I muſt alſo be preſſing with your Lordſhip,
" that if, in caſe of Death, any Paper under my Name ſhould come
" out, as pretended to be written by me, in the Manner or Form of a
" Speech, you will not believe it to be genuine; for I that am heartily
" ſorry for diſowning my Principles, in one ſpoken before your Lord-
" ſhip, and the reſt of my Peers, will never add to that Act of Indiſ-
" cretion, by ſaying any Thing on the Scaffold, but my Prayers, for the
" Forgiveneſs of my poor ſelf, and thoſe that have brought me to be a
" Spectacle to Men and Angels, eſpecially ſince I muſt ſpeak in my laſt
" Moments according to the Dictates of my Conſcience, and not pre-
" varicate, as I did before the Lords, for which I take Shame to my-
" ſelf; and ſuch a Method of Proceeding might do Injury to my Bro-
" ther *Carnwath*, who, I am told, is in a much fairer Way than I am,
" of being not excluded from Grace.

" I have nothing farther, than to implore your Lordſhip to charge
" your Memory with the Recommendations I gave you to my Wife,
" and the reſt of my Children; beſeeching God, that he will ſo ſancti-
" fy their Afflictions, that after the Pains and Terrors of this mortal
" Life, they may with me be tranſlated to the Regions of everlaſting
" Joy and Happineſs: To which bleſſed State of Immortality, your
" Lordſhip ſhall alſo, while I am living, be recommended in the Prayers
" of,

My very good Lord,
Your moſt affectionate Kinſman, &c.
KENMURE."

From my Priſon in the *Tower of London*, *Feb.* 23, 1715.

" When the Lord *Kenmure* was brought on the Scaffold, he was at-
" tended by two Divines, Mr. *H———s* and Mr. *Cockburn*, the latter
" being not ſent for till the Night before, and told by him, *He had ſo*
" *little Thoughts of dying then, that he had not provided a black Suit, that he*
" *might have died with more Decency; for which he was ſorry.* As ſoon as
" he came on the Scaffold he kneeled down, leaning one of his Hands
" on the Rail, and the Divines prayed with him. He ſeemed to be
" very ſincere and fervent in his Devotions, often lifting up his Hands
" and Eyes to Heaven: He had the Undertaker, Mr. *Rome*, with him,
" to take care of his Body, and a Surgeon, who was to direct the Ex-
" ecutioner in doing his Office, which he did, by drawing his Finger
" over that Part of his Neck where the Blow was to be given. The
" Viſcount kiſſed the Officers and Gentlemen on the Scaffold all round,
" and ſome of them twice or thrice; and being aſked, Whether he had
" any Thing to ſay, or any Speech to deliver? he ſaid, *No.* He prayed
" for the Pretender, and repented of his having pleaded guilty, and died
" after a very courageous Manner."

NUMBER XIII.

The TRIAL of the Reverend Mr. WILLIAM HENDLEY, for preaching a Charity Sermon at *Chiſlehurſt*, in *Kent*, for the Charity Children of *St. Ann*'s, *Alderſgate*, *London*; and of GEORGE CAMPMAN, ROBERT HICKS, FILIAR HARDING, and WALTER PRAT, the Schoolmaſter, and Truſtees for the Charity Children, for collecting Money for the ſame; at *Rocheſter* Aſſizes in *Kent*, before Sir *Littleton Powys*, Knight, one of his Majeſty's Juſtices of the Court of *King's-Bench*, *July* 15, 1719.

The CASE*.

ON *Saturday*, *Auguſt* 23, 1718, upon Leave obtained, firſt, from the Biſhop of *Rocheſter*, (*Atterbury*, then Biſhop of the Dioceſe) and ſecondly, from the Reverend Mr. *Wilſon*, Rector of *Chiſlehurſt*, to preach two Charity Sermons for the Children of *St. Ann's*, *Alderſgate*; the School-maſter, with four or five more, carried down ſome of the Children to *Chiſlehurſt*.

Immediately after they arrived, they were taken up, and carried before Sir *Edward Bettiſon*, Bart. *Thomas Farrington*, Eſq; Juſtices of the Peace, and Major *Stephens*, High Sheriff of the County; by whom they were aſked, How they dared to come ſtrolling and begging about the Country, without Licence or Authority firſt obtained? To which they anſwered, That if Archbiſhops and Biſhops thought it a good Work to preach for ſuch Children, they imagined it to be a good Work to collect for them: To which the Juſtices replied, They cared not for Archbiſhops or Biſhops, and were reſolved the Thing ſhould not be purſued.

On *Sunday*, *Auguſt* 24, a Sermon was preached by the Reverend Mr. *Hendley*, ſuitable to the Occaſion: The Sermon being ended, the Reverend Mr. *Wilſon* (whoſe Curate read Prayers) put on a Surplice, and repaired to the Altar to read the Offertory Sentences before the Prayer for the Church Militant; when Mr. *Wilſon* made his Offering in one of the Communion Patens, and then gave them to Mr. *Campman* and Mr. *Prat*, two of the Truſtees for the Children, to collect for them from Pew to Pew.

The People gave liberally, till they came to Mr. *Farrington*, who not only refuſed giving, but ſeized the Collector, aſſerting it was illegal, and no Collection ſhould be made; that the Children were Vagrants, and ſent about begging for the Pretender. Mr. *Hendley* called out from the Pulpit, and commanded them to proceed; Mr. *Wilſon* (from the Altar) did the like; but the Collectors anſwered, They could not. Mr. *Wilſon* came down, and ſaid he would collect in Perſon, and Mr. *Hendley* called for a Common-Prayer Book, and read the ſeveral Rubricks which authorized theſe Proceedings, and told the Juſtices, they could not anſwer diſturbing Divine Service, and muſt expect a Complaint to the Biſhop of *Rocheſter*. The Juſtices ſaid, They cared not for the Biſhop, or them either, and were charged by Sir *Edward Bettiſon* and Captain *Farrington* to deſiſt from collecting.

In the mean time, the Rector had good Succeſs in collecting, many People crouding up to give before their Turn; and others, kept back by mere Force, threw their Money into the Plate. Mr. *Farrington* made a Snatch at the Plate to take the Money; when Mr. *Wilſon* ordering the Money to be brought to the Altar, Mr. *Wilſon* took one Paten and Mr. *Hendley* the other, and decently placed them thereon. Mr. *Farrington* preſſed to come within the Rails; Mr. *Hendley* held the Door, and told him, his Place was not there, and forbid him touching the Money. Then Sir *Edward Bettiſon* came up to Captain *Farrington*, who called for a Conſtable, who came up with a long Staff; upon this they were ordered to diſperſe, upon Pain of being guilty of a Riot, being ſeconded by Sir *Edward Bettiſon*; when Mr. *Wilſon* and Mr. *Hendley* told them, that the Service of the Church was not finiſhed, for the Prayer for the Church Militant was not read, nor the Bleſſing given; and if any Riot, it was occaſioned by the two Juſtices. Sir *Edward* anſwered, That the Service was finiſhed, and forbid them to proceed; and that all concerned in bringing down the Charity Children ſhould ſuffer for what was done. Mr. *Wilſon* then called the Churchwarden to tell the Money with him, and agree to the Diſpoſal of it according to the Rubrick. The Juſtices countermanded the ſame, whom Mr. Churchwarden rather choſe to obey.

Upon this Mr. *Wilſon* and Mr. *Hendley* told the Money on the Lord's Table, and committed it that Afternoon into the Cuſtody of the Biſhop

* Taken from a Pamphlet, intituled, *Charity ſtill a Chriſtian Virtue*; *or, An impartial Account of the Trial of the Reverend Mr.* Hendley, *&c. for preaching a Charity Sermon at* Chillehurſt *in* Kent.

of *Rocheſter*. In the Evening, the Rector, the Preacher, and three Perſons who brought the Children down, were taken into Cuſtody, and bound over to the Quarter-Seſſions at *Maidſtone*, as Rioters and Vagrants.

Theſe Gentlemen appeared at *Maidſtone* upon their Recognizance; but no Bill being found againſt them, they moved to be diſcharged; but the Juſtices obliged them to put in freſh Bail for their Appearance at the next Aſſizes, when they appeared, and the following Indictment was found againſt them.

'*Kent ſſ.* JURATORES pro Domino Rege ſuper ſacramentum ſuum preſentant, quod *Willielmus Hendley* nuper de *Chiſleburſt* in comitatu *Kantiæ* Clericus, *Georgius Campman* nuper de eadem Painter, *Robertus Hicks* nuper de eadem Labourer, et *Filiar Harding* nuper de eadem Packer, et *Walterius Prat* nuper de eadem Upholſterer, exiſtentes perſonæ ſeditioſe et male diſpoſiti, ad gubernationem hujus regni ſub excellentiſſimo Domino *Georgio* nunc Rege feliciter ſtabilito maxime averſi, et iniqui lucri avidi, et nequiter et injuſte intendentes grandes denariorum ſummas illicite lucrari et obtinere ſub colore colligendi eleemoſinas et alias charitates et dona ad ſuſtentationem et mantenationem diverſorum puerorum et puellarum, ſcilicet viginti puerorum, et triginta puellarum, viceſimo quarto die *Auguſti*, anno regni dicti Domini *Georgii*, nunc Regis *Magnæ Britanniæ*, &c. quinto, apud *Chiſleburſt* in comitatu *Kantiæ* prædicto, inter ſeſe et quamplurimas alias male diſpoſitas perſonas juratoribus prædictis ignotas, conſpiravere et confederavere cum prædictis pueris et puellis pro oberrare, itinerari, et vagari ad diverſas parochias in comitatu *Kantiæ* prædicto; et in aliis comitatibus *Angliæ* in parochialibus eccleſiis et aliis parochiis illicite et injuſte lucrari, colligere, et obtinere diverſas grandes denariorum ſummas, colore et prætextu colligendi eleemoſinas et charitatis dona pro ſuſtentatione et mantenatione prædictorum puerorum, puellarumque. Et juratores prædicti ſuper ſacramentum ſuum ulterius preſentant, quod prædictus *Willielmus Hendley*, *Georgius Campman*, et *Walterius Prat*, in proſecutione et performatione conſpirationis prædictæ, et juxta conſpirationem et confederationem prædictam inde prius habitam ad nequiſſimas intentiones ſuas prædictas ad effectum redigendas, poſtea, ſcilicet viceſimo quarto die *Auguſti*, anno quinto ſupradicto, apud parochiam de *Chiſleburſt* prædictam in comitatu *Kantiæ* prædicto, cum prædictis pueris et puellis, ſeu aliquo ſeu aliqua eorum, adtunc non exiſtentibus, reſidentibus, vel reſidente, nec nato, ſeu nata, infra parochiam de *Chiſleburſt* prædictam, itineraverunt, iverunt et vagati fuerunt ad parochialem eccleſiam de *Chiſleburſt* prædictam, et in parochiali eccleſia de *Chiſleburſt* prædicta, die dicto, ſcilicet viceſimo quarto die *Auguſti*, anno quinto ſupradicto, ſeſe cum prædictis pueris et puellis, et multis aliis male diſpoſitis perſonis juratoribus prædictis ignotis, aſſemblaverunt in eccleſia parochiali de *Chiſleburſt*, prædicto tempore celebrationis divini ſervitii in eadem: Ac prædictus *Willielmus Hendley* adtunc ſervitii et ibidem ſecundum conſpirationem prædictam, inde ut perfertur, hic illicite et injuſte, abſque licentia dicti Domini Regis, ſeu alia legali authoritate quacunque, incitavit et rogavit parochiantes et alias perſonas in eadem Eccleſia adtunc et ibidem exiſtentes, dare eleemoſinas, et alia charitatis dona, ſub colore et prætextu charitatis exhibere, pro prædictis pueris et puellis. Ac idem *Georgius Campman*, et *Walterius Prat*, non exiſtentes guardiani eccleſiæ parochialis prædictæ, vel alii officiarii de dicta parochia, ſeu inhabitantes ſeu commorantes in, ſeu infra dictam parochiam de *Chiſlehurſt*, ſecundum conſpirationem prædictam, ut perfertur, inde hic illicite et injuſte, ſub colore et prætextu colligendi eleemoſinas et charitatis dona pro ſuſtentatione et ſupportatione prædictorum puerorum et puellarum, ad *Rolandum Tryon* parochianum prædictæ parochiæ de *Chiſlehurſt*, et alias perſonas in eadem eccleſia tunc exiſtentes, durando tempore divini ſervitii in eadem eccleſia tunc celebrandi, illicite et injuſte acceſſerunt, et requiſiverunt eos dare eleemoſinas, et charitatis dona, pro illicitis propoſitis prædictis: Ac iidem *Georgius Campman*, et *Walterius Prat*, adtunc et ibidem ſub colore et prætextu colligendi eleemoſinas et charitatis dona, adtunc et ibidem in proſecutione confederationis et conſpirationis prædictæ, et ſecundum conſpirationem et confederationem prædictam, inde prius ut perfertur, ac abſque aliqua legali authoritate, collegere, recepere, et obtinuere diverſas ſummas moneti, in toto attingere ad tres libras, à prædicto *Rolando Tryon*, et aliis parochianis et inhabitantibus prædictis et aliis perſonis in parochiali eccleſia prædicta exiſtentibus, in maxima diſturbatione quietis celebrationis divini ſervitii in eadem eccleſia tunc celebrandi per *Georgium Wilſon* Rectorem ejuſdem eccleſiæ; in maxima defraudatione et deceptione prædicti *Rolandi Tryon*, ac prædictorum aliorum parochianorum parochiæ de *Chiſlehurſt* prædictæ et predictarum perſonarum in eadem eccleſia tunc exiſtentium; in malum et peſſimum exemplum omnium in ſimili caſu delinquentium contra leges, ac in contemptum dicti domini Regis, legumque ſuarum, necnon contra pacem dicti Domini Regis, coronam et dignitates ſuas.

MITCHELL.'

The Sum of which *Indictment* in *Engliſh* runs thus:

THE Jury for our Lord the King preſent, That *William Hendley*, late of the Pariſh of *Chiſlehurſt*, in the County of *Kent*, Clerk, *George Campman*, lately of the ſame, Painter, *Robert Hicks*, lately of the ſame, Labourer, *Filiar Harding*, lately of the ſame, Packer, and *Walter Prat*, lately of the ſame, Upholſterer, being evilly and ſeditiouſly diſpoſed to the Government of this Kingdom, under our moſt excellent Lord *George*, King of, *&c.* and averſe to the happy Eſtabliſhment thereof, and wickedly deſirous of Gain, and moſt horridly and injuſtly intending to procure to themſelves unlawful Gains, under Pretence of collecting Charities, Alms, and Gifts, for the Suſtenance and Maintenance of Boys and Girls, *viz.* Twenty Boys, and Thirty Girls; on the 24th Day of *Auguſt*, in the fifth Year of our ſaid King, did, in the aforeſaid Pariſh of *Chiſlehurſt*, with ſeveral other ill-diſpoſed Perſons (to the Jury unknown), conſpire and confederate with the ſaid Boys and Girls, to wander up and down in *Kent*, and divers other Parts or Counties in *England*, in order to collect great Sums for the aforeſaid Purpoſes. And, that the ſaid *William Hendley*, *George Campman*, &c. in order to put their ſaid wicked Intentions in Execution, did, on the 24th Day as above-mentioned, at the aforeſaid Pariſh, with the ſaid Boys and Girls (none of them being Natives of that Pariſh), wander, itinerate, and ſtroll to the ſaid Church; and there did aſſemble in the ſaid Pariſh-Church at the Time of Divine Service; and there, at the Time of Divine Service, the ſaid *William Hendley* (to proſecute his Conſpiracy, without any Licence from the King, or legal Authority) did incite and aſk of the Pariſhioners Charities, Alms, and Gifts; though neither *George Campman* nor *Walter Prat* were Church-Wardens, or otherwiſe Officers of that Pariſh, yet they did there, in Divine Service, unlawfully extort theſe Charities, amounting to the Sum of three Pounds, from *Rowland Tryon*, and other Inhabitants, to the great Diſturbance of Divine Service, at that Time celebrating by *George Wilſon*, Rector of that Church; to the great Defrauding and Cheating of *Rowland Tryon*, and the other Pariſhioners; for a wicked and evil Example of all offending hereafter in the ſame Manner againſt the Laws; and in Contempt of our ſaid King and his Laws, and againſt the Peace of the ſaid King, his Crown and Dignity.

To which they pleaded Not Guilty.

The Jury were,

Sir *Thomas Roberts*, of *Cranbrook*, Bart.
William Honeywood, of *Cheriton*, Eſq.
Edward Gulſton, of *Weſt Farley*, Eſq.
Richard Lewin, of *Lee*, Eſq.
John Smith, of the ſame, Eſq.
Edward Hodſden, of *Lewiſham*, Eſq.
John Siſh, of *Greenwich*, Eſq.
William Clapham, of *Eltham*, Eſq.
William Simons, of *Marden*, Eſq.
Henry Wraigh, of *Offspring*, Eſq.
John Gore, of *Minſter*.
John Batchelor, of *Raynham*, Eſq *.

The Counſel were,

For the Plaintiffs,	For the Defendants,
Serjeant *Darnell*,	Serjeant *Comyns*,
Mr. *Baynes*,	Sir *Conſtantine Phipps*,
Mr. *Marſh*.	Mr. *Biondell*.

Mr. *Marſh*, with a Warmth, alledged, That in Time Charity Schools might raiſe ſuch Sums of Money, as to enable them to make Head againſt the Government; their Drums beat to Arms, and their Trumpets ſound a moſt dreadful Alarm; the Proteſtant Religion had its Quarters beaten up at *Chiſlehurſt*, and the Terror had ſtruck the Head Quarters in Town; the Sum of three Pounds was raiſed even in that little Pariſh, and ſuppoſe ten thouſand Pariſhes in *England*, from each of which if that Sum was raiſed, it would be enough to bear the Chevalier's Charges into *Italy*, and help him to conſummate the Marriage with the Princeſs *Sobieſki*, upon whom he might get new Pretenders, to the great Diſquiet of the Proteſtant Intereſt; and that if a Stop were not put to theſe Proceedings, in Time the Clergy would grow up into Friars Mendicant; and then quoted ſeveral Acts of Parliament againſt Vagrants, to prove the Defendants were within the Meaning of them; and ſhewed the Illegality of collecting Money without Letters Patents or Briefs †; and then called the Juſtices, Conſtable, and others, to prove the bringing down the Charity Children to *Chiſlehurſt*, the Preaching, and collecting Charity for them after they were forbid, *&c.*

The Defendants proved that they had the Biſhop's and Incumbent's Conſent, by the Oaths of *John Reeves*, *William Moor*, *Richard Neeves*, and *Thomas Shackleton*.

William Tryon, Eſq. and *George Jefferies* proved, that the Juſtices were the Authors of the Diſturbance.

To prove the Archbiſhop of *Canterbury* preached at *St. Dionis Back-Church*, for the Charity Children of *Shadwell*, the Reverend Mr. *Hume*, Mr. *Tryon*, Captain *Thomas Shackleton*, and *Richard Payne*, were called, who proved the ſame. And,

That the Archbiſhop of *York* did the ſame, was proved by Captain *Thomas Shackleton*.

Mr. Archdeacon *Sprott* offered in Evidence, that he had ſeen the Houſe of Lords preſent at a Sermon at *Weſtminſter*, when a Collection was made for poor Children not thereunto belonging; and offered the three Rubricks for the Defendants Vindication, *viz.* the laſt after the *Nicene* Creed, the firſt after the Offertory, and the laſt after the Communion Service; but the Judge over-ruled them, by urging, That the Collection was reſtrained to a fixed Time.

Serjeant *Darnell* ſpoke chiefly relating to the Acts of Parliament made in the Reigns of Queen *Elizabeth*, King *Charles* II. and Queen *Anne*, made againſt Vagrants and Wanderers from their Pariſhes, and inſiſted theſe Collections were illegal; as did Mr. *Baynes*.

Sir *Conſtantine Phipps* inſiſted it was legal, as they had the Biſhop's and Rector's Licence; and that if what they had done was illegal, it was cognizable only in the Eccleſiaſtical Courts; and that if the Houſe of Lords were preſent at ſuch a Collection, as Mr. Archdeacon *Spratt* had depoſed, and that he had ſeen the late Lord Chancellor *Cowper*, and the late Lord Keeper *Wright*, encourage ſuch Collections, ſure there could be no Illegality in it; and then proceeded to ſhew the Defendants were not within the ſeveral Acts of Parliament quoted; as did Mr. *Comyns* and Mr. *Blondell*, who inſiſted, That ſuch Proceedings would diſcourage Charity-Schools, and put an End to that noble Inſtitution, *&c.* and that there was no Precedent for this Proceeding.

The Judge ſummed up the Evidence, and obſerved what dangerous Conſequences might happen from theſe Collections; and was a little ſuſpicious, that Mr. *Hendley* had Cardinal *Alberoni*'s Leave, as well as the Biſhop of *Rocheſter*'s, to make this Collection, to carry on worſe Deſigns under the ſpecious Colour of advancing Charity; and ſeemed confirmed in his Suſpicion, becauſe the Manner of collecting had ſome Reſemblance with that of the Cardinal's in *Spain*; for he laid a Tax upon the People, which they were forced to pay, and gave it the ſpecious Name of a Free-Gift, *alias* Charity. If this Stratagem was to ſpread in *England*, by the ſubtile Artifices of this political Cardinal, the Nation is in Danger of paying double Taxes. Upon the whole, the Judge wiſhed that he had his eleven Brethren to conſult with upon the Bench; but as that was not

* The Publiſher of *The Account of this Trial* ſays, p. 43. "*N. B.* The Jury for the County was induſtriouſly ſet aſide, and the above-mentioned were impannelled out of "*the Grand Jury.*"

† It is great Pity this Trial was never taken down in Short-Hand; it would have been very entertaining, as well as uſeful.

possible, he directed the Jury to bring in their Verdict for the Plaintiffs; when the Jury went out, and returned in a few Minutes with a Verdict, Guilty; upon which the Judge fined them 6 *s.* 8 *d.* each, and told them, if they did not like the Verdict, they might bring a Writ of Error.

The Counsel for the Justices urged for a larger Fine, for that the Defendants had become Plaintiffs in the Bishop's Court; and therefore prayed, that such a Fine might be laid upon Mr. *Hendley*, &c. as might either satisfy the Charges they should be at in the Bishop's Court, or make the Opponents desist. But the Judge refused their Request, and told them, That should serve for the present; but if they came before him again, they should have their Deserts.

We shall here conclude (the Account of) this Trial, with an original Letter wrote by Sir *Littleton Powys* to the Lord *Parker* Lord Chancellor, upon the Occasion.

To his Excellency the Right Hon. Thomas *Lord* Parker, *Lord High Chancellor of* Great Britain, *one of his Majesty's Lords Justices*, London.

Henley, near *Ludlow*, *Aug.* 4, 1719.

My Lord,

I TAKING *London* in my Way between *Lewes* and *Kingston*, came to your Lordship's House the Morning before I went to *Kingston*, but your Lordship was then sitting. I did then intend to have informed your Lordship of what occurred in the Circuit thitherto, relating to the Public, especially in *Kent*: And after I came from *Kingston*, I found your Lordship was gone out of Town; and before your Return, I set out for my Country Concerns here in *Shropshire*, till near next Term; so that what Account I give your Lordship must be by Letter.

Though your Lordship has heard how the Verdict went in the Trial at *Rochester* *, yet perhaps it may not be unacceptable to your Lordship to have some Abstract of the Matter arising in it. It began at Six in the Morning, by my Appointment, and held till Twelve. The Court was very full of Clergymen, and a great Auditory; and I gave both Sides Liberty to expatiate as they pleased, especially the Defendants, that they might not say but that they had a full and fair Trial. Most of the Witnesses for the Prosecution were unwilling, and did prove the Facts but meanly; but afterwards the Witnesses for the Defendants did, upon questioning, prove all the Facts very fully upon all the Defendants, *viz.* *Hendley* the Preacher, the Schoolmaster, and the two Collectors, being all who were served with Process. Serjeant *Comyns*, Sir *Constantine Phipps*, and Mr. *Blondell*, were Counsel for the Defendants. After an Harangue upon the Virtue of Charity, and how essential to Christianity (though I thought the Texts they cited proved another Sort of Charity, *viz.* Good-Nature and Good-Neighbourhood, but I thought it not proper then to take Notice of the Distinction) they insisted chiefly,

1. That it would discourage all Charity, and Charity-Schools, which would thus be in Danger of Subversion.

2. That every Parson might order Collections in his own Parish, for what Charities he pleased, especially if approved of by the Bishop.

3. That the Rubrick in the Communion-Service, a Common-Prayer Book being produced in Court, does imply that the Parson and the Bishop are intrusted in Collections of Charity in the Church; for it says, that if the Parson and Churchwardens disagree in the Distribution, the Bishop shall determine.

4. That the Parson of the Parish, and also the Bishop of *Rochester*, did give *Hendley* Leave to preach this Sermon, for this Purpose.

5. That though the Sermon was done, yet the Prayer for the Holy Catholic Church at the Communion-Table was not quite finished, as were not also the Sentences for exciting Charity, when Mr. *Farrington*, the Justice of the Peace, interrupted the Collection.

6. That the two present Archbishops have preached Charity Sermons, in *London*, for the Children of other Parishes there.

7. That there is no Precedent of such an Indictment ever before.

Too much Time was spent on both Sides, relating to what Power the Bishops had antiently in the Distribution even of Tythes and Profits relating to the Church, and their Rights to license Preaching, and to direct what is to be done in Churches, and that Laymen are not to intermeddle there.

Serjeant *Darnell*. Mr. *Baynes*, and Mr. *Marsh*, were *pro Rege*. The Substance of what they all said is herein mentioned, intermixed with my own Thoughts in my summing up to the Jury.

I first said, That there were three Things much insisted on by the Defendants Counsel, and answered by the Counsel on the other Side, which I thought ought to be pared off, and put out of the Case, *viz.*

1. All Jealousy of discouraging all Charity, and Charity-Schools; for that they remained just as they were before, as long as they kept within the Bounds of their proper Parishes. But this Case was quite of a different Nature, relating to arbitrary Collections, and that in other Parishes, and the coming of fifty Boys and Girls together begging for that Purpose; and if this was practised, it might do more Harm to Charity-Schools, by making them odious to their Parishes, whose Poor would be injured, by lessening the Charity to them.

2. It ought to be put out of the Case, whether Mr. *Hendley* was authorized to preach there, or not; for that I thought it the same Case if the Parson of the Parish himself had then preached, [It was at my Tongue's End, *if the Bishop himself had preached*, as indeed it was the same; but I thought it better not to heat the Question by a Supposal of the Bishop's Preaching] for that the Preaching was not the Point, being used only to excite Giving; but the true Point was, *Whether the Collection was without lawful Authority; and therefore the Collecting of it in the Church is not a Jot better, in Point of Law, than if the fifty Boys and Girls had stood at the Market-Place, and the Collectors had there received the Charity of all whom they could assemble about them.*

3. Another Matter I thought proper to be pared off, (though so much debated on both Sides), whether it was a Crime (I suppose the Crime suggested in the Bishop of *Rochester*'s Court) to interrupt the Collection before the Prayer for the Holy Catholic Church, and the Sentences for Charity, were fully read; since they thought, that if such Collecting is an unlawful Act, the proper Time to stop it is just when it begins, or soon after, as was done here by Mr. *Farrington*; for otherwise Common-Prayer, or a Sermon, might be used to justify and give a Sanction to any unlawful Act, and this Stop might as well have been in the Middle of the Common-Prayer, or of the Sermon, in case the unlawful Collection had then begun: So that the true Point is, Whether the Collection was unlawful: and upon that all the Case depends.

As for the Assertion, that every Parson of a Parish may order Collections in his Parish for Charities, when and for what he pleases; I declared my Opinion, that he could not; it not being any Part of his Function, like reading Prayers, Preaching, Christening, Burying, &c. and I knew not how he was made Judge of the Times and Objects of all Charities within his Parish, though he might preach as much as he pleased upon the general Duty of Charity.

As to the Rubrick in the Communion-Service, I said, I thought that was to be taken *secundum subjectam materiam*, viz. the ordinary Collection at the Communion, which is ever then used to be made for the Poor of that Parish, but should not extend to every Collection the Parson should appoint for any foreign Charity, and that I did not till now hear that the Clergy did claim such a Power. And farther, I said, that I thought those Words of the Rubrick did not imply such a Power in the Parson: For the Words being, "the Money given at the Offering shall be dis-"posed of to such pious and charitable Uses as the Parson and the "Churchwardens shall think fit, wherein if they disagree, it shall be "disposed of as the Ordinary shall appoint;" such a Power of appointing a Collection at Pleasure, is as much implied in the Churchwardens as in the Parson, for they have as much Liberty to disagree from the Parson in the Distribution, as the Parson has to disagree from them; and so the Churchwardens might also appoint Collections for what Charities they pleased: But that I thought that the Parson and Churchwardens, either jointly or severally, could not appoint any Collection for Charity otherwise than in common Form for the Poor of their own Parish, and that those are the charitable Uses intended by the Rubrick, and particularly at the Communion, to the Service of which those Words of the Rubrick are subjoined. I hope your Lordship, on reading that Part of the Rubrick at the End of the Communion-Service, will be of my Opinion, which I then suddenly declared, as to the Implication, and do not since alter, unless otherwise convinced.

As to what was mentioned of the two present Archbishops, it was for the Poor of the same Town, though of a different Parish †; and all the Circumstances of those Cases do not now appear, nor were they litigated, as this Case is.

As to the Objection, That there is no Precedent of such an Indictment ever before: There never was such an Attempt before, that fifty Boys and Girls should go into another Parish, in another County, and make a Kind of Migration in such a Body, really begging, though with great Formality. And though much might be said (as the Counsel for the King insisted) to bring them within the Statute of Vagrants, especially seeing the Statute of 39 *Eliz.* c. 4. paragr. 2. says, *That all Persons calling themselves Scholars, going about begging, shall be accounted Vagrants*; yet I judged it not proper to put the Case upon that Point, when I thought it so clear otherways, and fit so to be mentioned.

I also told the Jury, that this Case did consist of two Parts; the first but particular, and the other very general.

As to the particular, it is relating to the Maintenance of the Poor, which is not of a Spiritual Nature, but a mere Lay Concern, and relating to the Civil Government; and the several Acts of Parliament do plainly esteem it as such, by ordering the Rates and Collections for the Poor, and putting the whole Management into the Lay Hands of the Justices of the Peace, and the Overseers of the Poor, who are to be nominated by the Justices of the Peace, and accountable to them, and by their Directions to set the Poor at Work, if they thought proper; and therefore a Justice of Peace, being then in the Church, might well take it to be a Matter within his Jurisdiction, and that he might stop such a new and extraordinary Proceeding, newly begun among the Clergy, relating to the Maintenance of the Poor, and a Collection made by Strangers, without the Consent or Assistance of the Churchwardens or Overseers of the Poor of that Parish.

But this Case, if under a general Consideration, *is of a vast Extent, and mighty Consequence to the King and the People, and at which the very Legislature may take great Umbrage. The levying of Money is the tenderest Part of our Constitution, and if it may be done arbitrarily, under the Shew and Form of Charity*, (which may comprise all good Works and all good Intentions) *it cannot be said whither it may go*; any more than it can be said whither these fifty Boys and Girls may go: For as, by the same Reason, they may go into all the Parishes in *England*, so Collections, as for Charities, may be set up in all the Churches in *England* by the Clergy, as often as they please: *And though it be said, it is all but voluntary Giving, yet it is a Sort of Compulsion, by the Solemnity in the Church, and vying with others, and being marked out, if refusing, or giving meanly.*

In the Time of Charles I. *the Parliament took great Offence at some Attempts for Free Gifts to the Crown*; and we hear that Cardinal *Alberoni* is now setting up the like all over *Spain*.

But besides, here in England *no Collection* ‡, *even for Charity* (unless for the Poor of the same Parish) *is, by Law, to be made, but by the Leave and*

* Occasioned by a Charity-Sermon preached at *Chiselhurst* by one *Hendley* of *Illington*. He died not long after.

† Charity Sermons are preached in *London* frequently in the Parish Churches there, for the Charity Children of different Parishes. The *British* Charity-School on *Clerkenwell-Green* have an annual Charity Sermon, preached before the Stewards and Gentry of the *Welch* Feast, on the 1st of *March*, for their Benefit, and generally at a different Church each Year, and are never molested.

‡ In the Year 1745, when the Rebellion was on Foot, at the several County Meetings then held for subscribing Sums of Money to raise Men, &c. for the Defence of his Majesty's Person and Government, several Gentlemen, in different Counties, objected to it, as against Law; and that no Money could be raised but by Authority of Parliament, or the King's Licence, &c. But my Lord Chancellor *Hardwicke*, in his Speech (when Lord High Steward) at passing Sentence on the Rebel Lords, *p.* 38. has these Words "Men of Property, of all Ranks and Orders, crouded in with liberal Subscriptions, of their own Motion, beyond the Examples of former Times, and uncom-"pelled by any Law; and yet in the most legal and warrantable Manner, notwithstanding what has been ignorantly and presumptuously suggested to the contrary."

Permission

Permiſſion of the King, gathering of Money being ſo nice a Matter that it muſt not be done, even for Charity, without his Leave, in the moſt compaſſionate Caſes; and thence the antient Method of Briefs under the Great Seal, has been uſed, even upon extreme great Loſſes by Fire. And the Statutes of 4 and 5 of *Anne* have put the whole Management of Briefs under the Regulation of the Court of Chancery, and impower the laying great Fines upon the Offenders. *But this Method were giving a Go-by to all Royal Licences, and putting it in the Power of the Clergy to do all Acts of Charity of themſelves, at the Expence of the People, and to be ſole Judges of the Occaſions, and to make what Application and Account they pleaſe.*

I told the Jury that I was very clearly of Opinion, in Point of Law, this was a Caſe of dangerous Conſequence, and was an Invaſion not only on the King's Prerogative, but alſo upon the Legiſlature, and that I thought the Defendants guilty.

The Jury ſtayed out but a little while, and brought them in all Guilty. I then told the Defendants Counſel, that if they did not like my Opinion, in Point of Law, they might bring their Writ of Error; and the Indictment being ſo ſpecial, it did equal a ſpecial Verdict, and they might have the Opinion of a ſpecial Court if they pleaſed.

I then ſet a Fine of a Noble upon each Defendant, ſaying, it was ſo ſmall only becauſe it was made a Queſtion; but now that a Verdict had ſettled it, there would be very heavy Fines upon thoſe who ſhould preſume to offend in like Manner hereafter. Yet I heard that ſome Gentlemen in the Town had thereupon ſaid, that I had been too favourable to them by ſo ſmall Fines: But it was far from my Intention of any Favour to them, but of Service to the King; whereas, if great, it might have been ſaid, that, while they were proſecuted for levying Money on the People, the Proſecution was only to levy Money upon them, when it was really to ſettle the Point: And great Fines might have raiſed Compaſſion, and perhaps a Collection for them. It would be great Satisfaction to me, if your Lordſhip be of the ſame Opinion with me, as to the Smallneſs of the Fines; I am ſure I intended it for the beſt.

I gave Mr. *Woodford* a News-Paper, wherein was an Advertiſement, which I thought very fit to be ſhewed to Superiors: That the Biſhop of *London* had iſſued a Circular Letter to all his Clergy, to collect Charities in their Pariſhes for the poor Vicarages in *England*, which I thought much a-kin to the late Collection in *Kent*, or rather more dangerous, not only by raiſing a vaſt Sum of Money, (if the like in all Dioceſes) but alſo by marking out People how far affected to the Church throughout *England*, and caſting ſome Reflection upon Queen *Anne*'s Bounty, and upon a beneficial Explanation after by his preſent Majeſty, yet as if to be ſupported by begging: And this done in a Time of Taxes, which muſt appear the more heavy after ſuch Collections; and the Clergy would thus gain a Power of raiſing Money as they pleaſe, and applying it as they pleaſe. How this Project goes on, I know not; but ſure it ought to be ſtopped: And for that Purpoſe, a Thing very appoſite was mentioned in the Debate of the late Trial in *Kent*; That commonly about *Chriſtmas*, when it is hard with the Poor for Want of Work, in great Froſt and Snow, then the Biſhop of *London* does ſend a Circular Letter to the Pariſhes within the Bills of Mortality, to make Collections for the Poor, to be put into the Hands of the Lord-Mayor. *But it was alſo alledged in the ſame Trial, that precedent to ſuch Circular Letter of that Biſhop, the King ſends a Letter, under his Sign Manual, to that Biſhop, authorizing and requiring him ſo to do. This deſerves to be inquired into; and, if true, it is a Caſe in Point againſt this new Letter of the Biſhop of* London, *if without the King's Licence.*

A Man of *Rocheſter*, worth nothing, was convicted before me of drinking the Pretender's Health. I ordered him to be whipped, in open Market, twice, till his Back was bloody, with a Month between the firſt and ſecond Whipping.

And at *Lewes*, a Man of *Rye* was convicted before me for drinking the Health of King *James* the Third, and ſaying, he knew no ſuch Perſon as King *George*. He had run out a good Eſtate by Looſeneſs, and had *nothing left* but an Annuity of *thirty* Pounds *per Annum* for his Life. I fined him a hundred Pounds, and committed him till paid, and that he would find good Sureties for his good Behaviour for three Years next after the Payment of the Fine. I told him, that by his paying a hundred Pounds to King *George*, he would certainly know there is ſuch a Perſon.

Your Lordſhip's Notion, againſt ſetting a State Offender in the Pillory, was certainly very right, and did ſo convince me, that I have ever ſince ordered corporal or pecuniary Puniſhments upon them, as having a better Effect upon ſhameleſs People, and without giving the Mob an Opportunity to be troubleſome.

I declared in all my Charges in this Circuit, as I did the two laſt Terms at *Weſtminſter*, that the Number of baſe Libels; and ſeditious Papers, is intolerable, and that now a quicker Courſe will be taken about them; for that now the Government will not be ſo much troubling itſelf to find out the Authors of them, but as often as any ſuch Papers are found on the Tables of Coffee-houſes, or other News-houſes, the Maſter of the Houſe ſhall be anſwerable for ſuch Papers, and ſhall be proſecuted as the Publiſher of them, and let him find out the Author, Letter-writer, or Printer, and take Care, at his Peril, what Papers he takes in.

This laſt was a Maiden Circuit, which had not been known before, and is to be attributed to the late good Law of Tranſportation, which is well put in Execution in the Counties near *London*, whence Tranſporting is eaſy, but not ſo well in other Parts of *England*. The Treaſury would ſave much Money, partly by paying fewer Rewards of Forty Pounds, and partly by not long maintaining Fellows in Gaol, if ſome Rates were agreed to be given to Merchants to carry them off ſpeedily.

Your Lordſhip's Order of Notification, to the Juſtices of Peace, had a very good Effect, for they appeared much better this Circuit than formerly, eſpecially in *Surrey*; where I told them, that I would requeſt your Lordſhip, that you would pleaſe to acquaint his Majeſty at his Return, how very well, in particular, his Juſtices of Peace in *Surrey* had appeared, upon his Pleaſure being notified to them for that Purpoſe.

I did, in all my Charges, inform the Audience of the Occaſion and Neceſſity of that Notification, for that there was grown a Sort of general Neglect, all over *England*, of the Appearance of the Juſtices of Peace at the Aſſizes, when the Judges had often Matters to inform them of, by Command of his Majeſty; and Trials of Felons were often imperfect by the Non-attendance of the committing Juſtice of Peace; and that their Attendance was a Reſpect due to the King and his Government, upon thoſe ſolemn Occaſions: And that it is no Hardſhip upon them; there being three Excuſes, which will be readily admitted, if upon the Call mentioned to the Court, barely upon the Word of ſome other Juſtice, or Proof upon Oath by ſome other Perſon, *viz.* 1. If not fit to travel, by Age or Want of Health. 2. If living out of the County. 3. If then actually out of the County. But if Juſtices of Peace ſhall remain at Home, about their private Affairs, or to avoid the Trouble of a Journey to the Aſſizes, it ought to be looked on as a Neglect of the Duty of their Office: For they are not called only to notify to the People that they are in Commiſſion, but to anſwer to their Names in Perſon.

Many of thoſe in Commiſſion do not act, and have not taken the Oath of Office: whereupon I ordered, in open Court, each Clerk of the Peace, againſt next Term, to tranſmit to your Lordſhip a Liſt of ſuch as reſide in the County, and refuſe to act; yet that he does, in the mean time, know of them, if they perſiſt in ſuch Refuſal; that ſo it may be their own doing, if they are put out of the Commiſſion, after his Majeſty's Favour to them in being put in.

I fear I have tired your Lordſhip with this long, though abridged, Account: But your Lordſhip's Pardon will be an Addition to all your former Favours to,

My Lord,
Your Lordſhip's moſt faithful
and moſt humble Servant,
LITTLETON POWYS.

NUMBER XIV.

CURL's CASE.

Mich. Term. 1 Geo. II.

Dominus Rex *verſ.* Edmund Curl.

An obſcene Book is puniſhable as a Libel *.

"INFORMATION exhibited by the Attorney-General againſt the Defendant *Edmund Curl*, for that he *exiſtens homo iniquus et ſceleratus, ac nequiter machinans et intendens bonos mores ſubditorum hujus regni corrumpere et eos ad nequitiam inducere, quendam turpem, iniquum et obſcænum libellum, intitulat'* Venus in a Cloyſter, or, The Nun in her Smock, *impie et nequiter impreſſit et publicavit, ac imprimi et publicari cauſavit*, (ſetting forth the ſeveral lewd Paſſages) *in malum exemplum, &c.* and of this the Defendant was found guilty. And in *Trinity Term* laſt, it was moved in Arreſt of Judgment by Mr. *Marſh*, that however the Defendant may be puniſhable for this in the *Spiritual Court* as an Offence *contra bonos mores*, yet it cannot be a Libel for which he is puniſhable in the *Temporal Court*. *Libellus* is a Diminutive of the Word *Liber*, and it is *Libellus* from its being a Book, and not from the Matter of its Contents. In the Caſe *De Libellis famoſis*, my Lord *Coke* ſays, That it muſt be againſt the Public, or ſome private Perſon, to be a Libel: and I do not remember ever to have heard this Opinion contradicted. Whatever tends to corrupt the Morals of the People, ought to be cenſured in the *Spiritual Court*, to which properly all ſuch Cauſes belong. What their Proceedings are I am a Stranger to: But for me it is ſufficient to ſay, I do not find any Caſe, wherein they were ever prohibited in ſuch a Cauſe. In the Reign of King *Charles* II. there was a filthy Run of obſcene Writings, for which we meet with no Proſecution in the *Temporal Courts*; and ſince theſe were Things not fit to go unpuniſhed, it is to be ſuppoſed that my Lords the Biſhops animadverted upon them in their Courts. In the Caſe of the *Queen* verſus *Read*, 6 *Ann. B. R.* there was an Information for a Libel in writing an obſcene Book, called, *The fifteen Plagues of a Maidenhead*; and after Conviction, it was moved in Arreſt of Judgment, that this was not puniſhable in the *Temporal* Courts; and the Opinion of Chief Juſtice *Holt* was ſo ſtrong with the Objection, that the Proſecutor never thought fit to ſtir it again.

"Mr. Attorney-General *contra*. I do not obſerve it is pretended there is any other Way of puniſhing the Defendant; for if the *Spiritual Court* had done it, Inſtances might be given; and it is no Argument to ſay, we meet with no Prohibitions; ſuch a Way of Argument would conſtrue them into all Sorts of Juriſdictions. What I inſiſt upon is, that this is an Offence at Common Law, as it tends to corrupt the Morals of the King's Subjects, and is againſt the *Peace* of the King. *Peace* includes good Order and Government, and that Peace may be broken in many Inſtances without an actual Force.

* *Strange's Reports*, Vol. II. p. 788.

"1. If

" 1. If it be an Act againſt the Conſtitution or Civil Government. 2. If " it be againſt Religion. And, 3. If againſt Morality.

" 1. Under the firſt Head fall all the Caſes of ſeditious Words or " Writings, 2 *Roll. Abr.* pl. 2. *Vent.* 324. 3 *Keble* 841. and the Caſe " of the *Queen* verſus *Bedford*, *Mich.* 12 *Ann.* whoſe Treatiſe of *Here-* " *ditary Right* was held to be a Libel, though it contained no Reflection " upon any Part of the Government.

" 2. It is a Libel, if it reflects upon Religion, that great Baſis of " Civil Government and Liberty; and it may be both a ſpiritual and " temporal Offence, *Cro. Jac.* 421. 2 *Roll. Abr.* 78. pl. 2. 1 *Vent.* 293. " 3 *Keble* 607, 621. In *Tremayne's Entries*, 226. there is a Sentence to " have a Paper fixed upon the Defendant's Head, intimating, that he " had uttered blaſphemous Words, tending to the Subverſion of Go- " vernment. There is one *Hall* now in Cuſtody on a Conviction as for " a Libel, intituled, *A ſober Reply to the merry Arguments about the Tri-* " *nity.* And *Paſch.* 10 *Ann. Regina* verſ. *Clendon*, there was a Special " Verdict on a Libel *about the Trinity*, and it was not made a Doubt of " in that Caſe.

" 3. As to Morality. Deſtroying the Peace of the Government; for " Government is no more than public Order, which is Morality. My " Lord Chief-Juſtice *Holt* uſed to ſay, *Chriſtianity is Part of the Law:* " And why not Morality too? I do not inſiſt that every immoral " Act is indictable, ſuch as telling a Lie, or the like: But if it is de- " ſtructive of Morality in general; if it does, or may, affect all the " King's Subjects, it then is an Offence of a public Nature. And upon " this Diſtinction it is, that particular Acts of Fornication are not pu- " niſhable in the Temporal Courts, and Bawdy-Houſes are. In Sir " *Charles Sedley*'s Caſe it was ſaid, that this Court is the *Cuſtos Morum* " of the King's Subjects, 1 *Sid.* 168. and upon this Foundation there " have been many Proſecutions againſt the Players for obſcene Plays, " though they have had Intereſt enough to get the Proceedings ſtayed " before Judgment, *Tremayne's Entries*, 209, 213, 214, 215. *State Trials*, " Vol. III. Lord *Grey*'s Caſe.—*Mich.* 10 *Wil.* III. *Rex* verſ. *Hill*, the " Defendant was indicted for printing *ſome obſcene Poems* of my Lord " *Rocheſter*'s, tending to the Corruption of Youth; upon which he went " abroad, and was outlawed; which he would not have done, if his " Counſel had thought it no Libel. The Spiritual Courts puniſh only " perſonal Spiritual Defamation by Words; if it is reduced to Writing, " it is a Temporal Offence, *Salk.* 552. *Mo.* 627. and it is puniſhable as " a Libel. My Lord *Coke*, in the Caſe *De Libellis famoſis*, had nothing " in View but ſcandalous, defamatory Libels. *Libellus* is not always to " be taken as a technical Word; in this Caſe it may ſtand as an obſcene " little Book. And as to the Caſe of *Read*, there was no Judgment, but " it went off upon the Chief-Juſtice's ſaying, *Why don't you go to the Spi-* " *ritual Court?* Which was giving a falſe Reaſon for that ſudden Opi- " nion: Now it appears there is no Inſtance of the Spiritual Court's " intermeddling, where it is reduced to Writing, or in Print.

" Chief-Juſtice *Raymond.* I think this is a Caſe of very great Con- " ſequence; though, if it was not for the Caſe of the *Queen* verſus " *Read*, I ſhould make no great Difficulty in it. Certainly the Spiritual " Court has nothing to do with it, if in Writing: And if it reflects on " Religion, Virtue, or Morality; if it tends to diſturb the Civil Order " of Society, I think it is a Temporal Offence. I do not think *Libellus* " is always to be taken as a technical Word. Would not Trover lie *de* " *quodam libello intitulat'* the New Teſtament, and does not the Spiritual " Court proceed upon a Libel?

" *Forteſcue* J. I own this is a great Offence; but I know of no Law " by which we can puniſh it. Common Law is common Uſage, and " where there is no Law, there can be no Tranſgreſſion. At Common " Law, Drunkenneſs, or Curſing and Swearing, were not puniſhable; " and yet I do not find the Spiritual Court took Notice of them. This " is but a general Solicitation of Chaſtity, and not indictable. Lady *Pur-* " *beck*'s Caſe was for procuring Men and Women to meet at her Houſe; " and held not indictable, unleſs there had been particular Facts to make " it a *Bawdy-Houſe*. To make it indictable there ſhould be a Breach of " the Peace, or ſomething tending to it, of which there is nothing in " this Caſe. A Libel is a technical Word at Common Law; and I " muſt own the Caſe of the *Queen* verſus *Read* ſticks with me, for there " was a Rule to arreſt the Judgment *niſi*. And in Sir *Charles Sedley*'s Caſe " there was a Force, of throwing out Bottles upon the People's Heads.

" *Reynolds* J. It is much to be lamented, if this is not puniſhable: I " agree there may be many Inſtances, where Acts of Immorality are of " Spiritual Cognizance only; but then thoſe are particular Acts, where " the Proſecution is *pro ſalute animæ* of the Offender, and not where they " are of a general immoral Tendency; which I take to be a reaſonable " Diſtinction. *Read*'s Caſe is indeed a Caſe in Point: But I confeſs I " ſhould not have been of that Opinion. *Libellus* does not *ex vi terminis* " import Defamation, but is to be governed by the Epithet, which is " added to it. This is ſurely worſe than Sir *Charles Sedley*'s Caſe, who " only expoſed himſelf to the People then preſent, [naked] who might " chuſe whether they would look upon him or not; whereas this Book " goes all over the Kingdom. Drunkenneſs and Swearing were puniſh- " able in the Spiritual Court, before the Acts which made them Tempo- " ral Offences, and in which the Juriſdiction of the Spiritual Court is " ſaved.

" *Probyn* J. inclined this to be puniſhable at Common Law, as an " Offence againſt the Peace, intending to weaken the Bonds of Civil " Society, Virtue, and Morality. But it being a Caſe of great Conſe- " quence, it was ordered to ſtand over for a further Argument.

" And this Term *Page* J. came into the *King's-Bench*, in the Room " of Juſtice *Forteſcue*; it was to have been ſpoke to by Mr. Sollicitor- " General and myſelf. But *Curl* not having attended me in Time, " I acquainted the Court I was not prepared; and as my Want of be- " ing ready proceeded from his own Neglect, they refuſed to indulge " him to the next Term. And in two or three Days, they gave it as " their unanimous Opinion, That this was a Temporal Offence. They " ſaid, it was plain the Force uſed in *Sedley*'s Caſe was but a ſmall In- " gredient in the Judgment of the Court, who fined him 2000*l.* " (*Q. Marks* *,) and if the Force was all they went upon, there was " no Occaſion to talk of the Court's being *Cenſor Morum* of the King's " Subjects. They ſaid, if *Read*'s Caſe was to be adjudged, they ſhould " rule it otherwiſe: And therefore, in this Caſe, they gave Judgment " for the King. And the Defendant was afterwards ſet in the Pillory, " as he well deſerved."

This *Edmund Curl* ſtood in the Pillory at *Charing-Croſs*, but was not pelted, or uſed ill; for, being an artful, cunning (though wicked) Fellow, he had contrived to have printed Papers diſperſed all about *Charing-Croſs*, telling the People, he ſtood there for vindicating the Memory of Queen *Anne*; which had ſuch an Effect on the illiterate Mob, that it would have been dangerous even to have ſpoken againſt him: And when he was taken down out of the Pillory, the Mob carried him off, as it were in Triumph, to a neighbouring Tavern.

* Sir *Charles Sedley* was indicted at Common Law for ſeveral Miſdemeanors againſt the King's Peace, and which were to the great Scandal of Chriſtianity; and the Cauſe was, for that *He ſhewed his naked Body in a Balcony in* Covent-Garden *to a great Multitude of People*, and there did ſuch Things, and ſpoke ſuch Words, &c. mentioning ſome Particulars of his Miſbehaviour, as throwing down Bottles (piſſed in) *vi et armis* among the People, *Keble*'s *Reports*, Vol. I. p. 620. *Forteſcue*'s *Reports*, 93, 105. And this Indictment was openly read to him in Court; and the Juſtices told him, That notwithſtanding there was not then any *Star-Chamber*, yet they would have him know, that the Court of *King's-Bench* was the *Cuſtos Morum* of all the King's Subjects; and that it was then high Time to puniſh ſuch profane Actions, committed againſt all Modeſty, which were as frequent, as if not only Chriſtianity, but Morality alſo had been neglected. After he had been kept in Court by Recognizance from *Trinity* Term to the End of *Michaelmas* Term, the Court required him to take his Trial at Bar: But being adviſed, he ſubmitted himſelf to the Court, and confeſſed the Indictment, 15 *Car.* II. 1663. The *Michaelmas* Term following, the Court conſidered what Judgment to give; and inaſmuch as he was a Gentleman of a very antient Family (in *Kent*), and his Eſtate incumbered, (not intending his Ruin, but his Reformation) they fined him only 2000 Marks, and to be impriſoned a Week without Bail, and to be of good Behaviour for three Years, *Sid.* 168. pl. 29. *Digeſt of the Law*, p. 60 and 116.

NUMBER XV.

The TRIAL of WILLIAM HALES, for forging a Promiſſory Note for 6400*l.* in the Name of *Thomas Gibſon*, Eſq. and Partners †, and for publiſhing the ſame as a true one, knowing it to be falſe and counterfeit, at the Seſſion of the Peace, and *Oyer* and *Terminer*, for the City of *London*, held at the *Old-Bailey*, on *Monday*, the 9th Day of *December*, 1728, before Mr. Juſtice *Page*, and Mr. Baron *Carter*.

Cryer. OYEZ! Oyez! Oyez! All Manner of Perſons, that have any Thing to do at this Seſſions of *Oyer* and *Terminer*, holden for the City of *London*, and Gaol-Delivery of *Newgate*, holden for the City of *London*, and County of *Middleſex*, draw near, and give your Attendance.——Oyez! You good Men of the City of *London*, ſummoned to appear here this Day, upon the Trial between our Sovereign Lord the King and *William Hales*, anſwer to your Names, on Pain and Peril that ſhall come thereon.

James Seymour, *Samuel Cranmer*, &c. called.

Clerk of the Arraigns. William Hales, look to your Challenges.

Samuel Cranmer——

Mr. Serj. *Baynes.* My Lord, I have a Paper delivered to me. There are three worthy Perſons on this Pannel, we deſire may be ſet aſide.

Mr. Juſtice *Page.* You know what the Law is: If *Mr. Attorney* conſent they ſhould be withdrawn, very well.

Mr. Serj. *Baynes.* We know there are enough, my Lord.

Cl. of Arr. Richard Knellys.

Mr. Serj. *Baynes.* He is related to Mr. *Gibſon.*

Mr. Serj. *Whitaker.* Prove it.

Mr. Baron *Carter.* Pray, how is Mr. *Gibſon* concerned?

Mr. Serj. *Darnell.* It is for a Note of Mr. *Gibſon*'s.

Mr. Juſtice *Page.* I would recommend it to *Mr. Attorney.* I would have this Trial without any Colour of Unfairneſs whatſoever; and as Mr. *Gibſon* is concerned, if he be really a-kin, I would adviſe *Mr. Attorney* to waive him.

Mr. Attorney General, (Sir *Philip Yorke.*) My Lord, I am ſure it is our Deſire that this Trial ſhould proceed with all the Fairneſs imaginable; therefore,

† This Trial (taken in Short-hand by Order of Mr. *Gibſon*) ſhould have come in Vol. IX. p. 67. being the firſt of *Hales*'s Trials; but not procuring it Time enough to inſert in its proper Place, have given it here; as it completes all the Trials at large, relating to the Forgeries of Mr. *Hales* and *Kinnerſley*: Though a ſhort Account of this Trial, from the Seſſion-Paper of that Time, is printed in Vol. IX. p. 68—71.

therefore, without entering into the Queſtion how far Mr. *Gibſon* is concerned, or, if he is, what Conſequence that may have, I waive this Gentleman.

Then the twelve Jurors, who were ſworn, were counted, and their Names were as follows, *viz.*

Samuel Cranmer,	*Ralph Knox,*	*James Coulter,*
William Howard,	*Cornelius Maſon,*	*Harvey Spragge,*
Thomas Swayne,	*John Pott,*	*Joſeph Jackſon,*
Thomas Port,	*Richard Chauncy,*	*Robert Knaplock.*

Cl. of Arr. Crier, make Proclamation.
Crier. If any one can inform, *&c.*
Clerk of the Arraigns opened the Indictment, which is as follows, *viz.*

'*London.* ſſ. JURATORES pro Domino Rege ſuper ſacramentum ſuum præſentant, quod *Willielmus Hales*, nuper de *London*, Aurifaber, Anglicè *Goldſmith*, exiſtens perſona malorum nominis et famæ, ac converſationis inhoneſtæ, ac injuſte et fraudulenter machinans et intendens quendam *Thomam Gibſon*, necnon quoſdam *Johannem Jacob* et *Robertum Jacomb*, participes ejuſdem *Thomæ Gibſon*, ac diverſos alios dicti Domini Regis nunc ligeos et ſubditos, de magnis denariorum ſummis fraudulenter et inique decipere et defraudare, ſeptimo die *Septembris*, anno regni Domini *Georgii* Secundi, nunc Regis *Magnæ Britanniæ*, &c. ſecundo, apud *London* prædict', ſcilicet, in parochia *Sancti Dunſtani in Occident'*, in warda de *Farringdon extra*, vi et armis, &c. falſo, fraudulenter, et deceptive fabricavit et contrafecit, et fabricari et contrafieri cauſavit, quoddam ſcriptum in verbis et figuris ſequentibus, videlicet,

'Auguſt 27*th*, 1728.

'*I promiſe to pay to* George Watſon, *Eſq. or Bearer, the Sum of ſix thouſand four hundred Pounds, at Demand, the like Value received. For myſelf and Partners,*

'*£.* 6400. THO. GIBSON.

'ad grave damnum præfat' *Thomæ Gibſon*, et prædict' *Johannis Jacob* et *Roberti Jacomb*, participum ejuſdem *Thomæ Gibſon*, in malum exemplum omnium aliorum in hujuſmodi caſu delinquentium, ac contra pacem dicti Domini Regis, coron' et dignitat' ſuas, &c. Et juratores prædicti ſuper ſacramentum ſuum prædictum ulterius præſentant, quod prædictus *Willielmus Hales* nequiter et deceptive machinans et intendens præfat' *Thomam Gibſon*, necnon prædict' *Johannem Jacob* et *Robertum Jacomb*, participes ejuſdem *Thomæ*, ac diverſos alios ſubditos et ligeos dicti Domini Regis nunc, de magnis denariorum ſummis fraudulenter et inique decipere et defraudare, poſtea, ſcilicet prædicto ſeptimo die *Septembris*, anno ſecundo ſupradicto, apud *London* prædict', ſcilicet, in parochia et warda prædict', vi et armis, *&c.* quoddam ſcriptum falſo fabricatum et contrafactum in verbis et figuris ſequentibus, videlicet,

Auguſt 27*th*, 1728.

'*I promiſe to pay to* George Watſon, *Eſq. or Bearer, the Sum of ſix thouſand four hundred Pounds, at Demand, the like Value received. For myſelf and Partners,*

'*£.* 6400. THO. GIBSON.

'ſcienter, illicite, et fraudulenter produxit et publicavit, et produci et publicari cauſavit, tanquam verum et legitimum ſcriptum, (dicto *Willielmo Hales* adtunc et ibidem bene ſciente ſcriptum ult' mentionat', per ipſum *Willielmum Hales* ſic ut præfertur product' et publicat', falſo fabricat' et contrafact' fuiſſe) ad grave damnum præfat' *Thomæ Gibſon*, et prædict' *Johannis Jacob* et *Roberti Jacomb*, participum ejuſdem *Thomæ*, in malum exemplum omnium aliorum in hujuſmodi caſu delinquentium, ac contra pacem dicti Domini Regis nunc, coron' et dignitat' ſuas, &c. Et juratores prædicti ſuper ſacramentum ſuum ulterius præſentant, quod prædictus *Willielmus Hales* machinans et fraudulenter intendens præfat' *Thomam Gibſon*, necnon prædict' *Johannem Jacob* et *Robertum Jacomb*, participes ejuſdem *Thomæ Gibſon*, ac diverſos alios dicti Domini Regis nunc ſubditos, de magnis denariorum ſummis fraudulenter et inique decipere et defraudare, prædicto ſeptimo die *Septembris*, anno ſecundo ſupradicto, apud *London* prædict', ſcilicet, in parochia et warda prædict', vi et armis, &c. falſo, fraudulenter, et deceptive fabricavit et contrafecit, et fabricari et contrafieri cauſavit, quoddam ſcriptum geren' dat' viceſimo ſeptimo die *Auguſti*, anno Domini milleſimo ſeptingenteſimo viceſimo octavo, in ſe purportans, quod prædictus *Thomas Gibſon* pro ſeipſo et participibus promiſit ſolvere *Georgio Watſon*, Arm', aut latori, ſummam ſex mille quadringent' librarum, ſuper demand', conſimili valore recept', ad grave damnum præfat' *Thomæ Gibſon*, et prædict' *Johannis Jacob* et *Roberti Jacomb*, participum ejuſdem *Thomæ Gibſon*, in malum exemplum omnium aliorum in hujuſmodi caſu delinquentium, ac contra pacem dicti Domini Regis, coron' et dignitat' ſuas, &c. Et juratores prædicti ſuper ſacramentum ſuum ulterius præſentant, quod prædictus *Willielmus Hales* nequiter et deceptive machinans et intendens præfat' *Thomam Gibſon*, ac prædict' *Johannem Jacob* et *Robertum Jacomb*, participes ejuſdem *Thomæ Gibſon*, ac diverſos alios ſubditos dicti Domini Regis nunc, fraudulenter et injuſte decipere et defraudare de magnis denariorum ſummis, poſtea, ſcilicet, prædicto ſeptimo die *Septembris*, anno ſecundo ſupradicto, apud *London* prædict', ſcilicet, in parochia et warda prædict', vi et armis, &c. quoddam ſcriptum falſo fabricat' et contrafact', geren' dat' viceſimo ſeptimo die *Auguſti*, anno Domini milleſimo ſeptingenteſimo viceſimo octavo, in ſe purportans, quod prædictus *Thomas Gibſon* pro ſeipſo et participibus promiſit ſolvere *Georgio Watſon*, Arm', aut latori, ſummam ſex mille quadringent' librarum, ſuper demand', conſimili valore recept,' ſcienter, illicite, et fraudulenter produxit et publicavit, et produci et publicari cauſavit, tanquam verum et legitimum ſcriptum, (prefato *Willielmo Hales* adtunc et ibidem bene ſciente ſcriptum ult' mentionat', per ipſum *Willielmum Hales* ſic ut præfertur product' et publicat', falſo fabricat' et contrafact' fuiſſe) ad grave damnum præfat' *Thomæ Gibſon*, et præfat' *Johannis Jacob* et *Roberti Jacomb*, participum ipſius *Thomæ Gibſon*, in malum et pernicioſum exemplum omnium aliorum in conſimili caſu delinquentium, ac contra pacem dicti Domini Regis nunc, coron' et dignitat' ſuas, &c.'

N. B. This Indictment was found under the Commiſſion of *Oyer* and *Terminer*, and not upon the Gaol-Delivery.

Cl. of Arr. Upon this Indictment the Defendant hath been arraigned, and pleaded Not Guilty; and for his Trial he puts himſelf upon God and his Country, which Country you are.

Your Charge is to inquire, *&c.*

Mr. *Strange.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury: This is an Indictment againſt *William Hales*, of *London*. The Indictment ſets forth, That he being a Perſon of ill Fame and Reputation, and intending to deceive and defraud *Thomas Gibſon*, *John Jacob*, *Robert Jacomb*, and divers others, did, on the 7th of *September*, forge and counterfeit, and cauſed to be forged and counterfeited, a certain Note, *viz.* "*Auguſt* 27, 1728. *I promiſe to pay*, &c." This is laid to be to the great Damage of the ſaid *Thomas Gibſon*, &c. and to the evil Example of others in like Caſe offending, againſt his Majeſty's Peace, *&c.* It ſets forth, That, from the ſame evil Intentions, he did produce and publiſh, and cauſed to be produced and publiſhed, a certain Note following, *viz.* "*Auguſt* 27, 1728, *I promiſe to pay*, &c." That he publiſhed this as a true and lawful Writing, knowing the ſame to be falſe, forged, and counterfeit. It ſets forth, That he forged and counterfeited, and cauſed to be forged and counterfeited, a certain Writing, dated *Auguſt* 27, 1728, purporting that the aforeſaid *Thomas Gibſon*, for himſelf and Partners, promiſed to pay *George Watſon*, or Bearer, 6400*l.* Gentlemen, the Indictment ſets forth, That on the ſame 7th of *September*, in this City, the ſaid *William Hales* did produce, and cauſed to be produced, a Writing, which purported that the ſaid *Thomas Gibſon* had promiſed to pay *George Watſon*, or Bearer, 6400*l.* and publiſhed this, knowing it to be forged at the ſame Time. And this is laid to be to the great Damage of the ſaid *Thomas Gibſon*, &c. and to the evil Example of all others in like Caſe offending. To this Indictment he hath pleaded Not Guilty. But if we prove the Fact, it becomes your Duty to convict him thereof.

Mr. Attorney General. May it pleaſe your Lordſhip, and you Gentlemen of the Jury; I am of Counſel in this Caſe for the King. The Charge againſt the Defendant, Mr. *William Hales*, is for forging a Note in the Name of Mr. *Gibſon*, payable to *George Watſon*, Eſq. or Bearer, for no leſs a Sum than 6400*l.* and publiſhing this Note as a true one, knowing it to be falſe and counterfeit: For, though the Fact is laid different Ways in the Indictment, yet it is upon one and the ſame Note, and the Difference conſiſts only in the Form of alledging it.

This, Gentlemen, is the firſt Caſe of the moſt extraordinary Scene of Forgery that hath come under Examination in this Place, committed in ſuch a Manner, and attended with ſuch Circumſtances, as make it neceſſary to be proſecuted with the greateſt Weight and Solemnity, for an Example and Terror to others. All Kinds of Forgery are Crimes of a moſt pernicious Nature, as they tend to weaken and deſtroy that Faith and Commerce which ought to be maintained amongſt Men: But Forgery in the Caſe of negotiable Notes, which have a particular Currency given to them by Act of Parliament, whereby private Credit is greatly aſſiſted, and Trade carried on, is one of the moſt dangerous, and, if it ſhould prevail, the Conſequences, though not eaſy to be foreſeen, would certainly be extenſive and deſtructive. Such is the Nature of the Offence whereof the Priſoner ſtands accuſed: But howſoever heinous that may be, his Guilt will depend entirely upon the Evidence of the Fact.

Gentlemen, the Advantage taken to commit this Forgery was from an Act of Kindneſs and Civility done to the Defendant. He ſome Time ago prevailed with one Mr. *Booth*, Book-keeper to Mr. *Gibſon*, to accommodate him with two Covers for Letters franked by Mr. *Gibſon*, in order (as he pretended) to ſend News into the Country: A Practice which I fear is too common; but I hope this Inſtance will have ſome Effect to make it leſs frequent. It will appear to you, from ſeveral Circumſtances, That the Note in Queſtion was made on one of theſe Covers: For, Gentlemen, it is a Promiſſory Note, ſubſcribed, *For myſelf and Partners*, *Thomas Gibſon.* The Body of the Note is all of one Hand-writing, not pretended to be Mr. *Gibſon*'s. When we come to the Subſcription, there is a Raſure at the End of the Word *For*, which, upon holding the Paper againſt the Light, is plainly to be ſeen. The Manner of Mr. *Gibſon*'s Writing being pretty wide and looſe, the Letter *o* in the Word *For* appears to have been crouded between the other two Letters *F* and *r*, and is remarkably of a different Character and freſher Ink than the others. From hence the Manner of making the Forgery ſeems to have been, by raſing out the two *e*'s at the End of the Word *Free*, or at leaſt the greateſt Part of them, and inſerting an *o* in the Manner I have mentioned, and then adding in the ſame Line, after this Word thus made to be *For*, theſe other Words, *Myſelf and Partners*; which ſtanding a little above the Name *Tho. Gibſon*, ſerve as a proper Subſcription to this Note. It will appear likewiſe, that the Stroke at the Beginning of the *m* in the Word *my* is of the older Kind of Ink, and probably was at firſt Part of one of the *e*'s in the Word *Free*. There is ſomething obſervable in the Figure and Appearance of the Paper itſelf: The old Folding, which is moſt worn, anſwers to that which probably might have been the Fold of a Cover of a Letter, and the Paper is torn off at one Side and at the Top.

This, Gentlemen, being the Nature of the Writing, and the Manner in which it was transformed from the Direction of a Letter to a Note of this Value, we ſhall, in the next Place, lay before you the Uſe which was made of it. And, Gentlemen, the Time pitched upon for this Purpoſe will be material for your Conſideration. Mr. *Gibſon* was gone to *Bath*, and it was thought proper to date the Note the Day before he went. No Uſe was made of it till ſome Time after he was gone, that there might be no Room for applying to the Perſon himſelf. The Day, and Time of the Day, which were choſen to put it off, were *Saturday* at Night; when probably there would be no Opportunity of making Inquiries till the *Monday* Morning following, and conſequently a whole Day might be gained. This being the Opportunity reſolved upon, it will appear, that on *Saturday* the 7th of *September* Mr. *Hales* made Uſe of an Inſtrument, that hath confeſſed himſelf to have been drawn in by him, one *Thomas Rumſey*, a young Fellow bred to the Sea, who was abſolutely under his Influence; told him he muſt go with him into the City, bid him put on a particular Suit of Cloaths, and obſerving that he had a laced Hat upon his Head, adviſed him to leave that behind him, and gave him a plain one. To make him appear ſtill more like a Man of Buſineſs, Mr. *Hales*, as

they went along the *Strand*, bought him a Pocket-Book or Letter-Case. Thence he carried him to *Middle-Row*, and bought him a dark Perriwig, bid him put it on, and said, it became him very well. Thus equipped, he took him to *John*'s Coffee-house in *Shire-Lane*; and when they were there, *Rumsey* not knowing about what he was to be employed, a Porter came in with a Letter. Without the Porter's saying one Word, *Hales* asked, If he did not want *Rumsey*? The Porter answered, Yes; and produced a Letter directed to *Rumsey*, which Mr. *Hales* took, and readily found inclosed in it this Note for 6400*l.* payable to *George Watson*, or Bearer. In the Letter were two Names written with Sums against them thus, *Lady Harriot Elliot* 4300*l.* *Sir John Hynde Cotton* 2100*l.* and underneath, *payable to them or Bearer.* These Names only being in the Letter, Mr. *Hales* took upon him to order *Rumsey* to write under them, *James Moreton, Esq. or Bearer*; and when this was done, that Part of the Letter with the Names was torn off, and put into the Pocket-Book (which had been bought for the Purpose), together with the Note for 6400*l.* *and a Bank Note of* 20*l.* *and two of* 25*l.* *each.* Then the Prisoner gave it to Mr. *Rumsey*, with Directions to carry these Notes to the Shop of Mr. *Snow* and *Poltock* without *Temple-Bar*, and there take their Cash-Note, payable to *James Moreton*, Esq. or Bearer, for 70*l.* the Produce of the Bank-Notes; and in Exchange for this forged Note, to take one of their Notes, payable to the Lady *Harriot Elliott*, or Bearer, for 4300*l.* and another to Sir *John Hynde Cotton* or Bearer, for 2100*l.* The Prisoner gave strict Instructions to *Rumsey*, that, if at Mr. *Snow*'s he should be asked where he lived, he should answer, at the upper End of *Bond-Street*; if he should be asked his Name, he should say, *Thomas Fowler*, or any other Name besides his true Name; that it was indifferent what, so it was not the right Name. *Rumsey*, thus instructed, went immediately to the House of Mr. *Snow* and *Poltock*, which *Hales* took Care to shew him. Mr. *Poltock* took the small Bank Notes, and gave his Note for them; but observing the Appearance of the Note for 6400*l.* that it was written on a dirty Scrap of Paper, and the Difference of Hand-writings in it, would have nothing to do with that. During this Time *Hales* kept at a little Distance; and *Rumsey* returning without Success, he directed him to go to Mr. *Hoare*'s, and (as he had concerted in the former Instance) to pay in a small Sum of Money not exceeding 70*l.* and take their Note for it, and to exchange the Note of 6400*l.* for their Notes. The Names of the Persons to whom the Notes were to be made payable were then to be changed; for the Stratagem was, to make Use of the Names of Persons that dealt at the several Shops, in order to gain Credit to the Transaction. Therefore the Names of two Honourable Persons, well known at Mr. *Hoare*'s, were pitched upon; and the new Direction which the Prisoner gave to *Rumsey* was, to take one of Mr. *Hoare*'s Notes for 4300*l.* payable to Sir *Richard Grosvenor* or Bearer: and another for 2100*l.* payable to Sir *John Hynde Cotton* or Bearer; and there also if he was asked to give in his Name, *Thomas Fowler*. When it was near dark, *Rumsey* went to Mr. *Hoare*'s, and exactly pursued his Orders. They made him out a small Note for the Cash, and gave such Credit to Mr. *Gibson*'s Name, as to give him the Notes he desired, in lieu of the 6400*l.* Note; all which Mr. *Rumsey* delivered immediately to Mr. *Hales*, who waited for him at a Fruit-stall not far from the Shop.

Gentlemen, Mr. *Hales* being now possessed of three Notes of Mr. *Hoare*'s, one for 70*l.* another for 2100*l.* and a third for 4300*l.* the next Part of his Scheme was to negotiate and exchange them for other Notes from Hand to Hand, in order to entangle the Affair, and make it difficult to trace out the Cheat: Therefore his next Orders to *Rumsey* were, to carry the Note for 4300*l.* payable to Sir *Richard Grosvenor* or Bearer, to Mr. *Brassey*'s, and exchange it for smaller Notes. *Rumsey* went thither that Night, and took four smaller Notes of Mr. *Brassey*'s, in lieu of Mr. *Hoare*'s, *viz.* two of 1000*l.* each, one of 1200*l.* and another of 1100*l.* But though these Notes of Mr. *Brassey*'s were given out on *Saturday Sept.* 7th at Night, they were made to bear Date on *Monday* the 9th; because, it being late in the Evening, the Cash-Book was made up for that Day. These four new Notes Mr. *Rumsey* delivered to Mr. *Hales*, who waited for him again at a very small Distance from Mr. *Brassey*'s Shop.

The next Part of the Scheme was to change these Notes into negotiable Securities equal to Cash, in which there was probably a double View; partly to intricate the Affair still further, and partly for the greater Convenience of carrying off the Fruits of their Iniquity, when that should become necessary: Therefore the Prisoner sent *Rumsey* to Mr. *John Hals*, a Broker in *Exchange-Alley*, and directed him to acquaint him, that he came from Mr. *Samuel Palmer*, in *Mansel-Street*, *Goodman's-Fields*, with Orders to buy *South-Sea* and *India* Bonds to the Value of 3400*l.* against *Monday* Morning following.

Thus the Matter rested till *Monday* the 9th of *September*: But on the *Sunday* the Prisoner was not wanting in making his Preparations. He then appointed one *Robert Hall*, his Taylor, to meet him at *Lloyd*'s Coffee-house in *Lombard-Street*, at Eight of the Clock the next Morning, without letting him into the Secret of what he was to do. *Hall* went accordingly, and there found one *Samuel Lee* waiting for Mr. *Hales*; an Instrument made use of by the Prisoner in another Transaction, which will one Day appear as rank a Forgery as this. About Nine *Hales* came, and gave to *Hall* Mr. *Brassey*'s Note for 1200*l.* directing him at the same Time to go and receive 650*l.* in Guineas, and have it indorsed off. He told *Hall*, that if he was asked, he should tell them he lived in the *Hay-Market*, or any where else except the real Place of his Dwelling, and that his Name was *John Roberts*. So here is another sham Name and Place of Abode. He obeyed these Orders, received the Money, not in Gold, but in three Bank-Notes; and when the Persons in Mr. *Brassey*'s Shop enquired his Name, he told them *John Roberts*. Whilst *Hall* was in the Shop, he observed that Mr. *Hales* walked by; so jealous was he of his Agents, or at least so vigilant to see how Things succeeded. *Hall* delivered the Bank-Notes, together with Mr. *Brassey*'s Note, on which the 650*l.* was indorsed off, at *Lloyd*'s Coffee-house; and afterwards met him again at *Janeway*'s Coffee-house in *Cornhill*. There *Hales* returned these Bank Notes to *Hall*, and ordered him to go to the *Bank*, and there receive the Money upon them in Gold. Mr. *Hales* was still so jealous or impatient, that whilst *Hall* was at the *Bank* receiving the Money, he took Occasion to come in there upon Pretence of changing a Guinea, and taking no Notice of *Hall*, went away; after which *Hall* went with him to a Tavern, and paid him the 650*l.* which he received at the *Bank*.

Gentlemen, thus far the Design succeeded well. Here are several good Notes obtained, and some Cash got, without Discovery: But the Occasion of that will arise out of the Part which *Rumsey* was to act on the *Monday* Morning.

Gentlemen, you observe there are two Notes of Mr. *Hoare*'s behind, whereof no Account hath been yet given, *viz.* that of 70*l.* and that of 2100*l.* payable to Sir *John Hynde Cotton*, to put off which Mr. *Rumsey* was employed. It will appear, that Mr. *Hales* kept *Rumsey* continually with him, and lodged him in his House on *Saturday* and *Sunday*; and on *Monday* Morning, when he went into the City, brought *Rumsey* with him, took Care to shew him Mr. Alderman *Hankey*'s Shop, and directed him to exchange these two Notes for 70*l.* and 2100*l.* for Mr. *Hankey*'s Notes. *Rumsey* went to the Shop, and they having no Difficulty about exchanging Mr. *Hoare*'s Notes, accepted them, and gave him two of their own, one for 1100*l.* and another for 1050*l.* both payable to *Samuel Palmer* or Bearer; and the remaining 20*l.* was paid in Money. As to the Note for 1100*l.* the whole was received upon that at Mr. Alderman *Hankey*'s the same Day, by a Person who called himself *Samuel Lane*.

Gentlemen, the next Part of the Transaction relates to the *South-Sea* and *India* Bonds for 3400*l.* which had been ordered to be procured by *Hals* the Broker. On *Monday* Morning *Rumsey* received the Money of Mr. *Hales*, with Directions to carry it to *Hals*, and pay for these Bonds. Whilst *Rumsey* was gone to transact this, it appears that Mr. *Hales* was upon this Occasion also uneasy and impatient, thought *Rumsey* stayed too long, and sent a Porter for him to *Hals*'s Office, by the Name of *Thomas Fowler*; and that *Rumsey* answered to that Name, and went along with the Porter.

Gentlemen, we shall next produce to you the Account made up by Mr. *Hals* or Mr. *Cole* his Partner, which will appear to have been made out in these feigned Names, *Samuel Palmer, Esq. per Thomas Fowler*; whereas no such Persons had any thing to do in the Transaction, but the whole was negotiated by *Hales* and *Rumsey*. And it will be proved, that whenever the Prisoner sent *Rumsey* upon any of these Errands, he considered the Questions which were likely to be asked, and gave him Instructions how to make proper Answers, and some of them in Writing.

While these Things were transacting, the Accident happened that led to the Discovery. About Eleven o'Clock on *Monday* Morning, Mr. *Humphreys*, a Servant of Mr. *Hoare* and his Partners, who carries out Notes and receives Money abroad, carried the Note for 6400*l.* to Mr. *Gibson*'s, and, Mr. *Phillips* the Cash-keeper being abroad, left it with Mr. *Cramlington*, another of the Servants, with Directions to pay the Money upon it to Mr. *Bromfield* at the *Bank*, who was to place it to Mr. *Hoare*'s Account. When Mr. *Phillips* came Home, he was surprized to find such a Note with Mr. *Gibson*'s Hand to it; the Note not of his own Writing, though it is always his Practice to write the Body of his Notes as well as the Subscription. And no Notice having been given of it by Mr. *Gibson*, upon this he conceived a Suspicion, and resolved not to pay it till he had first spoke to Mr. *Jacomb*. The Note was shewn to Mr. *Jacomb*, who, upon finding out the Rasure, and observing the other Circumstances which I at first mentioned to you, immediately suspected it to be a Forgery, and took Methods for the Discovery. He found out, that one of Mr. *Hoare*'s Notes had been exchanged for Bank-Notes, and traced out the Numbers; upon which Notice was immediately given at the *Bank*, that if any of those Notes were brought for Payment, they should be stopped, and the Person secured. It happened soon after this, that Mr. *Hales*, designing to get the Remainder of the Effects into his Pocket, carried *Rumsey* within Sight of the *Bank*, (who was so ignorant a Person, that he asked him whether it was a Church) and directed *Rumsey* to receive Money there on two Bank-Notes, each for 200*l.* Part of the Bank-Notes given out by Mr. *Brassey*; and thereupon the Officers of the *Bank* stopped *Rumsey*, and inquired into the Matter. Mr. *Rumsey* was first interrogated how he came by these Notes; and after much Hesitation and Difficulty, at last said, he had them from a Gentleman that stayed for him at *Robin*'s Coffee-house in the *Old-Jewry*. Upon this they sent a Constable, and found Mr. *Hales* there, having in his Hand Mr. *Brassey*'s Note for 1100*l.* This Note he endeavoured to conceal, but was prevented. They brought him to the *Bank*, and upon Search found about him the very Effects which were the whole Produce of Mr. *Hoare*'s three Notes, except about the Sum of which was wanting. He was asked, how he came by them, and by the Note signed with Mr. *Gibson*'s Name, payable to *Watson*, with which he procured them. The Account he gave was, that he had them from one Mr. *Samuel Palmer*: But he there declared, that all the Effects that he had about him were the Produce of this Note, and wrote down in a Paper how he had disposed of the rest.

Gentlemen, this will appear to you to be the Nature of the Case; and upon this Mr. *Hales* was committed, and *Rumsey* secured. And, Gentlemen, I apprehend, that, though this be a long Series of Facts, yet it will amount to a clear Evidence against the Prisoner. No reasonable Man can expect Proof to be made of the very Act of Forgery. Such Iniquities are Deeds of Darkness, and those who commit them do not call Witnesses to attest the Performance: But next to that we have the strongest Evidence. What arises out of the Note itself is of great Weight: The Circumstance of the Rasure and Alterations, which I will not repeat: The Body of the Note not of Mr. *Gibson*'s Writing, whereas it is his constant Practice to write the whole Note with his own Hand, and that too in a different Form of Expression from the present Note: There is no Person of the Name of *George Watson*, with whom he hath any Dealings. Another Circumstance material to be taken into Consideration is the immediate exchanging all these Effects, without any apparent Occasion. One Banker's Note exchanged for another, Mr. *Hoare*'s, Mr. Alderman *Hankey*'s, Mr. *Brassey*'s---all of them Persons of great Credit ----What Account can be given, without any Reason appearing, why one

one of these Gentlemen's Notes should be exchanged for another, but to darken and intricate the Affair?

Add to this the Consideration of the Persons concerned: Mr. *Hales*, a Bankrupt not discharged, employing such Agents as I have described to you; himself lurking about in a concealed Manner; all these Circumstances shew the Man was doing a wicked Thing, which would not bear the Light, nor his appearing in it. But what amounts to a Demonstration, is his directing these Agents to take upon them feigned Names and Places, to dress themselves in Masquerade, and to take Notes in the Names of other Persons, who were absolute Strangers to the Transaction.

As this is Evidence of the Prisoner's publishing a forged Note knowingly, it is Evidence likewise that he forged it: For, if a Person hath a forged Note in his Custody, and taketh such Methods to put it off and give it a Currency, it is a strong Proof against him of the Forgery itself; and properly turns it upon the Defendant to give a clear Account how he received it, upon what Consideration, and in what Way of Business; more especially in this Case, where the Note is for so great a Sum of Money, that Nobody can pretend to be at a Loss or under any Difficulty to shew how they came by it.

Gentlemen, when the Witnesses shall have given you an Account of these Things upon their Oaths, I apprehend there can remain no Doubt but the Charge of Forgery against the Prisoner is just, and this Prosecution necessary.

Call Philip Booth. *(Who was sworn.)*

Mr. Solicitor General. (Hon. Mr. *Talbot.*) Mr. *Booth*, do you know the Prisoner at the Bar, Mr. *Hales?*

Mr. *Booth.* Yes, Sir, I do know him.

Mr. Sol. Gen. How long have you been acquainted with him?

Mr. *Booth.* Ever since the Year 1703.

Mr. Sol. Gen. Can you remember the Time—how was he brought up at that Time?

Mr. *Booth.* I remember him at the Shop of Sir *Stephen Evance* several Years before their Failure.

Mr. Sol. Gen. Do you remember any thing of a franked Letter?

Mr. *Booth.* About a Year and a half ago he came to me, desiring me (Mr. *Gibson* being a Member of Parliament, and his other Friends out of Town), that I would do him the Favour to give him two Franks. He brought two Sheets of Paper; I desired Mr. *Gibson* to frank them, who wrote on them, *To Robert Booth, Esq. Bristol. Free Tho. Gibson.*

Mr. Sol. Gen. How did he write his Name?—Mr. *Booth. Tho. Gibson.*

Mr. Sol. Gen. What did you do with them?

Mr. *Booth.* I gave them to Mr. *William Hales.*

Mr. Sol. Gen. Sir, look on that Note. Are you acquainted with the Hand of Mr. *Gibson?* See whether you take any Part of the Note to be of his Hand-writing?

Mr. *Booth.* The Name is his.

Mr. Sol. Gen. Is there any other Part of the Note which you take to be his Hand-writing?

Mr. *Booth.* The *F* I take to be Part of the Word *Free*—the *F* I take to be Mr. *Gibson*'s Hand-writing.

Mr. Sol. Gen. What is the *r?* Look carefully upon it.

Mr. *Booth.* The *r* may be Mr. *Gibson*'s; but the *o* seemeth to be crouded in between the *F* and the *r*.

Mr. Sol. Gen. Do they seem to be of the same Hand, or of a different one?

Mr. *Booth.* Crouded in irregularly.

Mr. Sol. Gen. Are they of the same Ink?

Mr. *Booth.* I take them to be of a different Ink. The *r* is his Letter; but I take it there is some Alteration: Here is a plain Rasure, where the Letters *my* are written.

Mr. Sol. Gen. What Distance from the *r?*

Mr. *Booth.* The Rasure is probably where the two *e*'s stood.

Mr. Sol. Gen. The *my*, and the Word following, do you take them to be Mr. *Gibson*'s Writing?

Mr. *Booth.* No, Sir.

Mr. Sol. Gen. Take Notice of the Fold.

Mr. *Booth.* This seems to be the Fold of a Letter.

Mr. Sol. Gen. If you take that to be the Fold of a Letter; Is that the usual Place for the Folding of a Letter?

Mr. *Booth.* There must be some Alteration on the left-hand Corner.

Mr. Sol. Gen. Make your own Observations. Look on the Top of it; Doth that seem the Fold of the Paper as at first, or cut or torn off from any other Paper?

Mr. *Booth.* I believe it is not the original Fold of the Paper as it is now.

Mr. Sol. Gen. Look on that Side next me; Doth it seem cut or torn off?

Mr. *Booth.* Yes, it is not the original Selvedge of the Paper.

Mr. Sol. Gen. Is the original Selvedge of the Paper in any other Part? Is it cut off, or the original Selvedge?

Mr. *Booth.* The original Selvedge is not there.

Mr. Sol. Gen. Is it cut off?

Mr. *Booth.* I cannot tell; I query, whether cut or torn off.

Mr. Sol. Gen. Have you lived with Mr. *Gibson* long?

Mr. *Booth.* Eight Years.

Mr. Sol. Gen. Have you seen any Notes of his giving?

Mr. *Booth.* Yes, Sir.

Mr. Sol. Gen. What is his common Manner of signing Notes?

Mr. *Booth. For myself and Co.*

Mr. Sol. Gen. Read that Note, and give an Account to the Jury, wherein you think it agrees with his ordinary Way of Writing Notes, and wherein it differs.

Mr. *Booth.* Mr. *Gibson* generally begins with *I promise to pay*, and concludes his Notes *For Self and Co.* but never mentions *Value received.*

Mr. Just. *Page.* Consider of what Avail this is to prove that it is not written by Mr. *Gibson*, because it is different from the Manner of his Stile. It is certainly allowed by all not to be a Note written by Mr. *Gibson.*

Mr. Sol. Gen. My Lord, this is a Forgery, the Proof whereof depends upon a vast Variety of Circumstances, and every one of them is corroborating.

Mr. Just. *Page.* I submit it, whether it be of any Avail or not; the Cause will be long enough.

Mr. Sol. Gen. My Lord, this is one Circumstance. We know not what Reply they will make, and this is our Time to give in our Evidence—We hope therefore your Lordship will bear with us, and permit us to take our own Method.

Mr. Just. *Page.* Go on then your own Way.

Mr. Sol. Gen. We shall ask but one Question more; Those Notes that are signed by Mr. *Gibson*, of whose Hand-writing are they?

Mr. *Booth.* All his own.

Mr. Sol. Gen. Did you ever see any Promissory Note signed by Mr. *Gibson*, where the Body of it was wrote by any other Hand?

Mr. *Booth.* Never, to the best of my Knowledge.

Mr. Sol. Gen. As to *Self and Partners*, do you ever remember his writing in his Notes these Words, or always *Self and Company?*

Mr. *Booth. Self and Company* always.

Mr. Sol. Gen. In what Part of the Note? In a straight Line, or under?

Mr. *Booth.* In a straight Line.

Mr. Sol. Gen. Do you know that he ever signed a Promissory Note written by any other?—Mr. *Booth.* Never, to my Knowledge.

Mr. Sol. Gen. How long have you been with him?

Mr. *Booth.* Eight Years.

Mr. Sol. Gen. In what Place?—Mr. *Booth.* Book-keeper.

Mr. Sol. Gen. Did you see the Note when first brought to Mr. *Gibson*'s? Had it the same Creases in it?—Mr. *Booth.* Yes, Sir.

Mr. Sol. Gen. One Question more I would ask; Are the Letter *o*, and the Words following, of the same Ink?

Mr. *Booth.* Here seems to be an accidental Dash of the Pen, as if the Hand shook.

Mr. Sol. Gen. I apprehend the Gentleman mistakes my Question: Sir, I ask, whether you take the Letter *o* to be of the same Ink with the Word *my* and the following Words? Sir, I desire you will look once more distinctly on it, and tell us whether you apprehend the Letter *o* to be of the same Ink with the Word *my* and the following Words?

Mr. *Booth.* There seem to be some Fragments of a Letter?

Mr. Sol. Gen. Might there be the Fragments of the Letter *e?*

Mr. *Booth.* There are the Remains of the Letter *e.*

Mr. Sol. Gen. Then I ask you, whether these Remains of the Letter *e*, appear of the same Ink with the Word *my* and following Words?

Mr. *Booth.* No, nothing like it.

Mr. Sol. Gen. You have observed (I suppose) his Manner of Franking—Pray, Is it *Free* or *Frank?*

Mr. *Booth. Free* always.

Mr. Sol. Gen. One Question more; Have you observed, in his general Way, that the Space between the *F* and the *r* is so great? Suppose the *o* was out, would there be more Room between the *F* and the *r* than Mr. *Gibson* usually makes? You seem to be a very sensible Person, Sir; Is it further between the *F* and the *r*, than the Distance that Mr. *Gibson* usually makes?

Mr. *Booth.* I believe that he might make that Distance of Space, but cannot say that he always doth so; he often writes close.

Mr. Sol. Gen. This Frank (I think you say) was directed *To Mr. Robert Booth, Bristol*; I ask you, Whether that Direction was not written over the Words *Free Thomas Gibson?*

Mr. *Booth.* Yes, it was.

Mr. Sol. Gen. What Distance was there?

Mr. *Booth.* It was on a large Sheet of Paper: The Direction was very small, being only *To Mr. Robert Booth, Bristol*; and could not fill up a large Space.

Mr. Sol. Gen. What Distance do you think between the Top of the Word *Free*, and the Bottom of these Words of Superscription immediately over it?

Mr. *Booth.* I believe there might be an Inch.

Mr. Sol. Gen. The Question that I ask is, Whether, after this Direction *To Mr. Robert Booth, Bristol, Free Thomas Gibson* was not perpendicularly?

Mr. *Booth.* I cannot say on what Part of the Letter.

Mr. Sol. Gen. Was *Free Thomas Gibson* wrote so much on the Side, that it was possible that any other Words should be wrote above it?

Mr. *Booth* I believe that it might be so.

Mr. Sol. Gen. Here is a Direction *To Mr. Robert Booth, Bristol*; Where was the Word *Bristol?* Was it towards the left Hand, or was it towards the Bottom of the Superscription?

Mr. *Booth.* I cannot say how much to the Bottom; but I know that Mr. *Gibson* generally wrote loose.

Mr. Sol. Gen. Whereabout was the Word *Free* wrote?

Mr. *Booth.* Towards the left-hand Corner, and *Bristol* towards the right-hand Corner.

Mr. Sol. Gen. I ask one Question more; Did Mr. *Gibson* ever give Franks, without writing himself the Superscription?

Mr. *Booth.* I know not but that sometimes he may.

Mr. *Strange.* I desire he may fold it thus, *(producing a Sheet of Paper which he had folded)* This Half Sheet as large as you can:—Suppose you see where the Name *Thomas Gibson* is wrote, I inquire whether, when the Direction was over it, there was Room to tear off such a Paper as this, *(shewing the Note)* and have none of the Direction? You see the Distance from *Free Thomas Gibson* to the Top of the Paper; Was the Folding so large, that there might be the Direction torn off, and yet this *(the Note)* remain?

Mr. *Booth.* As I remember, it was a very large Sheet of Paper, and very largely folded. This I remember the more particularly, because Mr. *Hales* hath endeavoured the same Thing since, and I have some of them by me. I believe the Paper was large enough that there might be the Direction torn off.

Mr. Sol. Gen. Pray, will you look where Mr. *Gibson*'s Name is wrote, and tell me whether you apprehend that End is torn or cut?

Mr. *Booth.* This was the torn End, and the other answers exactly.

Mr. Robert Booth *called and sworn.*

Mr. Att. Gen. Sir, have you ever had any Letter by the Post from Mr. *William Hales?*

Mr. *R. Booth.* No, Sir; I never had any Letter from him by the General Post.

Mr.

Mr. Att. Gen. Can you recollect that you ever had a Letter from any body, franked with the Name of *Thomas Gibſon?*

Mr. *R. Booth.* I never had, I am poſitively ſure of that.

Mr. Att. Gen. Do you live at *Briſtol?*

Mr. *R. Booth.* Yes, Sir.

Mr. Att. Gen. Do you know of any other Perſon there of your Name?

Mr. *R. Booth.* None at all.

Mr. Att. Gen. Pray, had you ever any Letter from Mr. *Hales*, either franked or otherwiſe?

Mr. *R. Booth.* No, nor ever any Correſpondence with him.

Thomas Rumſey *called and ſworn.*

The Note propoſed to be read, and read accordingly.

Auguſt 27, 1728.

I promiſe to pay to George Watſon, *Eſq. or Bearer, the Sum of ſix thouſand four hundred Pounds, at Demand, the like Value received. For myſelf and Partners,*

£. 6400. THO. GIBSON.

Then the Note was handed about amongſt the Jury.

Mr. Att. Gen. Now, Gentlemen, it is proper for you to take Notice of the Obſervations that have been made by the Witneſſes upon the Appearance and View of the Note, the Size and Folding of the Paper, the Raſure, the Difference of the Ink, the Letter *o* in the Word *For*, and the other Letters. I deſire that you will look on it, and judge whether the Side of the Paper next to the Name hath been torn off from ſomething elſe, or is as it was originally. We ſhall, in the next Place, ſhew the Uſe that was made of this Note.——Mr. *Rumſey*, do you know the Defendant, *William Hales?*——*Rumſ.* Yes, Sir.

Mr. Att. Gen. How long have you known him?

Rumſ. I knew him above a Twelve-month agone.

Mr. Att. Gen. Did you ſee him at all in *September* laſt?

Rumſ. Yes, Sir.

Mr. Att. Gen. What Trade or Buſineſs are you of yourſelf?

Rumſ. I have been at Sea ever ſince ſix Years of Age, except when in Harbour.

Mr. Att. Gen. Well, Sir; What Time was it in *September* that you ſaw Mr. *Hales*, and what Buſineſs did he employ you in?

Rumſ. I ſaw him every Day.

Mr. Att. Gen. Did you ſee him *September* the 7th?----*Rumſ.* Yes, Sir.

Mr. Att. Gen. What Day of the Week was it?

Rumſ. Saturday.

Mr. Att. Gen. What did he ſay to you?

Rumſ. He bid me go into the City, and to dreſs me in theſe Cloaths.

Mr. Att. Gen. What Cloaths had you on before?

Rumſ. A lightiſh-coloured Coat, with a red Waiſtcoat and Breeches.

Mr. Att. Gen. Did he ſay any thing about your Hat?

Rumſ. When he ſpoke to me to go into the City with him, I had then a laced Hat on, a new Hat, with a broad open Lace.

Mr. Att. Gen. What did he ſay to you about it?

Rumſ. He told me, he had rather I ſhould wear a plain one, and aſked if I had one; I told him, No; he then deſired me to take his own.

Mr. Att. Gen. What Time of the Day was this?

Rumſ. About Four or Five in the Afternoon, as near as I can gueſs.

Mr. Att. Gen. Did he tell you on what Buſineſs you were to go into the City?-----*Rumſ.* No, Sir.

Mr. Att. Gen. Whence did you ſet out?

Rumſ. From his own Houſe in *Duke-Street*, *Weſtminſter*.

Mr. Att. Gen. When you came into the *Strand*, did you do any thing there?

Rumſ. He went into a Shop, and bought me a Pocket-Book. *(Produces the Pocket-Book.)*

Mr. Att. Gen. Let us ſee it.—When you had bought that, where did you go afterwards?

Rumſ. To *Holborn*, to a Place where they ſell Perukes.

Mr. Att. Gen. Was it *Middle-Row?*

Rumſ. I believe it might be; but I never was there before.

Mr. Att. Gen. Did he tell you he would preſent you with one?

Rumſ. Yes, Sir.

Mr. Att. Gen. What Sort of one was it?

Rumſ. I have it in my Pocket. *(Pulls out a dark-coloured Peruke.)*

Mr. Att. Gen. Put it on; I do not obſerve that you wear now a dark Peruke. Did you uſe to wear one?——*Rumſ.* No, Sir.

Mr. Att. Gen. What Peruke had you on before, when he made you change it?

Rumſ. This, Sir, that I have here. *(A light-coloured Peruke.)*

Mr. Att. Gen. After he had fitted you with a Peruke, whither did he carry you?

Rumſ. To *John*'s Coffee-houſe in *Shire-Lane*. He did not tell me whither we were going, nor for what.

Mr. Att. Gen. What happened there?

Rumſ. We went into a back Room, and had Pen and Ink brought us. Immediately a Porter came in.

Mr. Att. Gen. Did the Porter ſpeak to you?

Rumſ. No; he aſked the Porter; if he wanted me? He ſaid, Yes. The Porter produced a Letter directed to me, and he bid me open it.

Mr. Att. Gen. What did you find in it?

Rumſ. I found a Note for 6400*l.* payable to *George Watſon*, Eſq. or Bearer.

Mr. Att. Gen. Look on that; tell us whether you believe that to be the Note?

Rumſ. Yes, Sir; I take that to be the ſame Note, to the beſt of my Knowledge.

Mr. Att. Gen. What elſe did you find in the Letter?

Rumſ. I found written *Lady Harriot Elliott* 4300*l. Sir John Hynde Cotton* 2100*l. payable to them or Bearer.*

Mr. Att. Gen. Where was it written?

Rumſ. In the Body of the Letter.

Mr. Att. Gen. Was there any thing wrote to you in the Letter?

Rumſ. No, Sir; I remember only theſe two Names and Sums.

Mr. Att. Gen. What did he order you to write under theſe Names?

Rumſ. James Moreton, or Bearer.

Mr. Att. Gen. After he had bid you write this Name, what did he do with the Paper?

Rumſ. Tore theſe Names off.

Mr. Att. Gen. What did he do with the reſt of the Letter?

Rumſ. I know not.

Mr. Att. Gen. When he had torn off theſe Names, together with what you had added, what did he do with that Part?

Rumſ. He put it in the Pocket-Book, with the Note of 6400*l.* and a 40*l.* Note and two other Notes. He then ordered me to go to Mr. *Snow* and *Poltock*'s Shop, to give them the 40*l.* Note and the two other Notes, and to take their Note, payable to *James Moreton*, or Bearer.

Mr. Att. Gen. For what Sum?

Rumſ. I cannot tell exactly the Sum, but ſuppoſe it about 70*l.* If I was aſked, what *Moreton*, I was to tell them that he lived at the upper End of *Bond-Street*; but I never knew him. He ordered me to deſire for the 6400*l.* Note, their Notes for 4300*l.* payable to Lady *Harriot Elliott*, and 2100*l.* payable to Sir *John Hynde Cotton*, or Bearer.

Mr. Att. Gen. What further Directions did he give you?

Rumſ. If my Name was aſked, he bid me ſay that it was *Thomas Fowler*, or any other; it was an indifferent Thing, and I might make Uſe of any Name but my own. He had been ſo very kind to me, and I had ſo good an Opinion that he deſigned no Ill, that I readily did as he ordered me.

Mr. Att. Gen. After he had given you this Pocket-Book with theſe Notes and Inſtructions, whither did you go?

Rumſ. To Mr. *Snow* and *Poltock*'s.

Mr. Att. Gen. Whither did Mr. *Hales* go?

Rumſ. A little Way to ſhew me the Houſe.

Mr. Att. Gen. What happened at this Shop?

Rumſ. I aſked for their Note for the ſmall Notes, which they readily gave me. I then produced the other Note, and deſired their Notes; the Gentleman ſaid, he did not care to accept it, becauſe it was not all of Mr. *Gibſon*'s own Hand-writing.

Mr. Att. Gen. Did he mention any other Reaſon?

Rumſ. I remember not.

Mr. Att. Gen. Did he aſk your Name?

Rumſ. I think he did, and I told him *Thomas Fowler*.

Mr. Att. Gen. Did any thing further happen there?

Rumſ. No, Sir.

Mr. Att. Gen. What did you do then?

Rumſ. I went back; Mr. *Hales* met me a little Way off, on that Side of *Temple-Bar* next the Shop.

Mr. Att. Gen. Had he appointed to meet you there?

Rumſ. No, Sir.

Mr. Att. Gen. Was it within View of the Shop?

Rumſ. Yes, Sir.

Mr. Att. Gen. What did you ſay to him, when you came back?

Rumſ. He aſked me what I had got, and I told him; then we went back to *John*'s Coffee-houſe, where I gave him the Note; he then bid me write, inſtead of Lady *Harriot Elliott*, Sir *Richard Groſvenor*.

Mr. Att. Gen. On the ſame Paper, or another?

Rumſ. I cannot ſay.

Mr. Att. Gen. Did he bid you ſtrike out the Name *Lady Harriot Elliott?*

Rumſ. No; but write on a plain Paper, *To Sir Richard Groſvenor* 4300*l. to Sir John Hynde Cotton* 2100*l. payable to them or Bearer.*

Mr. Att. Gen. After this, what further Directions did he give you?

Rumſ. He ordered me to go to Mr. *Hoare*'s in *Fleet-Street*; he went oppoſite to the Shop, and ſhewed me the Shop.

Mr. Att. Gen. What Time of the Afternoon was it?

Rumſ. A little before it was dark.

Mr. Att. Gen. What o'Clock?

Rumſ. Half an Hour or three Quarters before it was dark.

Mr. Att. Gen. What Inſtructions did he give you to obſerve at that Shop?

Rumſ. To receive for this Note their Notes for 4300*l.* to Sir *Richard Groſvenor*, and 2100*l.* to Sir *John Hynde Cotton*, payable to them or to the Bearers.

Mr. Att. Gen. Did he give you Directions about taking any other Note?

Rumſ. I have a Notion of ſome other Note, but I cannot ſay poſitively what it was, but it did not exceed 70*l.*

Mr. Att. Gen. Did he give you any thing in Notes or Caſh?

Rumſ. Much the ſame as before.

Mr. Att. Gen. You ſay you had a Note from Mr. *Poltock*; Did Mr. *Hales* return that to you?

Rumſ. I cannot ſay poſitively; but it was that, or ſome other Notes, not exceeding 70*l.*

Mr. Att. Gen. Did he give you any Directions as to your own Name?

Rumſ. The ſame as before, *Thomas Fowler*.

Mr. Att. Gen. When you went to this Shop, what Peruke had you on?

Rumſ. The dark one, and the other in my Pocket.

Mr. Att. Gen. What paſſed at Mr. *Hoare*'s Shop?

Rumſ. I received their Notes, one for 4300*l.* payable to Sir *Richard Groſvenor* or Bearer, the other for 2100*l.* payable to Sir *John Hynde Cotton* or Bearer.

Mr. Att. Gen. What did you give for them?

Rumſ. The Note of 6400*l.*

Mr. Att. Gen. What for the ſmaller Note?

Rumſ. I cannot tell.

Mr. Att. Gen. For what Sum was that?

Rumſ. I remember not, but it did not exceed 70*l.*

Mr. Att. Gen. Where did you find Mr. *Hales?*

Rumſ. He told me he would wait for me at a Fruit-ſtall at the End of a Court about ſix Doors further. I went thither, and delivered the Notes.

Mr. Att. Gen. Did you deliver him the Notes at the Fruit-ſtall?

Rumſey.

Rumſey. I cannot be poſitive whether there, or at the Coffee-houſe.

Mr. Attorney General. Do you know the Court where the Fruit-ſtall was? Was it *Mitre-Court?*

Rumſ. I know not, not being acquainted with the Town.

Mr. Att. Gen. How far from Mr. *Hoare*'s?—*Rumſ.* About Six Doors.

Mr. Att. Gen. When you gave him the Notes, did you deliver them with the Pocket-Book, or without?

Rumſ. Pocket-Book and all.

Mr. Att. Gen. Where did you go afterwards?

Rumſ. He took a Coach, and bid the Coachman drive to the *Royal-Exchange.*

Mr. Att. Gen. Whither did he go when he came there?

Rumſ. He went out of the Coach, went a little Way with me to *Janeway*'s Coffee-houſe, called for Pen, Ink, and Paper, and bid me write 1200 *l.* 1100 *l.* 1000 *l.* 1000 *l. to Samuel Palmer or Bearer.*

Mr. Att. Gen. What Inſtructions did he give you about *Samuel Palmer?*

Rumſ. To ſay that he lived in *Manſel-Street*, in *Goodman's-Fields.*

Mr. Att. Gen. After you had done this, whither did you go next?

Rumſ. Next he carried me to Mr. *Woodward*'s, a Banker in *Exchange-Alley.* It was then dark. He bid me deſire their Notes for theſe Sums, payable to *Samuel Palmer* or Bearer, in Lieu of the 4300 *l.* Note of Mr. *Hoare*'s.

Mr. Att. Gen. What happened there?

Rumſ. They ſaid they could not do it.

Mr. Att. Gen. Where did you go next?

Rumſ. I went to him, who was cloſe by the Door. He took me to Mr. *Braſſey*'s, bade me deſire their Notes for the ſame Sum, in lieu of Mr. *Hoare*'s Note payable to Sir *Richard Groſvenor.* They gave me the Notes; they aſked me, what Mr. *Palmer* it was? I ſaid, that he lived in *Manſel-Street, Goodman's-Fields.*

Mr. Att. Gen. Did you ſay any thing further of him?

Rumſ. I think not; if I did, it was what Mr. *Hales* directed me.

Mr. Att. Gen. Did they aſk your Name?

Rumſ. I am not poſitive; if they did, I told them as elſewhere, *Thomas Fowler.*

Mr. Att. Gen. Whither did you carry the Notes?

Rumſ. I carried them to Mr. *Hales.*

Mr. Att. Gen. Where was he?

Rumſ. He was by a Shop at the Corner of a Court; he was in the Court, and came to me there. This was a little beyond Mr. *Hals*'s Door. He bid me aſk the Price of *South-Sea* Bonds, and aſk them, whether they could get 1000 *l.* worth by *Monday* Morning? They ſaid, they believed they could. We then went to *Janeway*'s Coffee-houſe.

Mr. Att. Gen. What did he then?

Rumſ. He called for ſomething, paid for it, went to *Stocks-Market*, thence took Coach, and went Home.

Mr. Att. Gen. Where did you go? Did you leave him there?

Rumſ. No, I ſupped with him.

Mr. Att. Gen. Did he make any further Appointment with you?

Rumſ. He bid me be ready on *Monday* Morning in the ſame Cloaths.

Mr. Sol. Gen. Where was you?

Rumſ. I was at his Houſe; he lodged me there.

Mr. Sol. Gen. Did any thing elſe happen on *Saturday?*

Rumſ. No, Sir.

Mr. Sol. Gen. Was you to put on the ſame Hat and Peruke?

Rumſ. Yes, Sir; and he ordered the Man to comb and powder it.

Mr. Sol. Gen. On *Monday* Morning did you do as directed?

Rumſ. Yes, and he then told out twenty Broad Pieces and ten Guineas.

Mr. Sol. Gen. Thoſe Notes that you received at Mr. *Braſſey*'s, do you know the Date of them?

Rumſ. Yes, Sir; *Monday* Morning, *September* the 9th.

Mr. Sol. Gen. What did you with them?

Rumſ. I delivered them to Mr. *Hales.*

Mr. Sol. Gen. What did you do on *Monday* Morning?

Rumſ. He then walked to *Janeway*'s Coffee-houſe; he did not tell me whither he was going, nor what I was to do.

Mr. Sol. Gen. What happened there?

Rumſ. He read the News, bid me call for what I wanted, he would pay for it; I drank two Diſhes of Chocolate.

Mr. Sol. Gen. What did you there?

Rumſ. He told me, that it was too ſoon to go to Mr. *Hals*'s for the Bonds, it being then between Eight and Nine o'Clock; ſo he told me, that he would ſend me with ſome Notes to Mr. Alderman *Hankey*'s.

Mr. Sol. Gen. What Directions did he give you?

Rumſ. He went oppoſite to Mr. Alderman *Hankey*'s.

Mr. Sol. Gen. What Notes did he give you?

Rumſ. One Note of 2100 *l.* another of Mr. *Hoare*'s for 70 *l.* payable to *Samuel Palmer* or Bearer.

Mr. Sol. Gen. What did you do after you received theſe Directions?

Rumſ. I went to *Janeway*'s Coffee-houſe, and there delivered the Notes to him.

Mr. Sol. Gen. But firſt did you not carry them to Alderman *Hankey*'s?

Rumſ. I got them changed there, delivered them to Mr. *Hales* at *Janeway*'s Coffee-houſe, one of 1050 *l.* and another of 1100 *l.* both payable to *Samuel Palmer* or Bearer, and 20 *l.* in Money. He gave me theſe again, and the 20 *l.* in Money.

Mr. Sol. Gen. What did you do with the Money?

Rumſ. He bid me keep it in my Pocket with the reſt of the Money that I had received of him. He then ſent to Mr. *Hals*'s for the Bonds.

Mr. Sol. Gen. What Quantity?

Rumſ. A thouſand Pounds worth.

Mr. Sol. Gen. In whoſe Name did you buy them?

Rumſ. In Mr. *Samuel Palmer*'s

Mr. Sol. Gen. Who directed you to buy them?—*Rumſ.* Mr. *Hales.*

Mr. Sol. Gen. What Name did you take?

Rumſ. Thomas Fowler, as before.

Mr. Sol. Gen. What did you do with the Bonds?

Rumſ. I delivered them to Mr. *Hales*; he ſent me to ſee for 2400 *l.* worth more; I came back and told him, that I could get no more than 400 *l.* worth more.

Mr. Sol. Gen. What then?

Rumſ. He ſent me for 2000 *l.* of *India* Bonds, and gave me Notes to pay for them all.

Mr. Sol. Gen. Do you know what the Notes were that he gave you?

Rumſ. I cannot tell; but I believe that they were ſome of the Notes that I had received before.

Mr. Sol. Gen. What did you do with them?

Rumſ. I went and bought the Bonds. The Notes coming to more, they gave me the Balance in Money; and I deſired them to give me a Bag, which they did.

Mr. Sol. Gen. Was there any Account made up by Mr. *Hals?*

Rumſ. His Clerk caſt it up on a Paper, and gave me a Note what they came to.

Mr. Sol. Gen. Have you that Note by you?

Rumſ. No; I gave it with the Bonds to him.

Mr. Sol. Gen. What was you directed next?

Rumſ. I told him, that I was to go to Mr. *Edward Jaſper* to receive my Pay. He bid me put it off. I told him that I could not. He bid me, when I had received it, to return to him. I went and received it, 35 *l.* odd Money. I then came to him, and deſired him to take the remaining Money. He ſaid, that he had not Time to reckon it, but bid me come to him at *Janeway*'s. He bid me not go through *Fenchurch-Street.*

Mr. Sol. Gen. For what Reaſon?

Rumſ. He did not tell me the Reaſon.

Mr. Sol. Gen. Was any Shop that you was at there?

Rumſ. Yes, Mr. Alderman *Hankey*'s.

Mr. Sol. Gen. Did you obſerve his Directions?

Rumſ. Yes, I came back to *Janeway*'s Coffee-houſe through *Leaden-hall-Street.*

Mr. Sol. Gen. Was he there?---*Rumſ.* Not at firſt, but I ſtayed for him.

Mr. Sol. Gen. What Time of the Day was it?

Rumſ. About Two o'Clock, *Monday* Noon.

Mr. Sol. Gen. What Directions did he give you then?

Rumſ. He bid me dine with him. I thought he was going Home directly; but he turned aſide to the *Bank*, which I aſked him if it was a Church. He told me, it was the *Bank.* He gave me two Notes of 200 *l.* each, bidding me, when I had received the Money, to come to him at *Robin*'s Coffee-houſe in the *Old-Jewry.* He peeped through the Saſh-Door, and directed me to a Gentleman at the left-hand Side. I went to him, who directed me to the other Side. They bid me ſtay a little. One of them went out and called a Conſtable, and ſtopt me.

Mr. Sol. Gen. What did they aſk you?

Rumſ. I was ſo confuſed and ſurprized, that I could not give a ſenſible Anſwer.

Mr. Sol. Gen. Had you any Name given you to go by at the *Bank*, if aſked your Name there?

Rumſ. Yes, Sir; at every Place I was to ſay *Thomas Fowler.*

Mr. Sol. Gen. I would have you recollect yourſelf, whether when you was receiving the Money, Mr. *Hales* came in to do any thing?

Rumſ. No, not at all.

Mr. Sol. Gen. Afterwards was you preſent when Mr. *Hales* was brought in?

Rumſ. I ſaw him carried up Stairs, but ſpake not to him.

Mr. Sol. Gen. Was you preſent at his Examination?—*Rumſ.* No, Sir.

Mr. Sol. Gen. Did you receive any more Money than what you have mentioned?

Rumſ. No, Sir, nor knew nothing till he gave me Directions.

Mr. Sol. Gen. You ſay, that they ſeized you at the *Bank*; Did you acquaint them where the Perſon was that gave you the Notes?

Rumſ. I told them at *Robin*'s Coffee-houſe in the Alley near the *Bank.*

Mr. Sol. Gen. Did they go to find him according to your Directions?

Rumſ. Yes, Sir.

Mr. Sol. Gen. Did you ſee them bring any body back in Cuſtody?

Rumſ. They brought him ſecured, and carried him up Stairs.

Mr. Sol. Gen. Did you ſee him?—*Rumſ.* Yes, Sir.

Mr. Sol. Gen. Was that Perſon, that you ſaw in the Room, the ſame that gave you the Bills (that you brought to the *Bank*) at the Coffee-houſe?

Rumſ. Yes, Sir.

Mr. Sol. Gen. Pray, will you look on that Note? Is that the Note that you received of Mr. *Hales?*

Rumſ. Yes, I take it to be the ſame Note; that was for 6400 *l.* and the Name was *Gibſon*; it was payable to *George Watſon*, Eſq; or Bearer.

Mr. Serj. *Darnell.* Mr. *Rumſey*, pray was not you engaged to go a Journey ſomewhere with Mr. *Hales?*

Rumſ. He told me on *Monday* Morning, that he was about going into the Country.

Mr. Serj. *Darnell.* Where was you to go?

Rumſ. He told me not where; but aſked me to ride out with him, and directed me where to get a Pair of Boots.

Mr. Serj. *Darnell.* On your Oath, was not the Peruke bought for riding in?—*Rumſ.* No, Sir.

Mr. Serj. *Darnell.* What was your Apprehenſion of theſe Things?

Rumſ. He having been ſo kind to me, I had a good Opinion of him.

Mr. Sol. Gen. What of this Tranſaction?

Rumſ. I thought that there was nothing wrong in it.

Mr. Serj. *Darnell.* When was it that he told you firſt of his going into the Country?---*Rumſ.* On *Monday.*

Mr. Serj. *Darnell.* Did he not mention it on *Saturday?*

Rumſ. No, Sir.

Mr. Serj. *Darnell.* Did not he mention *Harlow?*---*Rumſ.* No, Sir.

Mr. Serj. *Darnell.* You ſay, that this Note was ſent incloſed to you when at *John*'s Coffee-houſe; Were there no Names in the Letter but thoſe two you mentioned, nor no Directions what to do with it?

Rumſ. No, Sir.

Mr. Serj. *Darnell.* You ſay, that you have been acquainted with Mr. *Hales* ever ſince the 8th of *June*; between that and *September* did you tranſact Affairs for him?

Rumſey. No; he deſired me once before to write a Promiſſory Note, but no Name to it.

Mr. Serj. *Darnell.* You ſay, that you lay at Mr. *Hales*'s Houſe on *Saturday* Night *September* the 7th; Did not you lie there the Month before?

Rumſey. I lay there from the 8th of *June*, or thereabouts.

Mr. Serj. *Darnell.* Sir, you ſay, that you went in Diſguiſe; Did any then know you? What Occaſion was there for this Diſguiſe?

Mr. Juſt. *Page.* A Perſon in this Town every body may know; therefore it was proper to go in a Diſguiſe that no one might know him in. I find that they would have it thought that theſe Cloaths (the red Waiſtcoat and Breeches and Peruke) were for riding out: When you went firſt, did you go with them?

Rumſey. Yes, my Lord.

Mr. Serj. *Darnell.* When did he talk of riding out?

Rumſey. On *Monday* Morning he ſaid, he had Buſineſs to ride out on *Tueſday* or *Wedneſday*.

Mr. Serj. *Darnell.* When you lay at his Houſe on *Saturday* or *Sunday* Night, did he bid you be ready on *Monday* Morning, and have on the ſame Cloaths?----*Rumſey.* Yes.

Mr. Serj. *Whitaker.* Give me leave to propoſe to the Court a Queſtion, to aſk the Witneſs, whether he had ever been concerned in negociating Bills, or doing ſuch Buſineſs for any body?

Mr. Juſt. *Page.* He ſaith, he never did do any thing for Mr. *Hales*, but this Job of theſe Bills, except once writing a Promiſſory Note.

Mr. Serj. *Whit.* My Lord, that Queſtion was confined to Mr. *Hales*: But I would deſire, that he may be aſked the ſame Queſtion in general.

Mr. Juſt. *Page.* No, but he ſhall not indeed.

Mr. Serj. *Whit.* My Lord, we will now call other Witneſſes to confirm the ſeveral Steps that were afterwards taken.

Mr. Poltock *called and ſworn.*

Mr. Serj. *Whit.* Sir, look on that Paper; Have you ever ſeen that before? Tell us who brought it to you?

Mr. *Poltock.* A young Man on a *Saturday* came to my Shop; he ſaid that he had Money to pay; he pulled out a Bank-Note for 50*l.* I apprehended that it might be for ſome Cuſtomer. I aſked him where the Perſon lived; he told me about *Bond-Street.* I looked on the Note, and ſaw it was ſigned *For Wanly and Company.* Afterwards he produced this Note; ſaid he, I have another Note. I looked upon it wiſtfully, and told him thereupon, that I would not take it. Why not? (ſaid he.) Becauſe (ſaid I) not wrote by Mr. *Gibſon.* It is (ſaid he) ſigned by him. I told him that I would not meddle with it. He ſaid, it was late, and he ſhould have a good deal of Trouble with it; and was going to ſhew me ſome Paper to confirm its being Mr. *Gibſon*'s Hand. I told him, that as I would not receive the Note, I would not regard it. He laid before me a Paper with two Names and Sums, Lady *Elliott*'s and another Name.

Mr. Serj. *Whit.* Pray, Sir, mind the Folds, and ſee whether or no it is the very ſame Paper.

Mr. *Poltock.* Yes; I told the young Man, when he ſhewed it me, that Mr. *Gibſon* on ſuch a Paper as this would not write a Note for ſuch a Sum; therefore I would not medddle with it.

Mr. Serj. *Whit.* You ſaw the Witneſs that was laſt examined; Is he the ſame Perſon that brought you the Note, or not?

Mr. *Pol.* If he had the ſame Wig on, I believe I might know him.

Mr. Serj. *Whit.* Let him put the Wig on. (Rumſey *puts on the dark Wig.*)

Mr. *Pol.* Yes, I verily believe that that is the ſame Perſon, though I never ſaw him before nor ſince. He was a good genteel young Man, with a dark Wig.

Mr. Serj. *Whit.* What Cloaths had he on?

Mr. *Pol.* I cannot directly ſay, not knowing.

Mr. Sol. Gen. Now we are going to Mr. *Hoare*'s Shop.

Mr. Turner *called and ſworn.*

Mr. Sol. Gen. Mr. *Turner*, look on that Paper; When did you ſee it firſt?

Mr. *Turner.* On *Saturday* Evening, *September* the 7th laſt.

Mr. Sol. Gen. Pray, can you recollect with yourſelf, who it was that brought it you?

Mr. *Turner.* Sir, I did not ſee Mr. *Rumſey* when he came into the Shop firſt.

Mr. Richard Hoare *called and ſworn.*

Mr. Sol. Gen. Mr. *Richard Hoare*, pray tell us when you ſaw that Bill firſt?

Mr. *Hoare.* On the 7th of *September* laſt, about Seven o'Clock in the Evening. That Gentleman (as I take it) produced Mr. *Snow*'s Note, and a Bank-Note of 25*l.* for which I gave him our Note for 70*l.* After which he produced this Note of Mr. *Gibſon*'s Hand, and another Paper, deſiring our Notes for that Sum. I had not been long in the Buſineſs, and not knowing Mr. *Gibſon*'s Hand-writing, called Mr. *Turner* to tranſact that Affair, after I had given the 70*l.* Note.

(The Note read.)

Sir Richard Groſvenor, *Bart.* 4300*l.*
Sir John Hynde Cotton, 2100*l.*

Mr. Sol. Gen. Whoſe Hand-writing is this?

Rumſey. It is mine, Sir.

Mr. Sol. Gen. Do you remember what you did with that Note, or where you delivered it?---*Rumſey.* At Mr. *Hoare*'s.

Mr. Sol. Gen. Mr. *Turner*, will you give us an Account what was done upon the producing that Bill?

Mr. *Turner.* Mr. *Hoare* ſent for me. I think there lay upon the Counter both the Note Mr. *Rumſey* brought for 6400*l.* and this little Direction. I made theſe Notes payable accordingly, knowing that Sir *John Hynde Cotton* did Buſineſs at Mr. *Hoare*'s Shop.

Mr. Sol. Gen. Doth he?---Mr. *Turner.* Yes, Sir, he frequently doth.

Mr. Sol. Gen. Produce the three Notes given at Mr. *Hoare*'s Shop.

Mr. *Turner.* Theſe are the Notes *(producing the Notes)* which I gave in Exchange for Mr. *Gibſon*'s Note, and the 70*l.* Note Mr. *Hoare* wrote, and I ſigned them, and gave them to Mr. *Rumſey.*

Mr. Sol. Gen. You ſay, theſe are the Notes that you gave in Exchange for that Note; Do you know what became of that Bill afterwards?

Mr. *Turner.* After that I had delivered theſe Notes, I had this Note *(Mr.* Gibſon*'s* 6400*l. Note)* in Exchange, brought into Mr. *Hoare*'s Caſh, in lieu of the other.

Mr. Sol. Gen. Did you ſend it out?

Mr. *Turner.* Yes, upon *Monday* Morning.

Mr. Sol. Gen. Will you give us an Account what was done upon this?

Mr. *Turner.* I know nothing further.

Mr. Sol. Gen. Theſe Notes which you have produced, can you give an Account what became of them, or when they were brought back to Mr. *Hoare*'s?

Mr. *Turner.* I did nothing further about them.

(The Notes read.)

I promiſe to pay Sir John Hynde Cotton, *or Bearer, two thouſand one hundred Pounds, on Demand, for Meſſ.* Benjamin *and* Henry Hoare *and Partner.*
WILLIAM TURNER.

Sept. *7th*, 1728.

I promiſe to pay to Sir Richard Groſvenor, *or Bearer, four thouſand three hundred Pounds, on Demand, for Meſſ.* Benjamin *and* Henry Hoare *and Partner.*
WILLIAM TURNER.

I promiſe to pay James Moreton, *Eſq. or Bearer, ſeventy Pounds, on Demand, for Meſſ.* Benjamin *and* Henry Hoare *and Partner.*
Sept. *7th*, 1728. WILLIAM TURNER.

Mr. George Lee *called and ſworn.*

Mr. Sol. Gen. Where is it that you live?

Mr. *Lee.* At Mr. *Braſſey*'s in *Lombard-Street.*

Mr. Sol. Gen. Did you ever ſee that Note before? *(Mr.* Hoare*'s Note for* 4300*l.)*----Mr. *Lee.* Yes, Sir.

Mr. Sol. Gen. Upon what Occaſion, or when was it?

Mr. *Lee.* It was on *Saturday Sept.* 7th brought by Mr. *Rumſey* to Mr. *Braſſey*'s in *Lombard Street*, near Seven o'Clock in the Evening.

Mr. Sol. Gen. What paſſed upon it?

Mr. *Lee.* Being brought there by him, he pulled a Paper out of his Pocket, deſiring four Notes payable to *Samuel Palmer.* I have three of them by me, and an Account of the other. One was for 1200*l* two for 1000*l.* each, the other for 1100*l.*

Mr. Sol. Gen. What did you give him them in Exchange for?

Mr. *Lee.* Mr. *Hoare*'s Note for 4300*l.*

Mr. Sol. Gen. Did you aſk who *Palmer* was?

Mr. *Lee.* He told me that he lived in *Manſel-Street*, in *Goodman's-Fields.* I aſked him, whether he was a Merchant? He ſaid, that he could not tell. We had a Perſon dealt with us before of that Name. I aſked, whether it was he? He ſaid, that he could not tell. I enquired at *Woodward*'s, where Mr. *Hoare* doth Buſineſs; they ſaid that there had been a Perſon there of the ſame Name. I began to ſuſpect ſomething. I then went to Mr. *Hoare*'s, to inquire whether it was their Note; they acquainted me that it was, and ſhewed me Mr. *Gibſon*'s. I ſaid that I believed the Name was Mr. *Gibſon*'s Hand, but not the Body of the Note.

Mr. Sol. Gen. This Tranſaction was on the *Saturday, Sept.* 7th; How came the Bills to be dated the 9th?

Mr. *Lee.* Our Accounts were balanced for that Day, it being late in the Evening; therefore they were dated the 9th.

Mr. Sol. Gen. What became of them afterwards?

Mr. *Lee.* They came back again: Two of them came the ſame Day, the other the next Morning.

Mr. Sol. Gen. Who brought them?

Mr. *Lee.* The moſt of the Money was paid to Mr. *Hals* the Broker; there was 650*l.* paid to a Perſon who brought one of the Notes in the Morning; I believe that it was about Ten o'Clock. We aſked him his Name; he ſaid, it was *John Roberts.* He wanted to have 650*l.* to be wrote off from one of the Notes and wanted the Money for it. As I had ſome Reaſon to ſuſpect on the *Saturday* Night, and he coming ſo ſoon on the *Monday* Morning, I aſked him, whom he came from? He ſaid, Mr. *Manſel.* I heſitating, he ſaid, the Gentleman that it was to; I ſaid, *Palmer*; he ſaid *Palmer* in *Manſel-Street.* I did not know but that there might be ſome Demur on Mr. *Hoare*'s Note; therefore, to protract Time, I told him that he might receive the Money at the *Bank.* I gave him Bank-Notes:

N°. 11, payable to Mr. *Hankey*, 100*l*
106, payable to Mr. *Collett*, 50*l.*
131, payable to Mr. *Charles Shales*, 500*l.*
Which together made up 650*l.*

Mr. Sol. Gen. You wrote off 650*l.* Did you deliver the Note, when indorſed to the Perſon that brought it?---Mr. *Lee.* Yes, Sir.

Mr. Sol. Gen. This was a 1200*l.* Note; How was the other 500*l.* paid?

Mr. *Lee.* The other Part was paid off at ſeveral Payments to Mr. *Hals.*

Mr. Sol. Gen. As you have given an Account of that Note, can you give an Account of the other?

Mr. *Lee.* Two to Mr. *Hals*, Sir, at ſeveral Payments.

Mr. Sol. Gen. How much was each for?

Mr. *Lee.* A thouſand Pounds.

Mr. Sol. Gen. Well then, of theſe Notes two for a thouſand Pounds each have been paid; Hath the 1100*l.* Note been paid?

Mr. *Lee.* Four hundred and twenty Pounds have been paid as Part of the 1100*l.* and the reſt is out-ſtanding ſtill.

Mr.

Mr. Sol Gen. Do you remember the Form of the Perſon that came to you by the Name of *Roberts?* Is that Man the Perſon? (*Pointing to* Robert Hall.)

Mr. *Lee.* Yes, Sir, I believe that is the Perſon.

Robert Hall *called and ſworn.*

Mr. Sol. Gen. Mr. *Hall*, pray what Trade are you of?

Hall. A Taylor, Sir.

Mr. Sol. Gen. Did you ever work for Mr. *Hales?*

Hall. Yes, Sir, ſeveral Years.

Mr. Sol. Gen. Do you know him?---*Hall.* Yes, very well, Sir.

Mr. Sol. Gen. Had you any Converſation with him in *September* laſt?

Hall. Yes, Sir.

Mr. Sol. Gen. Did he ſend for you?

Hall. He ſent his Footman for me, *September* 8th, *Sunday* Night.

Mr. Sol. Gen. What Meſſage did the Footman bring you?

Hall. He came and knocked at the Door; my Wife opened the Door. He deſired to ſpeak with me; ſhe ſaid that I was in Bed. He came up, opened the Curtain, told me he had a Meſſage for me, I muſt be with his Maſter at Nine o'Clock on *Monday* Morning at *Lloyd*'s Coffee-houſe in *Lombard-Street*; I ſaid, that I muſt be with Mr. *Rumſey* at that Time to take Orders for Cloaths; he told me, that I ſhould meet *Rumſey* there. I went to *Lloyd*'s, and walked in the Coffee-Room. Whilſt I was there, there came up one *Leigh*, who aſked me what Buſineſs I came about? I ſaid, That I could not tell, but waited for 'Squire *Hales*. I aſked him what his Buſineſs was? He ſaid, that he had a Letter to meet him there. I drank ſomething there before Mr. *Hales* came, which was the beſt Part of an Hour. He firſt mentioned ſomething to *Leigh*; he then aſked me to ſtay one half Hour more. Accordingly I ſat down. He talked awhile with *Leigh*. When *Leigh* was diſmiſſed (whither I cannot tell) he took me up. In the Paſſage he gave me a Note, and deſired me to go to Mr. *Braſſey*'s, and receive 650 *l.* upon that Note.

Mr. Sol. Gen. What Note was it?---*Hall.* About 1200 *l.*

Mr. Sol. Gen. What Directions did he give you?

Hall. He told me to go to Mr. *Braſſey*'s the Banker, at the *Acorn*; he told me to receive 650 *l.* on this Note; he told me to mind that there was no Miſtake. If (ſaid he) they offer to pay you Silver, give them Half a Crown to pay it you in Gold. He told me that ſix hundred and nineteen Guineas and one Shilling would make juſt 650 *l.* I took theſe Notes (*the Bank-Notes he received at Mr.* Braſſey's) : He looked them over, and ſaid that it was all very right.

Mr. Sol. Gen. Look on that Paper: Did you ever ſee that Paper before? Is that the Note that you delivered to Mr. *Braſſey?*

Hall. Yes, Sir.

Mr. Sol. Gen. You ſay, that you had Inſtructions to receive it in Gold: Did they pay it in Gold?---*Hall.* No, Sir, three Bank-Notes.

Mr. Sol. Gen. What was the Amount of them?

Hall. Six hundred and fifty Pounds.

Mr. Sol. Gen. What did you do with them?

Hall. I gave them to Mr. *Hales.*

Mr. Sol. Gen. Did they write upon the Note?

Hall. Yes, they diſcounted this 650 *l.*

Mr. Sol. Gen. When ſent by Mr. *Hales*, had you Inſtructions what Name you ſhould go by?---*Hall.* Yes. *John Roberts.*

Mr. Sol. Gen. Of what Place?

Hall. The *Hay-Market*, or any Place where I pleaſed that Way?

Mr. Sol. Gen. Did you ſee him while you were in the Shop?

Hall. Yes, I ſaw him paſs by, and turn again.

Mr. Sol. Gen. Where was he when you gave him the Bank-Notes?

Hall. In the Paſſage in *Lloyd*'s Coffee-houſe.

Mr. Sol. Gen. Theſe Bank-Notes for 650 *l.* which you delivered to Mr. *Hales*, did you ever ſee them again afterwards?

Hall. Yes, Sir.

Mr. Sol. Gen. Upon what Occaſion?

Hall. He told me, that if I would take a Walk under the Piazza by the *Royal Exchange*, he would come to me. Accordingly he came to me, and at the Coffee-houſe (Janeway's *Coffee-houſe*) gave me them again. He aſked me, whether I was ever at the *Bank?* I told him, that I had been within it, but never received any Money there for myſelf or any body elſe. He bid me go and receive this in Gold, or if I ſhould be offered Silver, to do as directed before.

Mr. Sol. Gen. What was you to do with it?

Hall. To bring it to him at this Coffee-houſe (*Janeway*'s).

Mr. Sol. Gen. Did you go to the *Bank?*

Hall. I went to one there; he bid me go to another Gentleman, and he would ſign my Bills. I went to him, he ſigned them; I then went again to the ſame Perſon, who paid me the Money for them.

Mr. Sol. Gen. Were they the ſame Bills which you had received at Mr. *Braſſey*'s?---*Hall.* Yes, Sir.

Mr. Sol. Gen. Did you receive it in Gold or Silver?

Hall. In Gold.

Mr. Sol. Gen. Did you ſee him when you was at the *Bank?*

Hall. Yes, Sir.

Mr. Sol. Gen. Whereabouts?

Hall. Within one or two of the Tellers whom I received my Money of.

Mr. Sol. Gen. Did he take any Notice of you?---*Hall.* No, Sir.

Mr. Sol. Gen. Nor you of him?

Hall. No, being buſy receiving the Money.

Mr. Sol. Gen. He ſaw you, did not he?---*Hall.* Yes, Sir.

Mr. Sol. Gen. What did you do with it?

Hall. I took it at the *Bank.*——As I was going down *Grocers-Alley*, Mr. *William Hales* was ſtanding by the Alley, we turned into a Tavern (*the* Globe and Sceptre *Tavern*); he rang for the Drawer, and called for an half Pint of Wine. I gave him the Money, he counted it over, and we had done.

Mr. Sol. Gen. Did he give you any Reaſon why he came into the *Bank?*

Hall. No; but ſaid, You was a long Time at the *Bank.*

Mr. Sol. Gen. Did he offer you any thing for your Pains?

Hall. Yes; but I ſaid, that I would have nothing from a Gentleman that I had ſerved ſo long. He ſaid, if I would call on him the next Day, he would lend me ten Pounds, and I ſhould work it out.

Mr. Sol. Gen. Why did you go by the Name of *Roberts?*

Hall. I thought I might do any thing for Mr. *Hales.*

Mr. Sol. Gen. Did he give you any Reaſon for it?

Hall. No, Sir.

Mr. Hankey *called and ſworn.*

Mr. Sol. Gen. Mr. *Hankey*, will you give an Account whether any Bills were brought to you, what they were, and by whom brought?

Mr. *Hankey.* Mr. *Rumſey* (this Gentleman here) came to me on *Monday* Morning, *September* the 9th, with two Notes, for which I gave him my Notes, payable to *Samuel Palmer* or Bearer, one for 1100 *l.* the other for 1050 *l.* which with 20 *l.* amounted to Mr. *Hoare*'s Notes of 2100 *l.* and 70 *l.*

Mr. Sol. Gen. Did you aſk him his Name?

Mr. *Hankey.* No; but I aſked him who *Samuel Palmer* was, becauſe we had a Gentleman of that Name that had a Drawing Account with us, and I thought that this was to be put to his Account: But he told me, that it was a Gentleman in *Manſel-Street* in *Goodman's-Fields.* When he had done his Buſineſs, he went out of the Shop. He brought a little Bit of Paper, wherein was written to go to Alderman *Hankey*'s and get the two Notes figured down 1100 *l.* 1050 *l.* and 20 *l.* in Money.

Mr. Sol. Gen. You have looked on *Rumſey*; Is that the very Man?

Mr. *Hankey.* Yes, Sir; I was with him, when, having been apprehended at the *Bank*, he was examined.

Mr. Sol. Gen. Do you remember any thing of one *Lane*'s fetching any Money?

Mr. *Hankey.* If you will favour me with the Notes, I can tell the better. The 1100 *l.* Note was hardly dry, when he ſent a Porter-like Fellow, who came to a Servant of ours, and deſired that he would indorſe 550 *l.* and give it him in Guineas; he did it; he had it, and went out of the Shop. I believe that it was not an Hour before the ſame Perſon came again, and ſaid that Mr. *Palmer* begged Pardon for giving us ſuch Trouble, he did not know he ſhould ſo ſoon have Occaſion for it, deſired that we would give him the Remainder in Bank. I ſaid, that we had not juſt the Sum in Bank, but I would give it him in Money; he ſaid, then he muſt go and fetch a Bag. He went accordingly, and fetched a Bag. We aſked his Name; he ſaid, that it was *Samuel Lane*, and that he lived in *Marine-Square.* I gave him 523 Guineas and an half, and 6*s.* 6*d.* which compleated that Note. As to the other Note, it had not been written long, but a Servant to Mr. *Hals*, or he himſelf, came and deſired that I would give him a Note for 853 *l.* 14*s.* 5*d.* payable to him. I indorſed it, and gave him a Note for the Sum that he would have.

Mr. Sol. Gen. There are three Notes that compleat the Sum of 1050 *l.* Do you remember any Bank-Bills?

Mr. *Hankey.* I paid none at all.

Mr. Sol. Gen. Do you know any thing of the Reſidue being paid? Give an Account what you know of it.

Mr. *Hankey.* The Remainder was thus paid: 1100 *l.* was paid to *Samuel Lane*; 1050 *l.* by Indorſement for *Samuel Palmer*, for which the Perſon had a Note payable to Mr. *John Hals* for the ſame Sum; for the Remainder of that Note, two Notes were given payable, to *James Hickman.*

Mr. Sol. Gen. Was you preſent at the *Bank*, Sir, when Mr. *Hales* and Mr. *Rumſey* were ſeized?

Mr. *Hankey.* No; but I was there, Sir, when he was examined.

Mr. Benjamin Cole *called and ſworn.*

Mr. Sol. Gen. Mr. *Cole*, do you know Mr. *Hals?*

Mr. *Cole.* I live with him, Sir.

Mr. Sol. Gen. Are you his Servant, or Partner?

Mr. *Cole.* His Servant.

Mr. Sol. Gen. Do you know any thing of Mr. *Rumſey?*

Mr. *Cole.* On *Saturday September* 7th, he came about Seven o'Clock to me, and inquired the Price of *South-Sea* Bonds. He ſaid, that he ſhould want a large Parcel. I promiſed to get him them as cheap as I could.

Mr. Sol. Gen. What Name did he uſe?

Mr. *Cole.* None till *Monday* the 9th of *September.* I then bought ten *South-Sea* Bonds of 100 *l.* each; I aſked him what Name they ſhould be entered in? He ſaid, *Samuel Palmer* in *Manſel-Street*, in *Goodman's-Fields.* The Amount was 1058 *l.* 14*s.* 4*d.* for which he gave me Mr. *Braſſey*'s Note for 1000 *l.* and the reſt in Money.

Mr. Sol. Gen. Did you obſerve the Date of that Note?

Mr. *Cole.* I did not obſerve the Note.

Mr. Sol. Gen. Were there any other Bonds?

Mr. *Cole.* He ſaid that he ſhould want more. This happening when there were but few came to Market, I told him I could not procure him ſo many as he mentioned. Then he deſired as many *South-Sea* Bonds as I could get, and the reſt *India.* I procured four more *South-Sea* Bonds, and twenty *India* Bonds. He paid me a Note of Mr. *Braſſey*'s for 1000 *l.* and another Note of Mr. *Braſſey*'s upon which there remained 550 *l.* and one Note of Mr. *Hankey*'s for 1050 *l.* which made 2600 *l.* upon which Mr. *Hals* paid him 41 *l.* 2*s.* 3*d.* which made the Balance.

Mr. Sol. Gen. What Name did he take?

Mr. *Cole.* He ſaid that his Name was *Thomas Fowler*, and that he lived with Mr. *Palmer.*

Mr. Sol. Gen. Was there an Account drawn up?

Mr. *Cole.* Yes, Sir, this is the Abſtract of the Account.

Debtor,

Debtor, Samuel Palmer, *Esq.* *per* Thomas Fowler, *Creditor.*

To ten *South-Sea* Bonds	£. 1000	0	0
Intereſt 3 Months, 75 Days	18	4	4
Premium 4 *l. per Cent.*	40	0	0
Commiſſion	0	10	0
	1058	14	4

Sept. 9th, 1728.

By *Braſſey*'s Note	£. 1000	0	0
By Bank-Note, No. 123	25	0	0
By Caſh received	33	14	4
	1058	14	4

To twenty *India* Bonds	2000	0	0
Intereſt 5 Months, 9 Days	35	6	0
Premium 4 *l.* 19 *s. per Cent.*	99	0	0
Commiſſion	1	0	0
	2135	6	0
To four *South-Sea* Bonds	400	0	0
Intereſt 3 Months, 75 Days	7	5	9
Premium on 200 *l.* at 4 *l. per Cent.*	8	0	0
Ditto on 200 *l.* at 4 *l.* 1 *s. per Cent.*	8	2	0
Commiſſion	0	4	0
	2558	17	9
To Caſh paid *Thomas Fowler*	41	2	3
	2600	0	0

By *Hankey*'s Note	1050	0	0
By *Braſſey*'s Ditto	1000	0	0
By Ditto, Part of 1200 *l.*	550	0	0
	2600	0	0

For Mr. John Hals,
Benjamin Cole, *jun.*

Mr. Sol. Gen. How came you to make it up in this Manner, ſince he told you that it was for *Samuel Palmer?*

Mr. *Cole.* Yes, Sir, he did ſo; but we always mention alſo the Name of the Perſon that comes to us. This was the Particular of the Account.

Mr. Sol. Gen. Pray, Mr. *Cole*, do you remember that any body came to inquire for Mr. *Rumſey?*

Mr. *Cole.* There was a Perſon came and aſked for him by the Name of *Fowler*; to the beſt of my Memory, it was the Priſoner at the Bar. He came and aſked Mr. *Hals*, if he had any thing to do in *South-Sea* Bonds.

Mr. Sol. Gen. Was this Mr. *Hales* that aſked him this Queſtion?

Mr. *Cole.* Yes, Sir.

Then Mr. Lightfoot, *a Porter, was called and ſworn.*

Mr. Sol. Gen. Do you remember, Sir, any Time in *September* laſt, that you were ſent to Mr. *Hals*'s Office to inquire for Mr. *Thomas Fowler?*---*Lightfoot.* Yes, Sir.

Mr. Sol. Gen. When?----*Light. September* the 9th.

Mr. Sol. Gen. What Day of the Week was it.---*Light. Monday.*

Mr. Sol. Gen. Who ſent you?----*Light.* Mr. *William Hales.*

Mr. Sol. Gen. Is that the Gentleman?---*Light.* Yes, Sir.

Mr. Sol. Gen. What was the Meſſage that he ſent you on?

Light. He ſent me to inquire for Mr. *Thomas Fowler*, and to tell him, that the Gentleman wanted him as ſoon as he could diſpatch his Buſineſs, to come immediately away with me to him.

Mr. Sol. Gen. Did you ſee any body at *Hals*'s that anſwered the Name? Shew him Mr. *Rumſey:* Was that the Perſon?

Light. Yes, Sir.

Mr. Sol. Gen. Did he come with you?

Light. Yes, Sir, he came with me directly to the Piazza under the *Royal Exchange.*

Mr. Sol. Gen. Whom did he meet there?---*Light.* Mr. *Hales.*

Mr. Sol. Gen. You had known Mr. *Hales* before, had you not?

Light. Yes, Sir, for twenty Years: I knew him when he was Partner with Sir *Stephen Evance.*

Mr. Sol. Gen. And are you ſure that *that* was the young Man that anſwered to the Name of *Fowler?*---*Light.* Yes, Sir.

Mr. Humphreys *called and ſworn.*

Mr. Sol. Gen. Let him ſee the Note. Mr. *Humphreys*, look upon that Note; have you ſeen that Note before?---Mr. *Humphreys.* Yes, Sir.

Mr. Sol. Gen. Upon what Occaſion?

Mr. Humphreys. By Direction from Mr. *Hoare*, I went to receive it *September* the 9th.

Mr. Sol. Gen. Whither did you carry it?

Mr. *Humphreys.* To Mr. *Gibſon*'s Houſe. His Caſhier not being at Home, I left it there, deſired that the Money ſhould be left with Mr. *Bromfield*, one of the Tellers at the *Bank*, to be placed there to Mr. *Hoare*'s Account. I went about One o'Clock to ſee if the Money was left there; finding that it was not, I went to Mr. *Gibſon*'s. The Caſhier was at Dinner. I got one to go for him, and left Word that I ſhould be back in a Quarter of an Hour. I went to the *Royal Exchange*, where Mr. *Hoare* met me. We went to Mr. *Braſſey*'s afterwards. We ſtopped the Payment of the two Bank-Notes, which we found there had been delivered out. I had been returned not above ten Minutes, before we had an Account that a Perſon was ſtopped with the two Notes.

Mr. Sol. Gen. What is your Buſineſs?

Mr. *Humphreys.* It is my Buſineſs to go with Mr. *Hoare*'s Notes into the City.

Mr. *Sol. Gen.* When you came the ſecond Time to Mr. *Gibſon*'s, what Anſwer had you?

Mr. *Humphreys.* None, but that the Caſhier was gone to Dinner.

Mr. Sol. Gen. Who was the Perſon that you left the Note with?

Mr. *Humphreys.* I do not know the Gentleman's Name; there were three of them there, who were Servants to Mr. *Gibſon.* One of them aſked, where it ſhould be left? I thereupon named Mr. *Bromfield*, one of the Tellers of the *Bank.*

Mr. Cramlington *called and ſworn.*

Mr. Sol. Gen. Do you remember that you ever ſaw that Note before?

Mr. *Cramlington.* Yes, Sir.

Mr. Sol. Gen. When, and upon what Occaſion?

Mr. *Cramlington.* This Note was brought to Mr. *Gibſon*'s Office *Sept.* 9th by Mr. *Humphreys*, an Agent or Out-teller to Mr. *Hoare.* He deſired, that when Mr. *Phillips* (Mr. *Gibſon*'s Caſhier) came in, he would leave a Note or Money for the ſame with Mr. *Bromfield* at the *Bank.*

Mr. Sol. Gen. What became of it?

Mr. *Cramlington.* I put it into Mr. *Phillips*'s Seat between the Baniſters, for him to ſee when he came in.

Mr. Sol. Gen. Are you concerned or employed for Mr. *Gibſon* about Book-keeping?---Mr. *Cramlington.* No, Sir.

Mr. Phillips *called and ſworn.*

Mr. Sol. Gen. Look on that Note, Sir: Have you ever ſeen it before?

Mr. *Phillips.* Yes, Sir, on *Monday* the 9th of *September* laſt. I happened to be at the *Bank*; and on my Return from thence, which was about Twelve o'Clock, Mr. *Harwood*, one of the Clerks in our Office, told me, that Mr. *Humphreys* (Mr. *Hoare*'s Servant) had been there with a Note for 6400 *l.* and that I not being at Home, he had left it with Mr. *Cramlington*, deſiring that when I returned I would leave a Money-Ticket for it with Mr. *Bromfield*, one of the Tellers at the *Bank*, for *Humphreys.* I aſked him, where was the Note? He ſaid, that it was left with Mr. *Cramlington.* I opened my Seat Door, and ſaw the Note there. I was very much ſurprized, it being wrote by a ſtrange Hand; and knowing, by many Years Experience, that Mr. *Gibſon* never ſigned any Promiſſory Notes without writing the whole Notes. I obſerved a Difference in the Note, that the laſt Words, *For myſelf and Partners*, were wrote with a nearer Reſemblance to his Hand than the other Part of the Note. I obſerved that this Note was dated the 27th of *Auguſt*, and that he went to the *Bath* on the 28th: I had the Honour to attend him ſeveral Days. He concluded his Buſineſs relating to the Office on the 26th: On the 27th he did nothing of that Buſineſs, but prepared for his Journey. I endeavoured to recollect, whether he had any Tranſactions then with any *George Watſon*, to whom it was made payable. I could not remember that he had, nor did I remember that I had ever before heard of the Name, nor had I any Directions from any of my Maſters, that there was any ſuch Note ſtood out. I obſerved alſo that there was a Difference between the Stile of this Note and Mr. *Gibſon*'s: He always writeth, in a ſtraight Line, *For myſelf and Co. Tho. Gibſon*, never *Partners.* And then as to the *Value received*, he never uſeth theſe Words. I carried it to Mr. *Harwood*, whom Mr. *Humphreys* ſpoke to. I told him, that I did not like it, it being written in a ſtrange Hand; I would not therefore take Notice of it. We obſerved that there was the *F* and *r*, in *For myſelf and Partners*, wrote in a different Hand. I thought that there might be ſome Wickedneſs at the Bottom; I went therefore myſelf into Mr. *Booth*'s Office; and he and Mr. *Phippes* being there, I deſired Mr. *Phippes* to look into the Books, and ſee whether one Mr. *Watſon* had Credit for ſuch a Sum. Not finding any ſuch Thing, I then deſired them to look into the Kalendars of the Ledgers. They looked, and ſaw that there was no ſuch Name there. I ſaid then to Mr. *Booth*, I have a Note for 6400 *l.* which I do not like, and will not pay, without inquiring into it, and acquainting Mr. *Jacomb* (Mr. *Jacomb* was then above Stairs, which I knew not). I told Mr. *Booth* the Circumſtances which made me ſuſpect a Forgery; Foh! (ſaid he) this is a Villainy, a Forgery; this looks like one of *Hales*'s Tricks. I waited for Mr. *Jacomb*'s coming down; I ſaid to him, Sir, here is a Note for 6400 *l.* which I believe to be forged. It is (ſaid Mr. *Jacomb*) very plain; here is a Raſure on a Frank. (Mr. *Booth* having recollected that Mr. *Hales* ſome Time before had two Franks from him, one of which he now ſuſpected to be thus abuſed, acquainted Mr. *Jacomb* therewith.) He inquired where we had it? We told him, of Mr. *Humphreys*, Mr. *Hoare*'s Servant. He hereupon took me out with him. We went to the *Bank.* I ſtayed in the outer Office, whilſt he went in and acquainted the Directors, that ſuch a Thing had happened. Mr. *Bromfield* was ſent for, and examined, what the Reaſon was of this Direction, that it ſhould be left with him? He ſaid, he could give no Reaſon, but that Mr. *Hoare*'s Man uſed to tranſact Affairs with him: Mr. *Jacomb* took the Note to Mr. *Hoare*'s, and I went to Dinner.

Mr. Sol. Gen. Is it not uſual for Mr. *Gibſon* to enter Notes in the Book when he makes them out, and give you Notice of them?

Mr. *Phillips.* Yes, Sir.

Mr. Sol. Gen. Sir, look on the *F* and *r*, and tell us what you think of them?

Mr. *Phillips.* This is certainly Mr. *Gibſon's F*, the *o* ſeems thruſt in irregularly, two *e*'s eraſed, and then follows *Myſelf and Partners.*

Mr. Sollicitor General. You have ſeen his Franks; doth he make ſuch a Diſtance between the *F* and the *r?* Caſt your Eye again on it, and ſee whether the Diſtance between the *F* and *r* be ſuch as is uſual in his Franking.

Mr. *Phil.* Much as uſual, for I have compared it with ſome Franks, and they are there at the ſame Diſtance: but I obſerve the *o* is not of the ſame Letter, but crouded in irregularly: And the *o* is of a blacker Ink.

Mr. Sol. Gen. Pleaſe, Sir, to look on the Beginning of the *m*: What Obſervations do you make on that?

Mr. *Phil.* There is the Stroke before the firſt Minim of the *m* that ſeems of lighter Ink.

Mr. Sol. Gen. What do you make of that?

Mr. *Phil.* It ſeems to me to be the Tail or Bottom of the *e.*

Mr. Maddox *called and ſworn.*

Mr. Sol. Gen. I think, Mr. *Maddox*, you belong to the *Bank?*

Mr. *Maddox.* Yes, Sir.

Mr. Sol. Gen. Pray, Sir, will you give us an Account, whether any Notice was given you to ſtop any Bank-Bills?

Mr. *Mad.* Mr. *Braſſey*, with Mr. *Humphreys*, (Mr. *Hoare*'s Man) came to the *Bank* to deſire me to ſtop five Notes, with the Numbers, Dates, and Names. I looked and ſaw that three of them of 350*l.* were already paid. I took the Numbers of thoſe not paid, and gave Directions to all the Tellers, that the Minute any brought any of them, they ſhould give me Notice. In a little Time after I was gone up, I was called down again. *Pewtreſs* (one of them) came to me, and told me that two hundred Pound Notes were brought and demanded. I aſked him, Who brought them? He told me, that Perſon (*Rumſey*). I bid him bring a Conſtable, and not come back again till he had brought one. When he had brought one, I charged him with him. I aſked him, Where he had thoſe Notes? He would not tell me where he had them, nor who he was, but was very obſtinate. One of the Officers of the *Bank* ſaid, that he knew him, that his Name was *Rumſey*, that he belonged to the *Eagle* Galley. He aſked me to let him write a Letter; I let him, but would myſelf appoint the Meſſenger. He wrote a Letter, ſigned it *Thomas Fowler*, and directed it to Mr. at *Robin*'s Coffee-houſe. I called ſome Officers of the *Bank*, and directed them to go there with the Conſtable, and ſee what ſuſpicious Perſon was there. They went into the Coffee-houſe, and inquired of the Maſter of the Houſe what Company was there. He ſaid there was only three Neighbours, and a fourth Perſon whom he did not know. Whereupon one of the Officers of the *Bank* ſaid, I know that Perſon, that is Mr. *Hales.* They went and ſeized him. As they brought him into the *Bank*, *Rumſey* ſaid, That is the Perſon that I had the Notes of, and would fain have ſpoke with him. I kept them apart, carried the one up Stairs, kept the other below. They ſearched *Rumſey*, found about him 60*l.* and 25*l.* in different Bags, and two Notes were ſtopped below, before they went up to Mr. *Hales.* They found upon him above Stairs thirty-ſix *South-Sea* and *India* Bonds, a Bill of Parcels for ſome of them from Mr. *Hals*, five hundred and odd Pounds in Money, a Note of Mr. *Braſſey*'s, and Mr. *Shales*'s Note.

Mr. Sol. Gen. What Account did *Rumſey* give of the Money found upon him?

Mr. *Mad.* Thirty-five Pounds and odd Money he ſaid was his own Wages. There was about 60*l.* beſides, which he ſaid was Mr. *Hales*'s.

Mr. Sol. Gen. What Notes had Mr. *Hales* about him?

Mr. *Mad.* He had a Note of Mr. *Braſſey*'s of 680*l.* the Remainder of the 1100*l.* Note; a Note of Mr. *Shales*'s of 120*l.* A Note of Mr. *Thrupp*'s he had received, and had procured the Money for it, as he owned when he came upon his Examination.

Mr. Sol. Gen. Was his Examination in Writing or not?

Mr. *Mad.* It was taken before Sir *Edward Bellamy.* I cannot ſay whether it was in Writing or not.

Mr. Sol. Gen. Go on, and give us an Account what Mr. *Hales* ſaid when examined at the *Bank*, upon making up the Account of what was taken from him.

Mr. *Mad.* It wanted about four or five hundred Pounds of the 6400*l.* Mr. *Hales* having that Day (as he ſaid) redeemed two *Eaſt-India* Bonds, which he had pawned with Mr. *Braſſey*; and had alſo taken up a Note of Mr. *Thrupp*'s for 400*l.* which he had diſcounted with Mr. *Shales.* Among the Papers that were found upon Mr. *Hales*, there was an Account of the particular Produce of the Note.

Mr. Sol. Gen. What did Mr. *Hales* ſay?

Mr. *Mad.* He owned that he employed *Rumſey*; but ſaid, that he himſelf was employed by one *Samuel Palmer*, a Perſon whom he had been acquainted with for ſome Months, and that this Note was left by him with him to inveſt in ſomething that would turn to Account.

Mr. Sol. Gen. Was there any Notice then taken of *Rumſey*'s going by a ſham Name?

Mr. *Mad.* I remember not that.

Mr. Sol. Gen. Was there any one that told Mr. *Hales*, that he was a Man of Figures, and deſired him therefore to give a more particular Account?

Mr. *Mad.* Yes, Mr. *Moſes Raper.*

Mr. Juſt. *Page.* Is it not enough that Mr. *Hales* himſelf owned that what he had was the Produce of the 6400*l.* Note? Did not *Rumſey* manage all this? And came he not from him to the *Bank?* Hath he not owned it?

Mr. *Mad.* That was one of the Notes found upon Mr. *Hales.*

Mr. Juſt. *Page.* Had you any Diſcourſe with him about the Import of it?

Mr. *Mad.* No, my Lord. This Paper, one of thoſe found in the Pocket of Mr. *Hales*, contains a particular Account of the Produce of the 6400*l.* Note, and a little more.

(*The Paper read.*)

One of Mr. *Henry Hoare*'s for 2100*l.* payable to Sir *John Hynde Cotton.*
One of 70*l.* payable to *James Moreton*, Eſq.
One of 1000*l.* of Mr. *Nathaniel Braſſey*'s.

Bank-Notes, No. 412, for 1000*l.*
413, for 1000*l.*
414, for 1200*l.*
415, for 25*l.*
23*l.* received in Gold.

Mr. Att. Gen. In Caſe of Forgery, every Circumſtance is corroborating of the Fact, and therefore this was proper to be laid before the Jury.

Mr. Juſt. *Page.* Whoſe Writing is that Paper?

Mr. *Mad.* I believe it to be his: I knew him when a Goldſmith.

Mr. Serj. *Darnell.* Mr. *Maddox*, I deſire to aſk you one Queſtion. We have a very good Opinion of you: Pray, do you not know one *Samuel Palmer?* Had you never any Tranſactions in your Books between Mr. *Hales* and *Samuel Palmer*, with relation to a ten thouſand Pound Note, payable to one *Dymer?*

Mr. *Mad.* No, Sir.

Mr. Serj. *Darn.* Nor have you never heard of him?

Mr. *Mad.* No, only by the Paper found on Mr. *Hales.*

Mr. Serj. *Darn.* Did not the Defendant Mr. *Hales* bring you a Draught from Mr. *Jacomb* upon a particular Occaſion, payable to *Dymer?*

Mr. *Mad.* I cannot remember this. We never had any Account, that I know of, with *Palmer.*

Moſes Raper, *Eſq. called and ſworn.*

Mr. Att. Gen. Mr. *Raper*, will you look on that Paper? Have you ſeen it before? Do you know upon what Occaſion it was wrote, and by whom?

Mr. *Raper.* I was at the *Bank* the 9th of *September* laſt. Alderman *Bellamy* was then examining Mr. *William Hales:* He was then giving an Account of the Produce of that Note of 6400*l.* of Mr. *Gibſon*'s. He was a long Time before he could caſt it up. He ſeemed not much concerned. I ſaid to him, I wonder that you, who are a Man of Figures, ſhould be ſo much at a Loſs: You want about 400*l.* He at length mentioned a Note of one *Thrupp*'s. They aſked him, where he had that Note? He ſaid, of one *Palmer* of *Manſel-Street.*

Mr. Att. Gen. Did you ſee him write that Note?

Mr. *Raper.* I ſaw him ſum up that, as the Produce of the 6400*l.* Note.

Mr. Att. Gen. Do you remember that the Queſtion was aſked him, why *Rumſey* went by the Name of *Fowler?*

Mr. *Raper.* I know no Reaſon that he gave. He was aſked the Queſtion ſeveral Times, but gave no Anſwer.

Mr. Att. Gen. The Evidence, my Lord, hath been ſo extreme long, and every Part ſo well connected, that I ſhall not trouble your Lordſhip with any Obſervations thereupon. If there be Occaſion given by the Reply, your Lordſhip will then give us Leave.

Mr. Serj. *Darn.* My Lord, and Gentlemen of the Jury; I am Counſel in this Caſe for Mr. *Hales.* And indeed, according to the Miſrepreſentation that they have laid him under, he is a very unfortunate Perſon. And really they have given a great deal to lead into a Suſpicion of the Truth of what he is charged with; but we think a good deal of it is owing to the Misfortune he lay under. Having been a Bankrupt many Years, and not having obtained a Certificate, it was therefore impoſſible for him to carry on any Thing in his own Name; therefore, in the whole Courſe of his Traffick for many Years, he hath been forced to uſe fictitious Names, and thereby conceal all Receipts and Payments. And the Conſequence of his doing otherwiſe is very obvious. Till he hath obtained a Certificate, whatſoever he received in his own Name would be ſubject to the Commiſſioners. Therefore (according to my Inſtructions) Mr. *Hales* hath concealed his Dealings. I am inſtructed, that he had conſiderable Dealings with one *Samuel Palmer*, and that he was indebted to Mr. *Hales* in the Sum mentioned; and having had great Tranſactions for many thouſands of Pounds, they came to a Balance of the Account, and Mr. *Palmer* gave him this Note in Payment. It is difficult for us to clear Things in ſuch Affairs as require Privacy: But it appears, that he hath tranſacted great Affairs. He hath Books, whereby it appeareth that he hath traded for upwards of 300,000*l.* and that he hath traded with this *Samuel Palmer* for upwards of 10,000*l.* To prove that this is not a forged Note, will be extremely difficult; and I think that it matters not any Thing to Mr. *Hales*, whether it be ſo or not. If it be ſo, if this Note came from Mr. *Palmer* to Mr. *Hales*, the Forgery falls not upon Mr. *Hales.* The only Thing for us to eſtabliſh is, that it came from Mr. *Palmer* to Mr. *Hales.* They own, that he ſaid, when the Thing was recent, that he had it from *Palmer.* It happens (I ſuppoſe from a Certainty that the Note was a forged Note) that Mr. *Palmer* is gone out of the Kingdom. It is impoſſible therefore to produce him; and if he was here, he could not be a Witneſs. And, if my Inſtructions are true, that *Palmer* is gone, it leaves Mr. *Hales* without the Aſſiſtance of *Palmer.* Taking it for granted that he hath forged the Note, we ſubmit it that Mr.

Hales cannot be guilty of the Forgery.——Another Part of the Indictment is, That he hath publiſhed this Note, knowing it to be forged. If he received it in Satisfaction of a Debt or Demand that he had upon *Palmer*, that excuſeth him. Mr. *Palmer* being gone, it is only poſſible for us, firſt, to eſtabliſh Mr. *Hales*'s Character, then ſhew that he is a great Dealer, and produce his Books, in which theſe Things are entered. There are ſeveral Tranſactions therein, ſome many Years ago, ſome later, that will be verified by Witneſſes. If there be ſuch Tranſactions which we can verify, we leave it to the Court how far that will avail. Under theſe Circumſtances we beg Leave to ſubmit it to your Lordſhip.

Mr. Serj. *Baynes*. My Lord, and Gentlemen of the Jury; I am Counſel on the ſame Side. The firſt Thing that lies under Conſideration is, Whether this Note was forged by Mr. *Hales?* That it was a Forgery, they have given ſtrong Evidence; but the only Queſtion is, firſt, Whether Mr. *Hales* did forge it? In the next Place, Whether he publiſhed it, knowing it to be forged? Theſe are the two Charges laid againſt him in the Indictment. We hope, that upon the Evidence we ſhall give, you will think him clear of what is charged. It is well known, that he hath dealt for as great Sums as moſt in *Lombard-Street:* He had the Misfortune afterwards to fail; therefore he was obliged to act in a different Way from others. We ſhall ſhew that Mr. *Gibſon* himſelf gave him ſuch Credit, that he truſted him with great Sums of Money, and with receiving Rents in *Kent*. For us to prove a Negative, that he did not forge this Note, cannot be but by Circumſtances. In order to charge us, they have gone a great Way with Circumſtances; and the Queſtion is, What Validity theſe Circumſtances will have with you? They lay a Streſs upon this, That he gave Directions to *Rumſey* to tranſact theſe Affairs, to change his Cloaths, his Wig, and to put on another Hat. As to that, that will depend a great deal upon the Credit of *Rumſey*'s Evidence which he gives. Mr. *Rumſey* appears to be *Particeps Criminis:* Therefore, tho' I cannot ſay but this Evidence is legal, yet it affects his Character and Credit; it is not ſuch as if he was an indifferent Perſon. As to the Wig, they made a great Noiſe, as if it was bought with a Deſign to impoſe on Perſons in that Diſguiſe. We ſhall ſhew that it was not, but with another Deſign. Mr. *Hales* and *Rumſey* had an Intention, before *Monday*, to go into the Country. He himſelf ſaith, that he only had the fine light Wig which he had upon his Head. It was very proper at that Time of the Year, that he ſhould have another Wig to travel in. Therefore it ſeems probable, that it was bought with that View, and not to impoſe upon Perſons; ſince that could not make an Alteration in his Countenance. As to his acting under a different Name, that ſeems upon this Account; Mr. *Hales* had the Misfortune to have a Commiſſion of Bankruptcy awarded againſt him; and after long ſolliciting for a Certificate, could not get it: Therefore, although he tranſacted great Affairs, all the Sums which he negotiated were forced to be under feigned and borrowed Names; becauſe if his Creditors knew that he had ſuch Credit, and negotiated ſuch Affairs, they would be the harder upon him. Therefore there was ſuch a Direction given, that Mr. *Hales* might not be known to be concerned in ſuch an Affair.—It is incumbent upon us, firſt, to give an Account how we came by that Note: There was one *Samuel Palmer* indebted to Mr. *Hales* between ſix and ſeven thouſand Pounds; he came to him, offered this Note as a Security, that he might pay himſelf upon receiving this Money; thereupon Mr. *Hales* very innocently took the Note, not queſtioning its Goodneſs. Mr. *Gibſon* being a Man very well known, Mr. *Hales* knew that the Signing was his Hand, though the Body of the Note was not written by him; and he might be eaſily impoſed upon, and take this as a good Note. No Wonder that it ſhould be thought ſo. Though Mr. *Poltock* ſuſpected this Note, becauſe it was not written by Mr. *Gibſon*'s own Hand; yet it is plain, that at Mr. *Hoare*'s Shop, Mr. *Turner* made no Scruple at all to exchange this Note, and give other Notes for it. Therefore, though they ſaw that this Note was written on a different Piece of Paper from what a Note of ſuch a Value uſed to be, it is plain that Mr. *Turner* did not think this of ſo much Weight. No Wonder, therefore, that Mr. *Hales* ſhould be ſo impoſed on. The next Part of the Conſideration is, Whether he publiſhed this Note, knowing it to be forged? For otherwiſe it is not criminal. Therefore the Indictment runs, *Knowing it to be forged*. Now, in caſe that we prove this firſt Part which is in my Brief, and I hope that the Witneſſes will come up to, the other Part will fall to the Ground. If he came fairly by it, he cannot be ſaid, knowing it to be forged, to publiſh it. We ſhall call our Witneſſes, and ſubmit it to your Lordſhip.

The Indictment, my Lord, runs, That he, *Vi et Armis, viz. Verbis et Figuris ſequentibus*, forged this Note. Now, my Lord, it is not pretended that he forged the Name of Mr. *Gibſon*; and therefore, though I do not controvert that he that writes over my Name is guilty of forging the whole Note, yet not *Verbis et Figuris ſequentibus*; that is, forging the whole Note. Therefore being charged herewith, and they admitting that he did write the Name *Thomas Gibſon*——

Mr. Juſt. *Page*. Is the Name in the Indictment?

Mr. Serj. *Baynes*. Yes, my Lord.

Mr. Juſt. *Page*. Now *Thomas Gibſon* is agreed to be the Hand of Mr. *Gibſon*, but not to that Note.

Mr. Serj. *Baynes*. No, my Lord, I admitted that, in ſtating the Objection. I ſaid, that he that writes over my Name is guilty of forging ſuch a Note, but not *in Verbis et Figuris ſequentibus*; he is not guilty of forging the Name of *Thomas Gibſon*. They have taken upon them to fix that this Note was *Verbis et Figuris ſequentibus*; then after the Body of the Note followeth *Thomas Gibſon*. Now, my Lord, we apprehend this is not forged. Though the Subſtance of the Note is not Mr. *Gibſon*'s Hand-writing; yet they own, on the other Hand, that the Name is the Hand-writing of Mr. *Gibſon*. If ſo, it appears very plainly, that we have not forged this Note *Verbis et Figuris ſequentibus*.

Mr. Juſt. *Page*. Brother, do you rely upon this Objection? If you do, I will give you my Opinion of it when the Whole is finiſhed.

Mr. Grainger *called and ſworn.*

Mr. Serjeant *Darnell*. Sir, are you acquainted with Mr. *William Hales?*

Mr. *Grainger*. I am not perſonally acquainted with him, though I have known him by Sight many Years. I know nothing at all of his Dealings.

Mr. Serj. *Darn*. Do you know Mr. *Samuel Palmer?* Do you know his Dealings?

Mr. *Grain*. Yes, Sir, as to Mr. *Palmer*, I knew him from a Child. I married his Mother. He was brought up at the *Eaſt-India* Houſe, was ſent by the *Eaſt-India* Company into *Perſia*, and lived there many Years. Not having the Encouragement that he expected, he returned thence, but ſtayed in *Turkey*.

Mr. Juſt. *Page*. Was you there with him? After he came Home, what did you know of him?

Mr. *Grain*. As he came Home through *Turkey*——

Mr. Juſt. *Page*. You cannot ſay that upon Oath, ſince you was not there with him. Did you know him here at *London* after his Return? What did he deal in?

Mr. *Grain*. I know not of any Dealings he had in *England*.

Mr. Juſt. *Page*. Do you know of any Tranſaction between him and Mr. *Hales?*

Mr. *Grain*. He told me——

Mr. Juſt. *Page*. That is nothing. What Subſtance was he of?

Mr. *Grain*. He had no Subſtance at all, for he was an inſolvent Man.

Mr. Juſt. *Page*. How long ſince he was in *London?*

Mr. *Grain*. Within a Twelve-month.

Thomas Ayles, *Eſq. called and ſworn.*

Mr. Serj. *Baynes*. You are deſired, Sir, to give an Account, whether you know the Defendant Mr. *Hales*, how many Years you have known him, and what is your Opinion of him?

Mr. *Ayles*. I have known him twenty-three Years and upwards, when Partner with Sir *Stephen Evance*, with whom I kept a conſiderable Caſh all that Time: I received a great many Civilities from Mr. *Hales* upon ſeveral Occaſions, for which I have always had a good Opinion of him.

Mr. Serj. *Baynes*. What Opinion had you of his Character?

Mr. *Ayles*. I took him to be of as good a Character as any.

Mr. Serj. *Baynes*. Do you know of any conſiderable Sums paſſing through his Hands, during theſe Years that you have known him?

Mr. *Ayles*. Not any ſince his Failure.

Mr. *Lacy*. I beg a Word of the ſame Side with the other Gentlemen. As to the Exception they have made, it will not be contended (I believe) but that they might have laid it otherwiſe. They might have made it a Forgery of the Note, though they had ſet it forth otherwiſe. Our Objection is, Whether *Verbis et Figuris ſequentibus* doth not tie it down to the ſecond Part of the Note as well as the reſt? Another Thing is this; they have given an Account of the Publication at *London* in Mr. *Hoare*'s Shop; whether ſhould not the Forgery be fixed in *London* too?

Mr. Juſt. *Page*. If a forged Note be publiſhed in two Counties, may not the Proſecutors lay it in which they will? And the Indictment too is in *London*, if that were any Objection.

Mr. *Lacy*. Should not the Forgery be local as well as the Publication?

Mr. Juſt. *Page*. Yes. If that very Act of Forgery had been in *Middleſex*, it ought to have been tried there: But where there is no poſitive and direct Proof of the Forgery, but the Whole ariſes from Circumſtances, ſome in *London*, and ſome in *Middleſex*, it may be laid in either; or it would be impoſſible that any artful Perſon ſhould be convicted of Forgery; it is but being alone when he commits the Fact, and he is ſafe. And the Objection will be as ſtrong in one County as another; and then, if your Doctrine be true, he can be tried no where, which ſure is not ſo. You know a Felony may be tried in any County where the Goods are found on the Priſoner. As to your other Objection, That the Indictment is for forging the whole Note, whereas *Tho. Gibſon* is Mr. *Gibſon*'s own Hand-writing; that is extraordinary. Did Mr. *Gibſon* put his Name to that Bill? No. Suppoſe, in a leſs Degree, Mr. *Gibſon* had given his Note for a leſs Sum, and Mr. *Hales* had only made it for a greater, would not that have been a Forgery of the whole Bill? You know it is ſo of a Bond, Bank, or other Bill, in every Day's common Experience.

Mr. Att. Gen. My Lord, this was the ſame Caſe with Mr. *Ward*'s. There it was adjudged, that Mr. *Ward* forged a Note of the Duke of *Buckingham*'s in that Form. There was no Pretence but that it was (as originally) the Duke of *Buckingham*'s Note. This Objection was then made, but it was over-ruled, That the altering a material Part was making it entirely another Bill.

Mr. Serj. *Darnell*. My Lord, we have done with our Defence.

Mr. Sol. Gen. My Lord, as their Defence hath given us no further Occaſion, we ſhall not take up your Lordſhip's Time with any Reply.

Mr. Juſt. *Page*. Gentlemen of the Jury, the Priſoner at the Bar is indicted

dicted for forging a Note of Mr. *Gibſon*'s of 6400 *l.* and alſo for publiſhing this Note, knowing it to be forged; upon which two Things are proper for your Conſideration: Firſt, Gentlemen, by whom this Note was forged, (for it is agreed to be a forged Note) Whether by the Priſoner, or if he was privy to, or concerned in it? And ſecondly, Whether he is guilty of the Publication of it knowing it to be forged? There have been a great Number of Witneſſes examined; and I ſhould have gone over the whole Evidence as it was given, but the Counſel for the Priſoner have eaſed me of that Trouble. Forgery is what concerns every *Engliſhman*: As Paper-Credit is come to that Heighth it is now in, the utmoſt Care ought to be taken to preſerve that Credit; but ſtill the Innocent muſt not ſuffer. As to this Note's being forged, which hath taken up the moſt Part of the very long Time this Cauſe hath been trying, the Counſel for the Priſoner all agree that it is a forged Note; and then it will be to no Purpoſe to ſum up that Part of the Evidence to you. I ſhall therefore take Notice only of ſuch Parts, as go to prove Mr. *Hales* himſelf guilty of this Forgery, or of his Publication of it knowing it to be forged.

The two firſt Witneſſes were *Philip* and *Robert Booth*, which may be proper to be taken Notice of by and bye.

The third Witneſs was *Rumſey*, who hath gone through this whole Matter, and whoſe Credit hath been ſupported by others of unqueſtionable Reputation in every material Circumſtance. He tells you, he was no Dealer in this Kind of Buſineſs, but a perfect Stranger to it, bred up to the Sea: That he hath been acquainted with the Priſoner for about a Year, and from *June*, till the Time this Fact was committed, was very much with him. This Note, which was read and ſhewn to you, bears Date the 7th of *September* laſt; and the whole Management was carried on till the 9th. He ſaith, that on the 7th of *September*, which was *Saturday*, he was at Mr. *Hales*'s, not then knowing that he was to dip his Finger for him in ſo vile a Thing. He ſays, Mr. *Hales* only then told him, that he muſt go into the City with him on ſome Buſineſs; and that his Dreſs, which was a red Waiſtcoat and Breeches, were not proper to appear in, in the Affair he had to employ him in; and that he had provided him another (the ſame which *Rumſey* has now on). That he was not thought diſguiſed enough, but was in this new Dreſs carried to *Holborn*, and there had a black Peruke bought for him, and a Letter-Caſe with Papers put in, as a Man of Buſineſs; from whence, after he was equipped in this Diſguiſe, he and the Priſoner went together to *John*'s Coffee-houſe in *Shire-Lane*.

You will obſerve, Gentlemen, Mr. *Hales*, as *Rumſey* ſwears, did not then diſcover to him what he was to do; but it was to come out as by Accident, which was thus: Soon after they came to the Coffee-houſe, a Porter, with a Letter directed to *Rumſey*, came there, which Mr. *Hales* immediately took from the Porter and opened; which then appeared to be a Cover with this Note in it, and nothing writ on the Cover but, *Lady Harriot Elliot* 4300*l.* *Sir John Hynde Cotton* 2100*l.* This, *Rumſey* ſays, he did not underſtand; nor did the Priſoner give him Leave to open the Letter, knowing (as *Rumſey* ſays) he was unacquainted with the Contents of it. But when Mr. *Hales* had opened the Letter, he explained to him what the two Names and Figures meant, and then told him, he would have him go to Meſſ. *Snow* and *Poltock*'s with this Note, and get of them two Bills, one for Lady *Harriot Elliott* for 4300*l.* the other for Sir *John Hynde Cotton* for 2100*l.* and told him, that Mr. *Snow*'s Shop was a little without *Temple-Bar*, and did not ſo much as truſt *Rumſey* out of his Sight, but went with him over-againſt the Door. *Rumſey* goes in, where was Mr. *Poltock*. The firſt Thing Mr. *Rumſey* does is to produce a Bank-Note of 40*l.* and 10*l.* in Money, and to take his Note for 50*l.* and then produces the Note for 6400*l.* But Mr. *Poltock* being a very careful Man, and being now called, ſays, he made much the ſame Obſervations that I believe you have all made on View of it. He ſays, it was an odd Sort of a Bill; that he never had any of Mr. *Gibſon*'s Bills but of his own Hand-writing; and that this was writ on ſo ſcanty a Piece of Paper, that he would not meddle with it.

When *Rumſey* came out of the Shop, he ſays he found Mr. *Hales* over-againſt the Door, where he left him, and tells him what ill Succeſs he had had, and gives him back the Note; Whereupon the Priſoner and *Rumſey* go back to the Coffee-houſe, and there the Priſoner ſaid, he muſt try elſewhere, and named Mr. *Hoare*'s. And to give *Rumſey* Credit there, he was firſt to pay in at *Hoare*'s 70*l.* that is, Mr. *Poltock*'s Note for 50*l.* and 20*l.* in Money, and to take *Hoare*'s Bill for 70*l.* which was done: That it was then ſcarce light; and every one knowing Mr. *Gibſon*'s very great Credit, Mr. *Turner*, who was then in the Shop, without obſerving much this Note, takes it, and gives *Rumſey* two others. But Mr. *Hales* had then directed *Rumſey* not to take the 4300*l.* Note to Lady *Harriott Elliott*, but to Sir *Richard Groſvenor* or Bearer, and the 2100*l.* Note to Sir *John Hynde Cotton* or Bearer; and That *Turner* confirms. And *Rumſey* ſwears, that the Priſoner alſo ſhewed him Mr. *Hoare*'s Shop, and went with him almoſt to the Door.

When *Rumſey* had ſucceeded at Mr. *Hoare*'s, he ſays, he found the Priſoner waiting at a Fruit-ſtall, a ſmall Diſtance from the Shop; and there he gave the Priſoner the 70*l.* Note, and the Notes he had received in Exchange for Mr. *Gibſon*'s. *Rumſey* ſwears, he was to get nothing, and that the Priſoner had the whole Profit. But this would not do the Priſoner's Buſineſs, nor did he reſt here. The next Thing therefore is to make the beſt of theſe Notes, and to manage Matters ſo as not to be traced or found out; in which, Gentlemen, it was certainly right that the Notes ſhould be ſhifted and changed, divided and ſubdivided, as much as poſſible, that no Track of them might be ſeen: And for this, *Rumſey* ſays, that he accordingly did go with theſe Notes, by the Priſoner's Direction, from one Goldſmith to another; firſt with the 4300*l.* Note to Mr. *Woodward*'s, who would not meddle with it; thence to Mr. *Braſſey*'s, where he changed it for four Bills, which he gave to Mr. *Hales*, who waited for him at a Coffee-houſe.

The Notes *Rumſey* received at Mr. *Braſſey*'s the Goldſmith's, in Exchange for Mr. *Hoare*'s Note of 4300*l.* were four, *viz.* one for 1200*l.* one for 1100*l.* and two for 1000*l.* each, all made payable to one *Samuel Palmer*, in whoſe Name *Rumſey* was inſtructed by *Hales* to take theſe Notes, and was himſelf directed by the Priſoner to go by the Name of *Fowler*, which he did; and the Priſoner was ſo watchful, that he waited about Mr. *Braſſey*'s Shop during all the Time *Rumſey* was there.

Rumſey ſays, that he went and lay at Mr. *Hales*'s that and the next Night; and Mr. *Hales* bid him be ready on *Monday* Morning in that Dreſs he had then put on: And accordingly on *Monday* Morning he went with him to *Janeway*'s Coffee-houſe, where it was fixed how he ſhould diſpoſe of theſe Notes, and was directed by the Priſoner to go to Mr. Alderman *Hankey*'s to make other Alterations, and then to the Broker's for the Bonds he had beſpoke, who told him he had only got one thouſand Pounds worth, which *Rumſey* ſays he had, and afterwards, on his going again, had more.

Gentlemen, I have laid before you, not for your Conſideration whether Mr. *Gibſon*'s Note was forged, for that is admitted; but how far Mr. *Hales* has been concerned an Actor in this Affair; and to put you in Mind (if *Rumſey* ſwears true) that he was only the Cat's Claw, and a mere Tool for *Hales*, and that *Hales* contrived and ordered every Thing.

When all this was ſo ſucceſsfully carried through, the Priſoner ſends *Rumſey* to the *Bank* for Money, where the Matter comes to be diſcovered in this Manner.

Mr. *Humphreys* ſwears, That he being Mr. *Hoare*'s out-going Clerk to carry Bills abroad and receive Money, on *Monday* Morning he went to Mr. *Gibſon*'s with this Note for 6400*l.* Mr. *Gibſon*, he ſays, was gone to *Bath*; and it is remarkable that the Note is dated on a Day when he tranſacted no Buſineſs, and it was not publiſhed till he was gone to *Bath*. Mr. *Humphreys* ſays, that he not meeting with Mr. *Gibſon*'s Caſhier, deſired the Money ſhould be paid into the *Bank*, and left the Note for that Purpoſe. When Mr. *Gibſon*'s Caſhier, Mr. *Philips*, came Home, he ſays he had the Bill, and looking upon it, ſaw great Reaſon to ſuſpect it, and thought it not probable Mr. *Gibſon* ſhould draw a Bill as that was. He ſaith, that in all his Time he never knew Mr. *Gibſon* ſign ſuch a Note, nor any Note for Money, but of his own Hand-writing. The Size of the Paper alſo, he ſays, confirmed his Suſpicion. And ſure, Gentlemen, Paper muſt be very dear, that a Note for ſuch a Sum ſhould be wrote on ſo ſcanty a Piece as you have produced. But the Caſhier further ſays, that looking on the Note, he found there was a manifeſt Alteration in the Writing; *Thomas Gibſon* was Mr. *Gibſon*'s Hand, but a Raſure appeared above it, and the Letter *o* in the Word *For* to be intruded in it, and wrote with another Ink. You have all ſeen the Note, and to me it ſeems very plain, that the Letter *o* was not originally written in that Place. And to give you at leaſt a very probable Account, that this Word was at firſt *Free* and not *For*, and done by Mr. *Hales* himſelf, the firſt Witneſs (Mr. *Philip Booth*) you will remember, ſwears, That the Priſoner ſome Time ago prevailed on him to get of Mr. *Gibſon* two Franks on two Letters of Mr. *Hales*, directed to *Robert Booth*, Eſq; at *Briſtol*; and ſays, that the Foldings of thoſe Letters were large enough to tear off the Piece produced. And *Robert Booth*, Eſq; of *Briſtol*, ſays, there is no other of that Name there, and that he never received any Letter franked by Mr. *Gibſon*. And as Things of this Kind are generally made out by Circumſtances, it ſeems no very hard Thing to eraſe the two *e*'s, and put the *e* between the *F* and *r*, in ſuch a Manner as this has been ſhewn to you. Gentlemen, Mr. *Humphreys* goes further, and ſays, That going to the *Bank* about Noon that Day, he found that Mr. *Gibſon*'s People had not paid in this Sum; at which he ſays he was pretty much ſurprized, knowing Mr. *Gibſon*'s Credit and the Careſulneſs of his People; and went again to Mr. *Gibſon*'s, to know what the Reaſon was; where he was informed of the Diſcovery, which came out thus: Mr. *Hoare*'s two Notes having been ſhifted and changed about, as you have heard, ſome Part of the Money was at laſt in Bank-Bills, and there *Rumſey* that *Monday* Morning receives 650*l.* on Account of thoſe Bills, before the Fraud was diſcovered. But from what appeared at Mr. *Gibſon*'s, and the Bank-Numbers of the Bills delivered being entered, Care was taken to examine the Receipt-Book, to ſee who came for any more Money on thoſe Bills. And Mr. *Maddox* tells you, that he having Notice given him, ordered the Clerk that paid, when any body came with thoſe Bills, to ſeem ready to pay the Money, but to delay it till a Conſtable could be fetched: That ſoon after *Rumſey* came again, when a Conſtable was fetched, and charged with *Rumſey*. He at firſt declined to give any Account of his Name, or where he had the Note; at length he told Mr. *Maddox*, that if they would let him write a Letter, he would ſend it to the Perſon he had the Note from; and accordingly writes a Letter to Mr. ——— (with a Blank) at *Robin*'s Coffee-Houſe, with which the Conſtable, with ſome of the Clerks of the *Bank*, went immediately to ſee who was there, and found three Perſons beſides Mr. *Hales*. The three were Neighbours whom the Coffee-Man knew: Mr. *Hales* was a Stranger to him, but known to the Officers of the *Bank*. When he was ſeized, Mr. *Rumſey* was examined again, and owned that *that* was the very Perſon who ſent him with the Bill. Upon this *Hales* was carried up Stairs, examined and ſearched; and not only one of thoſe Bills that had been received found upon him, but alſo an Account under Mr. *Hales*'s own Hand, that exactly tallied with the Account *Rumſey* gave. And Mr. *Maddox* ſays, the Priſoner owned the Account to be his, and the Notes, Bonds, Broker's Account of the Bonds bought, and Effects found upon him, to be the very Produce of the 6400*l.* So that, Gentlemen, you will now take it into your Conſideration, that the

Evidence againſt the Priſoner doth not depend ſingly on the Credit of *Rumſey*, but that he is ſupported by the Number of Witneſſes you have had, and in particular by Mr. *Maddox*, and (which cannot err) the Account and Produce of the Money taken upon him.

Thus, Gentlemen, the Forgery being admitted, I have laid before you that Part of the Evidence that principally affects Mr. *Hales*, and that goes to prove him either guilty of the Forgery, or of the Publiſhing of this Note, knowing it to be forged. As to the Forgery, Gentlemen, of this Note by Mr. *Hales*, I muſt leave it to you upon the Strength of this Evidence, which has been very long, and (I doubt not) fully obſerved by you; and that you will give it its juſt Weight. But as to his publiſhing it knowing it to be forged, he hath not given you the leaſt Colour of Evidence to the contrary; and I muſt tell you, wherever a forged Note, or other Thing of that Nature, is found in any one's Hands, it is in Law a ſtrong Evidence that he is the Forger, unleſs he can give ſome Account of it. But here you are only told, that he had it from *Palmer*; but not one Word of Proof. Mr. *Hales*'s Counſel have indeed offered to you in his Defence, firſt, that he is a Gentleman, and ſhall not be preſumed to be guilty of ſuch an Offence; nor, Gentlemen, ſhall any other on a bare Preſumption. But here, Gentlemen, is great Strength of Evidence that affects him; I do not know that I have met with a ſtronger Proof of the very Fact; it is not to be expected. They have alſo told you, that he was a Bankrupt, and could not get a Certificate; that the Commiſſion of Bankruptcy againſt him was about twenty Years ago. They ſay, That upon that Account he was forced to make uſe of other Names in his Dealings, and ſometimes fictitious ones: That he hath traded for upwards of 300,000*l.* in that Time: That *Palmer* was much employed by him, and entruſted in the carrying on that Trade, and being thereby indebted to Mr. *Hales* in above 7000*l.* gave him this Note in Part of Payment; which, as to his Trading in that Manner, I think, is ſo far from juſtifying his Character, that it is of itſelf a Crime not much leſs than that with which he ſtands charged. A Man that is a Bankrupt, if he afterwards becomes able, ought in Honour and Conſcience to pay his juſt Debts. It is not the firſt Time I have known that done: General *Wood* was a Draper, failed, and paid very little; he went into the Army for Bread, and proved ſo gallant a Man, that he raiſed himſelf to be a General. He, like a good Chriſtian, and a Man that did as he would be done by, paid his Debts to the full; which if the Priſoner had done, it would have given him a much better Character. Gentlemen, his Counſel have told you he carried on a vaſt Trade for twenty Years; but do they tell you that his Creditors were the better for it, or were ever paid one Penny? No, Gentlemen, they did not; and therefore I muſt leave it to you, whether this was not one continued Act of Fraud to cheat his Creditors; if ſo, it will affect the Priſoner quite another Way than his Counſel intended it. And though two or three Witneſſes were called to give Evidence of the Dealings between Mr. *Hales* and Mr. *Palmer*, there was not one Thing proved: So that, Gentlemen, there ſeems very little for you to conſider. You have a Number of concurrent Witneſſes, that have given you a full and clear Account of this whole Tranſaction; that this was contrived, managed, and carried on by the Priſoner in a very extraordinary Manner, and which there was not, nor could be any Reaſon for, but to avoid being detected of the vile Crime he is now charged with; nor can there be any Doubt but the whole Produce of this Note was for his Benefit, the Account, Bonds, and Bills, having been found in his Pocket.

I muſt leave it to you, Gentlemen: But never was ſtronger Evidence than here is, that Mr. *Hales* is the Author of this. So that I think, Gentlemen, if you believe the Evidence, the Charge, one Way or other, is fully brought to the Priſoner's Door. If you believe him Guilty of the Forgery, you will then find him Guilty generally of the whole Indictment: But if you are not ſatisfied of that, you will only find him Guilty of the other Part of the Indictment; or, if you can upon this Evidence, you may acquit him.

The Jury being withdrawn, after a few Minutes Stay, brought the Priſoner in Guilty of forging the Note, and of publiſhing the ſame, knowing it to be forged.

The Priſoner was a ſecond Time indicted upon the Statute of 33 *H.* VIII. *c.* 1. for obtaining Money by falſe Tokens. To which Indictment the Defendant pleaded Not Guilty; and the ſame Evidence, in Subſtance, being offered as upon the former Indictment, the Jury brought him in Guilty.

NUMBER XVI.

The KING againſt JOHN GIBBON.

Upon an Information, in the Nature of a *Quo Warranto*, by the King's Coroner and Attorney, againſt the Defendant, to ſhew by what Authority he claims to be a Freeman of the Town and Port of *New-Romney*, at the Relation of *William Jarvis*. Tried at *Kent* Aſſizes, held at *Maidſtone*, the 6th of *Auguſt*, 1734, before the Right Hon. the Lord Chief Juſtice *Eyre*.

Mr. *Smith*.

MAY it pleaſe your Lordſhip, and you Gentlemen of the Jury; this is an Information, in the Nature of a *Quo Warranto*, againſt the Defendant *Gibbon*, to ſhew by what Authority he claims to be a Freeman of the Town and Port of *New-Romney*, in this County: And the Information ſets forth, That the Town and Port of *New-Romney* is an ancient Town and Port; and that the Mayor, Jurats, and Commonalty of the ſaid Town and Port are, and for ten Years laſt paſt, and long before, were, one Body Corporate and Politic, by the Name of Mayor, Jurats, and Commonalty of the Town and Port of *New-Romney* in *Kent*; and that the Office of Freeman of the ſaid Town and Port is a publick Office, and an Office of great Truſt and Preheminence within the ſame Town and Port, concerning the good Rule and Government of the ſame, and the Adminiſtration of publick Juſtice: And that the Defendant *Gibbon*, of the ſaid Town and Port, Innholder, on the 25th of *March*, in the ſeventh Year of his preſent Majeſty, and from thence continually, hitherto, at the Town and Port aforeſaid, hath uſed and exerciſed, without any lawful Warrant, the ſaid Office, and claims to be one of the Freemen of the ſame Town and Port, and to have all the Privileges, Liberties, and Franchiſes thereof: Of which Office the ſaid Defendant *Gibbon*, for all the Time aforeſaid, upon his Majeſty hath uſurped, in Contempt of his Majeſty, and to the great Damage and Prejudice of his Royal Prerogative, and againſt his Crown and Dignity: Whereupon he prays Proceſs, *&c.*

To this the Defendant has pleaded, that the ſaid Town and Port is an ancient Town and Port, and the Office of Freeman thereof a publick Office.

And ſays, That the late Queen *Elizabeth*, by her Letters Patent, dated at *Northaw*, the 4th of *Auguſt*, in the fifth Year of her Reign, did will and grant, that the *Barons and Inhabitants* of the ſaid Town and Port (who before that Time had been incorporated, by the Name of Jurats and Commonalty) ſhould for ever after be one Body Incorporate, by the Name of Mayor, Jurats, and Commonalty of the Town and Port of *New-Romney*.

And that they, and their Succeſſors, and all other the Barons and Inhabitants of the ſaid Town and Port, their Heirs and Succeſſors, ſhould for ever after be, in all Matters whatever, as free as the Mayor, Jurats, and Commonalty of the Town and Port of *Sandwich*, or any other Town and Port of her ſaid *Cinque Ports*.

And the Defendant by his Plea further ſets forth a Cuſtom in *Sandwich*, one of the ſaid *Cinque Ports*, That if a Man marries the Daughter of any Freeman of that Town, ſuch Daughter being born after the Swearing and Admiſſion of her Father into the Office of Freeman, and being reſiant and inhabiting within the Town, has a Right to be ſworn and admitted a Freeman of *Sandwich*.

And alledges the like Cuſtom in *Dover*, another of the *Cinque Ports*.

And that the *ſole Right* of ſwearing and admitting Freemen of *New-Romney* is, and at the Time of ſwearing and admitting of him, the ſaid *John Gibbon* was, in the Mayor and Jurats, or in the Mayor and any two Jurats.

That the Defendant *Gibbon*, on the 1ſt of *May*, 1727, married *Elizabeth Smith*, Daughter of *William Smith*, a Freeman of the ſaid Town and Port; and thereby, and by virtue of the ſaid Letters Patent, became entituled to be ſworn and admitted a Freeman of the ſaid Town and Port; and having ſuch Right, and being ſo entitled, was, on the 25th of *March* laſt, ſworn and admitted by *John Coates*, the then Mayor, and *Humphry Wightwick* and *Edward Batchelor*, then two of the Jurats of the ſaid Town and Port, being there aſſembled in due Manner for that Purpoſe; by reaſon of which he ſays, he is a Freeman.

The King replies, That *Gibbon*, by marrying the ſaid *Elizabeth Smith*, did not become entituled to be ſworn and admitted a Freeman.

To which there is a Demurrer, for the Opinion of the Court upon the Words of the Charter.

So that, Gentlemen, the firſt Iſſue you are to try is, Whether the ſole Right of ſwearing and admitting Freemen of the Town and Port of *New-*

New-Romney be in the Mayor and Jurats, or in the Mayor and any two Jurats: And if we prove to you, that the Commonalty have always had and exercised a concurrent Right with the Mayor and Jurats, you will please, Gentlemen, to find for the King.

Mr. *Marsh.* May it please your Lordship, and you Gentlemen of the Jury; I am Counsel for the Defendant *Gibbon*. You observe, by the Opening, that this is an Information, in the Nature of a *Quo Warranto*, against him, to shew by what Authority he claims to be a Freeman of *New-Romney*: And the only Points that come before you now to be tried, are, First, Whether the Right of swearing and admitting Freemen of this Corporation be in the Mayor and Jurats, or in the Mayor and two Jurats? And, Secondly, Whether the Defendant *Gibbon* has been duly sworn and admitted a Freeman? There being a Demurrer as to the Right, that is to be determined by the Judges of the Court of *King's-Bench*: And in order to make out this Right, we shall produce to you the Books of the Corporation, as well as living Witnesses; whereby it will appear, that the Right of swearing and admitting Freemen of this Corporation is in the Mayor and Jurats, or in the Mayor and two Jurats; and that every one of the present Members of the Corporation was sworn and admitted by the Mayor and Jurats, or the Mayor and two Jurats: And by an Entry in the same Books it will likewise appear, the Defendant was duly sworn and admitted a Freeman; and when this appears, Gentlemen, you will find a Verdict for the Defendant.

Mr. *Lacy.* Mr. *Wellard*, please to produce the Corporation-Books. *(Which were produced accordingly.)*

Mr. Serj. *Darnell.* My Lord, we insist, the sole Right of admitting and swearing Freemen of this Corporation is not in the Mayor and Jurats, but in the Mayor, Jurats, and Commonalty.

C. J. *Eyre.* 'Tis Swearing and Admitting.

Mr. Serj. *Darnell.* *Gibbon* being called on by the Court of *King's-Bench*, to shew by what Authority he claimed to be a Freeman of the Town and Port of *New-Romney*, has demurred, and thereby waived the Foundation of his Claim.

C. J. *Eyre.* What! Is that waiving it? What concerned his Right comes not now in Issue, and was left undetermined by the Court. If he had a Right, the Question is, Whether he be duly admitted? And in order to that, he must be elected: And then the Question is, Whether he be admitted according to the Constitutions of the Town and Port of *New-Romney?*

Mr. Serj. *Darnell.* My Lord, a Right is here claimed by the Defendant; I have a Right by marrying a Freeman's Daughter; and if I have a Right, the Question is, as to the Method of coming to this Right. The Defendant says, the sole Right of swearing is in the Mayor and Jurats: But we say, though they have a Right, the whole Body must admit, though the Swearing be by the Mayor and Jurats.

C. J. *Eyre.* Swearing and Admitting is the same Thing, Brother *Darnell.* Where a Man is chosen Mayor of a Corporation, the Swearing and Admitting him is the same Thing. All Persons are admitted by Swearing, and taking the Oath is the Admission. A Man admitted is to be sworn: and there is no Corporation in the Kingdom, but where Swearing and Admitting is the same Thing; and yet you would make them two distinct Acts.

Mr. *Lacy.* We shall prove to your Lordship and the Jury, that the sole Right of Swearing and Admitting is in the Mayor and Jurats: And the first Instance we shall shew is in 1679, *Peter Martin* was admitted and sworn by the Mayor and Jurats.—Read the Entry of the 8th of *March*, 1679.

(Witness sworn to prove an Assembly-Book.)

C. J. *Eyre.* I think it proper to be read as a Court-Book.

Associate reads——

"8 *March*, 1679. *Romney.* At a Common Assembly of the Mayor, "Jurats, and Commonalty of the Town and Port of *New-Romney*, in "the Common Place held there, 32° *Car.* 2di. Present, *John Hunt*, "Mayor; *Thomas Durrant*, *John Mascall*, *John Cockman*, *William* "*Green*, and Mr. *Isaac Rutton*, Freemen of the said Town; *Peter* "*Martin*, an Inhabitant of our Member of *Orlest-n*, in *Old-Romney*, "was elected a Freeman; and this Assembly doth appoint him to "be sworn a Freeman by the Mayor and any two Jurats of this Cor-"poration."

C. J. *Eyre.* *Peter Martin* elected and sworn 32 *Car.* II. 1679.

Mr. *Marsh.* Now read his Admission and Swearing.

Associate reads—

"At the Court holden before *John Hunt*, the Mayor, and Jurats of "same Port, 15 *March*, 1679, *Peter Martin* testified his free Consent for "observing the Orders, Charters, and Ordinances, *&c.* of the *Cinque* "*Ports*, and of this Town in particular; and is hereby declared and ad-"mitted a Freeman of this Corporation; and took the Oaths appointed."

Mr. *Lacy.* Read the Entry, *fol.* 738, of *Stephen Brett*'s Admission.

Associate reads—

"*New-Romney.* Whereas the Mayor, Jurats, and Commonalty of the "Town and Port of *New-Romney* aforesaid, at their Common Assem-"bly, holden in the Common Place of the said Town and Port, did "elect and chuse Mr. *Stephen Brett*, being free-born; *Thomas Short*, born "at *Smeeth* in the County of *Kent*; *Robert Easton*, born at *Battle* in the "County of *Sussex*; and *John Coates*, Grazier; all free-born, to be "Freemen of the said Town and Port, the 15th Day of *May* last: Now "be it remembered, that at a Court of Record holden in the *Guildhall* "of the same Town and Port, this 3d Day of *December*, *Anno Domini* "1694, the said *Stephen Brett*, *Thomas Short*, *Robert Easton*, and *John* "*Coates*, testifying their free Consents for the observing and maintaining "the Charters, Franchises, Decrees, Privileges, Customs, and Usages of "the *Cinque Ports*, two antient Towns, and their Members, and parti-"cularly of this Town and Port of *New-Romney*, have severally taken "the Oaths of Freemen of the same Town and Port, according to the "Customal there, and are admitted into the Franchises of the Town "and Port aforesaid; and did also, at the same Time, here take the "several Oaths appointed by an Act of Parliament, intituled, *An Act for* "*abrogating the Oaths of Allegiance and Supremacy, and appointing other* "*Oaths*, &c."

Mr. *Marsh.* Read the Entry, *fol.* 770.

"*New-Romney.* At a Court of Record, holden in the *Guildhall* of the "same Town and Port, the 16th of *May*, 1698. Whereas the Mayor, "Jurats, and Commonalty, at a Common Assembly, holden in the "Common Place, on *Thursday* the 17th of *March*, 1697, did elect *Robert* "*Mascall*, free-born, *Thomas Lancaster*, and *Thomas Edwards*, free-born; "having testified their free Consents to observe the ancient Orders, "Charters, Ordinances, *&c.* were then admitted into the Freedom "of the said Town: Be it remembered, That the said *Robert Mas-*"*call*, *Thomas Lancaster*, and *Thomas Edwards*, having testified their free "Consent to observe the Orders, *&c.* aforesaid, have taken the Oath, "according to the Customal, and are admitted into the Franchises of the "Town and Port aforesaid, and took the several Oaths appointed."

C. J. *Eyre.* A Court of Record, and this Court held before the Mayor and Jurats.

Mr. *Marsh.* My Lord, there is not a single Member of the Corporation but is sworn in this Manner.

Mr. Serj. *Darnell.* We admit, my Lord, that no Man can be sworn but by the Mayor and Jurats; but none but Freemen can consent there shall be Freemen among them.

C. J. *Eyre.* If the Precedents are admitted by the other Side, there is no Occasion for proving them.

Mr. *Marsh.* My Lord, if they admit them according to the last Entry, there is no Occasion; but if not, it is necessary to call a living Witness.

C. J. *Eyre.* It is all one to me what you do. It is admitted on all Sides, there are many of these Entries since 1679.

Mr. *Marsh.* Read the Admission of *Isaac Rutton* and others, 7 *February*, 1708.

Associate reads —

"*New-Romney.* At a Court of Record holden in the *Guildhall* of the "same Town and Port, the 7th of *February*, 1708. Whereas the Mayor "and Jurats, at a Common Assembly, elected the several Persons fol-"lowing: Be it remembered, the Persons under-written, testifying their "Consents to observe the ancient Orders, *&c.* have taken the Oaths of "Freemen, and are admitted into the Freedoms."——

C. J. *Eyre.* Who are the People admitted?

Associate reads —

"*Isaac Rutton*, *John Bassett*, *John Minnis*, *John Tooke.*"

Mr. *Lacy.* Now turn to *fol.* 100. Read the Admission of *Nicholas Durrant*, and others.

Associate reads —

"13 *June*, 1715. Whereas the Mayor and Jurats did elect *Nicholas* "*Durrant*, *Isaac Warren*, *Daniel Warquin*, and *John Cosby*, to be Free-"men: Be it remembered, that they, testifying their Consent to observe "the ancient Orders, *&c.* are admitted into the Freedoms of this Town "and Port, and took the several Oaths appointed, and subscribed the "Declaration following.——

Mr. *Knowler.* Read the Admission of *John Widcomb*, and *Richard Howard*, *fol.* 116.

Associate reads —

"26 *August*, 1717. Whereas the Mayor and Jurats, at the last Com-"mon Assembly, did elect the several Persons, whose Names are hereunto "subscribed, to be Freemen: Be it remembered, this 26th of *August*, "1717, the Persons under-written, testifying their Consent to observe "the ancient Orders, *&c.* and taking the Oaths, are admitted into the "Freedoms of this Town and Port.

"*John Widcomb*,
"*Richard Howard.*"

Mr. *Marsh.* Turn. to *fol.* 125. Read the Admission of *Thomas Wilson.*

Associate reads —

"18 *November*, 1727. Whereas the Mayor, Jurats, and Commonalty "elected *Thomas Wilson*, within this Town, to be a Freeman: Be it "remembered, that he, testifying his Consent to observe the ancient "Orders, *&c.* and taking the Oath, is admitted into the Freedoms of "this Town and Port.

"Born at *Lydd* in *Kent.*"

Mr. *Lacy.* Now read the Admission of *William Gray*, the 7th of *June*, 1731.

"7 *June*, 1731. Whereas the Mayor and Jurats, at the last Election "of Mayor, did admit *William Gray* a Freeman: Be it remembered, "that he, testifying his Consent to observe the ancient Orders, *&c.* has "taken the Oath, and is admitted into the Freedoms of this Town "and Port."

Mr. *Marsh.* My Lord, we submit our Case here.

Mr. Serj. *Darnell.* The Word *admitted* is used both at the Common Assembly——

C. J. *Eyre.* But only there, in that Instance.

Mr. Serj. *Darnell.* May it please your Lordship, and you Gentlemen of the Jury; I am for the King against *Gibbon*: And this Issue is only a Part of a Question in relation to the Franchises and Privileges of the Town and Port of *New-Romney*, where of late there have been many illicit Practices in order to overthrow the Constitutions of the Town; and thereupon Application was made to the Court of *King's-Bench*, in two several Causes, against *Gibbon* and *Darby*, who were to shew by what Authority they claimed their Freedoms; and they insisted they had married the Daughters of Freemen, and therefore had a Right to their Freedoms; and also against one *Wightwick*, who was to shew by what Authority he claimed to be Mayor of *New-Romney.*

Gentlemen, the Election of the Mayor depending on the Right of *Gibbon* and *Darby*, the Court, by Rule, directed the Information against *Gibbon* first to be tried; and if he had no Right, *Darby* was to take the Fate of that Trial; and to disclaim.

Gentlemen, as the Election turned upon the Right of *Gibbon* and *Darby*, if this Issue be found for them, then *Wightwick* is the Mayor. But,

inſtead of coming to the Queſtion, Whether a Man has a Right to a Freedom by marrying a Freeman's Daughter? they have demurred: And now the Queſtion is, Who is to admit the Freemen? And I humbly apprehend, my Lord, where a Number of Freemen have the Freedom of a Town, Nobody can be let in without their Conſent; for, if the Mayor and Jurats are to admit ſolely, they may ſet up as many Freemen as they pleaſe.

My Lord, and Gentlemen of the Jury, the laſt Inſtances they have produced out of the Aſſembly-Books, are, I humbly apprehend, very ſtrong in our Favour; for it appears from thoſe Inſtances, that when the Body have agreed upon the Choice of a Freeman, the Mayor and Jurats ſwear him; and I take the Swearing to be a Thing of courſe; but the Admiſſion is in the whole Body, as appears by every Inſtance they have read. A Freeman is elected by the Mayor, Jurats, and Commonalty, and then he is ordered to be ſworn in by the Mayor and Jurats: Sure there can be no Doubt in the Queſtion. Swearing and Admitting I take to be the ſame Thing; they are ſynonymous: Without Swearing no Man can be admitted; but the Swearing does not admit. Suppoſe twenty Freemen ſworn in by the Mayor and Jurats, the Franchiſe of the Town is worth nothing—

C. J. *Eyre.* You take Admitting to be the Election; it is not ſo: But Admitting to the Exerciſe of the Right. Admitting is not conferring the Right. The Defendant has a Right by his Marriage: Admitting muſt be conſtrued the receiving him into the Office, and admitting him to the Exerciſe of that Right, and therefore is ſynonymous. You go upon a wrong Iſſue: Who were the Perſons intituled to adminiſter the Oath of Office?

Mr. Serj. *Darnell.* Admiſſion gives the Right.

C. J. *Eyre.* I think it would be proper to admit the Iſſue to be, Who ought to adminiſter the Oath?—I don't underſtand the Cuſtoms of the *Cinque Ports.*

Mr. Serj. *Darn.* If ſworn, whether duly elected? or it ſignifies nothing.

C. J. *Eyre.* Suppoſe *Gibbon* to have a Right: An Oath adminiſtered to a Man that has no Right is of no Avail: A Man muſt have a Right to an Office, and muſt be admitted into that Office by Swearing; and the Queſtion now is, Who is to adminiſter that Oath?

Mr. Serj. *Darn.* We are to ſupport the Right of the whole Body to elect and admit; or the Court of *King's-Bench* will think this Matter not tried.

C. J. *Eyre.* The Court of *King's-Bench would think me a trifling Fellow to try the Right of the Election.*

Mr. Serj. *Darn.* The Rule is, that *Gibbon*'s Iſſue ſhould be tried firſt, and *Darby* abide the Fate of that; to which they have demurred.

Mr. Serj. *Baynes.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury; I am alſo of Counſel in this Caſe for the King. The Senſe of the Court of *King's-Bench* was, in relation to a Right ſet up by *Gibbon* and *Darby*; and the Queſtion was, Whether a Perſon marrying a Freeman's Daughter was intituled to his Freedom? And the Court was of Opinion, That ought principally to be tried; and to make an End of the whole, if *Gibbon* and *Darby* had a Right, *Wightwick* was to be Mayor; if not, then *Elles* was to be Mayor. But they have evaded this Queſtion; and when an Iſſue was tendered to try the Right, they demurred; and thereby the ſole Reaſon of granting theſe Informations is entirely eluded: And now the Queſtion is, Whether the ſole Right of admitting Freemen belongs to the Corporation, or to the Mayor and Jurats, or to the Mayor and two Jurats? But, Gentlemen, we contend that the Right of Admiſſion is in the Court of Aſſembly.

The Gentlemen of the other Side have produced ſome Inſtances to ſhew the Right to be in the Mayor and Jurats, and that they have accordingly taken upon them to ſwear in ſome Perſons, and Swearing is a Completion of the Perſon's Right to be admitted.

My Lord, the Admiſſion of Freemen is to be made on *Lady-Day:* After the Election the Bell tolls; and the Perſons having a Right come before the General Aſſembly, and ſay, they claim to be admitted, for Servitude, or as Free-born, *&c.* And they judge of theſe Facts, and thereupon admit; though the Freedom is not completed till the Perſon be ſworn.

Gentlemen, the Evidences the other Side have produced go no higher than 1679: whereas we have Inſtances, long before that Time, of Admiſſions by both; and a new Inſtitution, lately practiſed, we humbly hope ſhall not ſet aſide an ancient Cuſtom. Strange! that this Power of admitting ſhould be in a Part of the Body! A Mayor and two Jurats cannot admit, contrary to the General Aſſembly; when they have approved a Claim, the Right is to be completed by Swearing before the Mayor and Jurats. They are two diſtinct Rights; and we ſhall produce to your Lordſhip and the Jury unqueſtionable Inſtances, that this is the conſtant Uſe, for the Perſons claiming to be Freemen to make out their Right to the Aſſembly, and afterwards to be ſworn by the Mayor and Jurats. A High Conſtable is named by the Juſtices in Seſſions, and then is ſent by them to a Juſtice of Peace to be ſworn; as, in the preſent Caſe, a Freeman is elected by the Common Aſſembly, and then is ſent to the Mayor and Jurats to be ſworn: And therefore, Gentlemen, we hope you will find a Verdict for the King.

Mr. *Wynne.* My Lord, the ſingle Queſtion before the Court of *King's-Bench* was, Whether *Gibbon* and *Darby* had a Right to Freedoms by marrying Freemen's Daughters? By the Rules of Practice, it is impoſſible for any Part of this Queſtion to come before this Court; the ſubſequent Proceedings in the Crown-Office muſt ſhew this; and nothing could be done by the Court of *King's-Bench*, the Pleadings being brought into the Crown-Office after the Term.

My Lord, it is endeavoured by the Gentlemen of the other Side to take away the Diſtinction between the Admiſſion and Swearing; and it is true, they are by diſtinct Bodies.

Gentlemen, the Claim is firſt to be made to the General Aſſembly on *Lady-Day*, on tolling a Bell: When that has been conſidered, and allowed, and admitted by the General Body, then, by Delegacy, it has been ſent to the Mayor and Jurats to ſwear the Perſon, and is merely a miniſterial Act; and what they have done has been in Eaſe of themſelves, in Delegacy to them. It will appear from the ancient Entries, (their higheſt Entry being 1679) and 'tis at an Aſſembly of Mayor and Jurats, *Peter Martin* was ordered to be ſworn by the Mayor and two Jurats; but not to part with any Right they had, as will fully appear, when our Evidences are compared in Point of Time with the others.

You will pleaſe therefore, Gentlemen, to conſider, that the Admiſſion is the Act of the General Aſſembly, but the Swearing the Act of the Mayor and Jurats.

Mr. Serj. *Darnell.* My Lord, we humbly inſiſt, the ſole Right is not in the Mayor and Jurats.

C. J. *Eyre.* I am of Opinion, this is an Admiſſion.

Mr. Serj. *Darnell.* In all the Inſtances, till 1679, they were admitted at the General Aſſembly; and in 1699 they have read one Inſtance. We inſiſt, therefore, that our Evidence is equally ſtrong.

Mr. *Knowler.* My Lord, we have a Rule to produce all the Corporation-Books at the Trial, and Mr. *Wellard* refuſes us the Books.

Mr. *Wellard.* My Lord, we have brought the Books hither at a great Expence. Mr. *Wightwick* muſt be paid for them.

Mr. *Knowler.* Mr. *Wellard* has had four Guineas on that Account.

Mr. *Wellard.* The Mayor has been at more than four Guineas Expences already, and there are ſeveral other Charges to be paid.

C. J. *Eyre.* You ſhould agree to pay what the Maſter of the Crown-Office ſhall think reaſonable more than four Guineas, and enter into a Rule for that Purpoſe. *(Which was done accordingly.)*

Mr. *Lacy.* My Lord, we ſubmit, whether this is proper Evidence on the Iſſue? The Plea is, that the ſole Right of Swearing and Admitting is, and at the Time of Swearing and Admitting *Gibbon* was, in the Mayor and Jurats, or in the Mayor and two Jurats, of the Town and Port of *New-Romney*; and the Iſſue is taken upon that, *Is, and at the Time was*—

C. J. *Eyre.* I think it proper Evidence, to ſhew what has been the Uſage by the Books. You muſt prove an ancient Right; for *Gibbon*'s Right muſt be determined by the ancient Uſage.

(Here a great Diſpute aroſe about the Corporation-Books between Mr. Wellard *and Mr.* Knowler, &c. *Mr.* Wellard *being in Fear he ſhould loſe them.)*

C. J. *Eyre.* Give them all in, and call for them one by one. You have them, and make no Uſe of them.

Mr. Serj. *Darnell. Fol.* — Read the Election of Mayor and Jurats.

(Aſſociate *begins to read, but could not go on; when the Chief Juſtice took the Book out of his Hands.)*

C. J. *Eyre.* Give me the Book; I can read it.

(Attempts to read, but does it very indiſtinctly and with great Difficulty; and then throws down the Book, not being able to go on.)

Mr. *Wellard* reads—

" The Election of Mayor and Jurats of the Town and Port of *New-*
" *Romney*, 1571. According to Patent, appeared *John Stevens* and others,
" in Number fourteen; by their Conſent, *Mercer* and others choſen
" Jurats."

C. J. *Eyre.* Admiſſion and Election are ſynonymous. Let it be ſhewn, that any Perſon was ſworn at this Aſſembly from an Entry.

Mr. *Wynne.* Read the Admiſſion and Swearing of *John Amerſham.*

Mr. *Wellard* reads—

" 25 *March*, 1571. *John Amerſham, natus apud* *admiſſus et*
" *juratus ad franchis'.*

C. J. *Eyre.* Shew that he was elected before: This is very material Evidence.

Mr. Serj. *Darn.* Read the Entry of *Thomas Baſtard*'s Admiſſion in 1671.

Mr. *Wellard* reads—

" Election of Mayor and Jurats of the Town and Port of *New-Rom-*
" *ney*, 1671. According to Patent, appeared *John Cheſſman*, and *Lau-*
" *rence Fane*, *Thomas Wall*, and others;
" *Thomas Baſtard, natus apud Yalden, admiſſus ad franchis' et ſol' feod'.*"

Mr. Serj. *Baynes.* Read the Admiſſion of *William Southland*, the 9th *Auguſt*, 33 *Elizæ.*

Mr. *Wellard* reads—

" *Gulielmus Southland, natus apud* 9 *Auguſt*, 33 *Elizæ*, ad-
" *miſſ' per Major', Jur', et Com' ad franchis', et ſol' inde feod', et*
" *juratus.*"

Mr. *Wynne.* Read the Admiſſion and Swearing of *Thomas Maſter*, and five others, *Lady-Day*, 1579.

Mr. *Wellard* reads—

" *Lady-Day*, 1579. Appeared *William Hyett*, *John Cheſſman*, *Richard*
" *Hoppen*, and others, Commoners and Freemen; were elected and
" choſen;

" *Thomas Maſter, admiſſ' et jur' et ſol' feod'.*
" *Halbakuk Thomas, adm' et jur'.*
" *Gul' Taylor, admiſſ' ad franchis', et jur', et ſol' feod'.*
" *James Gardner,*
" *Thomas Wymond,* } *adm' et jur' et ſol' feod'.*
" *Johannes Southern,*

Now turn to the Admiſſion and Swearing of *John Smith*, and others.

" *New-Romney.* Election of Mayor and Jurats, 25th *March*,
" 22d *James* Iſt, 1624. Appeared *Bedell*, Mayor; *Lancaſter*, and others,
" Commoners and Freemen;
" *John Smith, admiſſ' ad franchis' et ſol' pro jur'.*
" *Geo. Labden, adm' ad franchis', et ſol' 3s. 4d. et jur'.*
" *Daniel Duke, admiſſ' et jur'.*"

Mr. Serj. *Darn.* Read the Entry of the 25th *March*, 1627.

" Election 25 *March*, 1627. Appeared *Fell*, Mayor; *Lancaſter*, and
" others;
" *John Plomer*, free-born, *admiſſ' in franchis'.*"

N. B. It does not appear he was ſworn.

Mr. Serj. *Baynes.* Read on the Entries in 1659, 1660, and 1666.

" 25 *March*, 1659. *John Wyvill* admitted and ſworn.
" 15 *October*, 1660. Four Perſons admitted and ſworn.

" 29 *May*, 18 *Car.* II. 1666. Mayor and Jurats, at a Common " Place;

" *Richard Strode* admitted into the Franchiſes, ſubſcribed the Declaration, and took the Oath of a Freeman, according to the Cuſtomal."

Mr. *Wynne*. Turn to the Admiſſion and Swearing of *John Gray*, the 2d of *October*, 1699.

Mr. *Wellard* reads---

" 2d *October*, 11 *Wil.* III. 1699. Mayor and Jurats, at a Common " Place, Commoners and Freemen;

" *John Gray*, being free-born, was admitted and ſworn according to " the Cuſtomal."

Mr. *Knowler*. Read on till you come to Mr. *Furneſe* and Mr. *Papillon*'s Admiſſion and Swearing.

" 4 *July*, 1683. Mayor, Jurats, and Commoners, at a Common Place;

" *John Walker*, free-born, *Thomas Edwards*, *Richard Kent*, and *William Pidd*, were ſworn according to the Cuſtomal, and admitted " according to the Election, at a Common Aſſembly.

" 4 *November*, 3 Q. *Anne*, 1704. Mayor, Jurats, and Commoners; " *Walter Whitfield* admitted and ſworn.

" 10 *October*, 1710. *Robert Coates*, Mayor, Jurats, and Commoners; " *Robert Furneſe* admitted and ſworn according to the Cuſtomal.

" 20 *April*, 1713. Mayor, Jurats, and Commoners; " *Edward Watſon* admitted and ſworn.

" 23 *March*, 1721. Mayor, Jurats, and Commoners; " *David Papillon* admitted and ſworn according to the Cuſtomal."

Mr. Serj. *Darnell*. We ſubmit it to your Lordſhip, whether here is any Colour to ſay, that here is a Right in the Mayor and Jurats ſolely.

Mr. *Knowler*. My Lord, on the 28th of *November*, 1727, *John Maſcall* being before choſen, the Court made an Order, that he ſhould not be ſworn.

C. J. *Eyre*. A very ſtrong Evidence, that the Right is in the Mayor, Jurats, and Commonalty. They have ſhewn only from 1679: I deſire to know, if they can ſhew any Thing before the Reſtoration.

Mr. *Wellard* reads----

" 18 *March*, 1668. The Corporation conſidering the ſmall Number " of Freemen, purſuant to a Decree of Brotherhood and Ghueſtling, " have choſen *John Shoeſmith* and others to be Freemen, and ordered them " to be ſummoned to take the Oath according to the Cuſtomal."

Fol. 614. " They were afterwards declared free, and ſworn before the " Mayor and Jurats."

C. J. *Eyre*. The Mayor and Jurats have not the ſole Power of Swearing and Admitting. Reading ten or twenty Inſtances will not prove the ſole Right of Swearing to be in them.

Mr. *Wellard* reads----

" 34 *Car.* II. 1683. Mayor and Jurats; *Maſcall* Mayor, no Com- " moner preſent;

" A Freeman ſworn."

C. J. *Eyre*. One or two Inſtances will not alter the Caſe.

Mr. *Marſh*. My Lord, the Iſſue now before your Lordſhip and the Jury is, Whether the ſole Right of Swearing and Admitting Freemen be in the Mayor and Jurats, or not? And the Gentlemen of the other Side have produced Evidences to ſhew, that notwithſtanding what we contend for may in ſome Inſtances be true, the contrary Cuſtom has likewiſe been practiſed, and will deſtroy our Right. They have begun early with Evidences, (I think as far back as 1571) and carried it down to the Reſtoration: And the Stile of that Aſſembly does appear to be, " At the Election of the Mayor and Jurats," though it was a general Aſſembly when the Perſons were choſen Freemen. It expreſſes, that they were admitted and ſworn: Admiſſion may ſignify Election: If they are elected, the Entry goes on and ſays, they were ſworn. But I ſubmit it to your Lordſhip, Whether, though they, the Commons, joined in Electing, yet when the Swearing comes to be performed, That being a diſtinct Act, is not ſolely in the Mayor and Jurats?

My Lord, it is alledged by the Gentlemen of the other Side, that tho' the Name of the Aſſembly is often altered, yet the Perſons were there who made up the whole Corporation. But the modern Inſtances given, and ſome ancient ones, ſay, the Election was according to the Cuſtomal: So that all from 1679 ſay ſo. Theſe are ancient Entries; and therefore I ſubmit it to your Lordſhip, when from theſe Entries it does appear plainly that they were admitted and ſworn in general, whether it be neceſſary to make that more plain? And alſo, whether theſe modern Inſtances in 1668 and 1683 do not explain what was the Uſage before? For, if the Right was in the Freemen with the Mayor and Jurats, they would never part with it; and yet we find, they did order this Swearing to be by the Mayor and Jurats; and they would not have parted with their Right, if they had not been conſcious there was no Right in them. As to the Evidence given that refers to the Cuſtomal, when Sir *Robert Furneſe*, Mr. *Papillon*, and Mr. *Wellard*, were admitted; if the Reference is to the Cuſtomal, that Cuſtomal we have, and it takes Notice particularly of their being to be ſworn before the Mayor and Jurats, and that the Commoners ſhould not be excluded before they had the ſetting of the Price. Your Lordſhip was pleaſed to ſay, you did not underſtand the Cuſtoms of the *Cinque Ports*; where we find many ancient Entries, that the Freemen ſhould be ſworn according to the Decrees of Brotherhood and Ghueſtling; which is an Aſſembly or Parliament of the *Cinque Ports*, when they meet and make Orders and Rules; they extend to other Ports in point of Example, Influence, and Power, if not in point of Authority. We hope, my Lord, to produce and give in Evidence theſe Acts of Aſſembly; and if theſe are ſo, we doubt not but the Jury will find for us.

Mr. *Wellard* reads----

The Old Cuſtomal.

" *New-Romney*, *Henry* VII.

" *Item*, it is uſed, that; if a Stranger of good Name and Converſation be dwelling within the Town, and deſireth to be a Freeman of the " Town, the Jurats may grant the Franchiſes, paying to the Commons " as they may accord; and when they be accorded, he ſhall be charged " in a Book, for to maintain the Franchiſes with his Body and Cattle, and " for to be true in all Points, and for to keep all the Commons Counſel; " and to be obedient as another Freeman to the Commons, and to have " a proper Place, of the Price of 40*s.* within the Town, within the next " Year enſuing, by which he may be diſtreyned and juſtified, upon Pain " of Forfeiture of his Franchiſe: And when he is thus ſworn, the Com- " mon Clerk ſhall enter his Name in Paper of the Common, for to witneſs the ſaid Grant; and all his Children, freely got en after the ſame " Day of Grant, may claim and enjoy the Franchiſe by the ſame Grant: " But, if he have any Children before the Day of Grant, or elſe that he " get any Child otherwiſe than in Sponſal, he ſhall not have the ſame " Franchiſe by the ſame Grant; but if he be of new Grant, and it is to " wit, that the Jurats may not grant the Franchiſe to no Stranger- " Man, if he be not reſiant within the Franchiſe."

Mr. *Lacy*. My Lord, the Jurats ſhall grant the Franchiſes, and the Commons are to ſet the Price.

Mr. *Smith*. Grant the Franchiſes muſt be to put them in Poſſeſſion, which cannot be till they are ſworn; and the Commons are to ſet the Price.

Mr. *Lacy*. All the modern Entries mention, *according to the Cuſtomal*.

C. J. *Eyre*. It is taking the Oath according to the Cuſtomal. Is there the Oath of Office of a Freeman, according to the Cuſtomal? If there is, let it be read.

Aſſociate reads the Freeman's Oath----

Mr. *Marſh*. Now read an Act of Ghueſtling.

C. J. *Eyre*. We'll have no Brotherhood and Ghueſtling: I know nothing of it. Let Mr. Town-Clerk explain it.

Mr. *Wellard* reads---

" At a Brotherhood held at *New-Romney*, the 8th of *July*, 1603.

" Whereas there are, in many of the Towns and Members of the " *Cinque Ports*, Men of Wealth, ſtayed, and of good Government, " dwelling within the ſame, who enjoy much Benefit of their ſo dwelling, *viz.* free from Payment of Fifteenths and Tenths, and from " being returned to appear at Aſſizes or Seſſions in the County where they " inhabit; and receive many other Privileges and Benefits, by reaſon " of their ſo inhabiting within the ſaid *Cinque Ports*, ancient Towns, or " Members, which otherwiſe they could not enjoy; and yet refuſe to be " Freemen of the ſame Town and Port where they dwell, and enjoy " the ſaid Benefit and Privileges; by reaſon whereof, divers of the " ſaid Towns, Ports, and Members, are unfurniſhed and unprovided " of ſufficient and able Men to execute and diſcharge ſuch Offices and " Services, as they are, by the Charters and Cuſtoms of the ſaid *Cinque* " *Ports*, Towns, and Members, bound to do: It is therefore at this " Aſſembly fully conſented and decreed, That, if the Mayor, Jurats, and " Commonalty, or the more Part of them, in any of the ſaid *Cinque* " *Ports*, Towns, and their Members, (or Bailiff, Jurats, and Com- " monalty, where no Mayor is, or the moſt Part of them) ſhall think " any Inhabitant or Inhabitants dwelling amongſt them, and in that " Port, Town, or Member, which ſuch Mayor and Jurats, or Bailiff " and Jurats, do govern, and ſhall by the more Voice of Mayor, Jurats, " and Commons, (or Bailiff, Jurats, and Commons, where no Mayor " is) chuſe ſuch their Inhabitant or Inhabitants to be Freeman or Free- " men of the ſaid Town where they ſo govern, and ſhall call the ſaid In- " habitant and Inhabitants, ſo to be choſen a Freeman or Freemen of the " ſaid Town, to their Court-Hall, and there, in full and open Court, " acquaint him and them, ſo choſen to be Freeman or Freemen, of their " ſaid Choice and Election, and do then and there require ſuch Perſon " or Perſons, ſo choſen for a Freeman or Freemen, to take the uſual " Oath of a Freeman in that Place, and he or they, ſo choſen, ſhall " not then and there, without further Delay, take the ſaid Oath, and " become a Freeman of the ſame Place, ſhall forfeit, to the Uſe of the " ſaid Town and Corporation where ſuch Default or Neglect ſhall hap- " pen, a Fine of 10*l.* of lawful Money of *England*. And ſo often as the " Mayor and Jurats, (or Bailiff and Jurats, where no Mayor is) after " ſuch Election or Choice of a Freeman or Freemen, as aforeſaid, ſhall " in full Court, there to be holden, proffer the Oath of a Freeman there " uſed to ſuch Perſon or Perſons ſo choſen as aforeſaid, and he or they, to " whom ſuch Oath ſhall be proffered, do not take the ſame Oath, and " become a Freeman as other Freemen of the ſaid Place, ſhall forfeit for " a Fine, to the Uſe of the ſaid Corporation where ſuch Neglect ſhall " be, for every ſuch Neglect, and not taking of his or their Oath, 10*l.* " of lawful Money of *England*; to be levied upon ſuch Perſon and Per- " ſons, ſo neglecting to take their Oaths, as Fines in the ſaid Place are " uſed to be levied."

Mr. *Lacy*. My Lord, we humbly ſubmit, we are intituled to the ſole Right. Inſtances have been produced, to ſhew that the Commons have a Right with the Mayor and Jurats; for all the Entries they have produced refer to the Book of Brotherhood and Ghueſtling, and all the Choices in that Book are by the Mayor and Jurats, who are to offer the Oath of a Freeman. Read the Act of Ghueſtling of the 21ſt of *July*, 1668.

Mr. *Wellard* reads----

" Brotherhood, or Ghueſtling, held at the ſaid Town and Port of " *New-Romney*, 21ſt *July*, 1668.

" Whereas, by a Decree of Brotherhood, made in the Year of our " Lord 1603, it is conſented to and decreed, That if the Mayor, Jurats, " and

"and Commonalty, (or Bailiff, Jurats, and Commonalty, where no "Mayor is) shall, by major Voice of such Mayor, Jurats, and Com-"mons, (or Bailiff, Jurats, and Commons, where no Mayor is) elect "and chuse any Inhabitant or Inhabitants, in their respective Corpora-"tions, to be Freeman or Freemen of the said Town, and shall call "the said Inhabitant or Inhabitants, so chosen a Freeman or Freemen "of the said Town, to their Court-Hall; and there, in full and open "Court, acquaint him and them of such Election, and shall then and "there require such Person or Persons, so chosen, to take the usual "Oath of a Freeman in that Place, and he or they shall not then and "there, without further Delay, take the said Oath, and become a "Freeman of that Place, shall forfeit, to the Use of the Corporation "where such Default or Neglect shall happen, for a Fine, the Sum of "10 *l.* And that, so often as any Inhabitant or Inhabitants, so elected "Freeman or Freemen in any of the said Towns, Ports, or Members, "shall refuse or neglect, (the said Oath being tendered to him or them "in Manner aforesaid) every such Inhabitant shall forfeit the like Sum "of 10 *l.* to be levied as in the said Decree is directed, and as by the "said Decree may more fully appear. Now, for that this Assembly "doth find that the said Decree is not so effectual to compel such Inha-"bitants to be made free in their respective Corporations where they do "inhabit, but that several Persons do evade the same, and the Penalty "therein contained, by refusing to appear in full and open Court, "where the said Oath is to be required and tendered, as aforesaid, and "by divers other subtle Devices; wherefore, for preventing such "Evasions and Devices for Time to come, and for the better uphold-"ing of several Corporations of the said Ports, Towns, and Members, "which otherwise may cease and be annihilated, it is now by this "Assembly fully decreed and ordered, That the said Penalty of Ten "Pounds, mentioned in the said recited Decree, is, and shall be, "by virtue hereof, imposed and levied upon every Inhabitant of any "of the said Ports, Towns, or Members, who shall be elected a "Freeman of such respective Corporation wherein he is Inhabitant, "according to the said ancient Decree; in case such Inhabitant or "Inhabitants, so elected, shall refuse or neglect to be and appear at "the next Court of Record to be holden in such Corporation wherein "he dwelleth, upon verbal or other Summons from the Mayor or "Bailiff of such Corporation, to be made by himself, his Serjeant, "or other Officer; or, upon Appearance at such Court, shall refuse "or neglect to take the Oath of a Freeman in Manner aforesaid: And "that, so often as such Inhabitant or Inhabitants, so elected free, shall "refuse or neglect to appear at any Court to be holden in such Town, "Port, or Member, where he or they inhabit, upon like Summons as is "last above-mentioned, or appearing, shall not take the Oath as afore-"said, they and every of them shall forfeit, for every such Offence "contrary to the Intent of this Decree, the like Sum of Ten Pounds; "which several Fines shall be levied by Warrant under the Seal of "Office of Mayoralty or Balliage of each Town or Member where the "same shall be forfeited, or in such other Manner as Fines in that Place "are usually levied."

C. J. *Eyre.* If the Mayor and Jurats call the Man, and he refuse, they may set a Fine upon him.

Mr. *Lacy.* My Lord, we humbly insist, the sole Right of Swearing and Admitting is in the Mayor and Jurats, or in the Mayor and two Jurats. Their Evidence is of admitting at a Common Assembly; and the Issue is not confined to the Mayor and Jurats only. The first Evidence we began with, was an Order of the Mayor, Jurats, and Commonalty, for the Mayor and Jurats to swear in a Freeman, and they did swear him in accordingly. The other Evidences given are of Instances, where the Mayor, Jurats, and Commonalty, all swore in. And we submit it to your Lordship, whether the Evidence of swearing in at the Common Assembly is not a concurrent Proof, that the sole Right is in the Mayor and Jurats; because the Mayor and Jurats must be Part of the Common Assembly: And if so, though the Commoners are not gone, yet the Swearing shall be construed to be before the Mayor and Jurats; *Reddendo singulo singulis.* Your Lordship sits Judge of *Nisi prius*, and takes a Fine; it is not as Judge of *Nisi prius*—

C. J. *Eyre.* The Common Assembly, as Mayor, Jurats, and Commonalty, cannot hold a Court of Record. An Assembly can act only as that Assembly. If a select Number take upon them to do an Act of the Corporation, that will be a void Act.

Mr. *Marsh.* My Lord, the second Issue is, Whether *Gibbon* was sworn and admitted before the Mayor and two Jurats?

C. J. *Eyre.* *Gibbon*'s Plea is, That he was intituled, as having married the Daughter of a Freeman; that the Mayor and Jurats had a Right to swear; and that he was sworn in accordingly.

Mr. Serj. *Darnell.* The Defendant was not sworn and admitted as by the Plea is alledged. Read the Plea.

(Associate *reads* Gibbon's *Plea, as before opened.*)

C. J. *Eyre.* The Question is, Whether this be the due Manner and Form alledged in the Plea?

Mr. *Lacy.* We have a Right, but not a *sole Right.*

Mr. Serj. *Darnell.* You have pleaded, you have a Right by marrying a Freeman's Daughter; and that the Mayor and Jurats have the *sole Right* of swearing and admitting you to that Right; and that you were sworn and admitted in due Form: Therefore you were admitted by the Mayor and Jurats, who had the *sole Right.*

Mr. Serj. *Baynes.* The Question is, Whether they were duly admitted and sworn by *Coates* and two Jurats? And if they were, the Right must be in the Mayor and two Jurats only. Read the Plea.

(Associate *reads* Gibbon's *Plea, as before.*)

C. J. *Eyre.* That he was admitted in due Manner and Form; so the Plea is.

Mr. Serj. *Darnell.* My Lord, by the Plea, he alledges the *sole Right* to be in the Mayor and Jurats, and that he was admitted in due Manner and Form; which must be by the Mayor and Jurats, who had the *sole Right.*

Mr. *Wynne.* My Lord, The second Issue is, Whether, having a Right, he was admitted in due Manner and Form? The Replication answers, That he was not admitted and sworn in Manner and Form as by the Plea is alledged; which would make this an absurd or immaterial Issue; and therefore, in Construction of Law, it is only one Issue.

Mr. *Marsh.* We submit it to your Lordship, Whether the second Issue involves any Matter of Right? The Matter is before the Jury; and if so, we are not at Liberty to go to the second Issue, and the Fact of Completing remains still; and it is necessary to prove that Issue. It may be thought immaterial by the Gentlemen of the other Side; but, if the first Issue is for us, the other will be absolutely necessary.

Mr. *Lacy.* My Lord, the first Issue is, Whether *Gibbon* was sworn and admitted in due Manner and Form before the Mayor and two Jurats?

C. J. *Eyre.* It was not in due Manner and Form, unless they had a Right.

Mr. *Lacy.* My Lord, we humbly hope we have given a sufficient Evidence, that there is a sufficient Right in the Mayor and two Jurats; and therefore have proved, that *Gibbon* was duly admitted.

Mr. *Smith.* If the first Issue should be found against us, Will it not be true, that there is a Right, if not a *sole Right*, in the Mayor and Jurats? And if so, the Defendant *Gibbon* was sworn in that Manner, and so he insists upon it.

Mr. *Marsh.* My Lord, it is plain there was a Right in the Mayor and two Jurats. The Plea saying it was a *sole Right*, we submit it to your Lordship, Whether that contradictory Evidence could destroy our Issue, which had tied it down? But this surely cannot in any Sort affect the second Issue, Whether it was in due Manner and Form? And, if we prove he was sworn in any due Manner, we hope the Jury will find for us.

C. J. *Eyre.* It must be in the due Manner you have set forth by your Plea, which must be according to the Right asserted to be in the Issue. We must not suppose there are two Rights. It must be in the due Manner upon the Construction of the Plea; and I shall leave it upon my own Sense of the Matter; I shall not lump it.

Gentlemen of the Jury, This is an Information against *Gibbon*, in the Nature of a *Quo Warranto*, for exercising of the Office of a Freeman in *New-Romney*, to which he was not intituled; and for usurping the Exercise of that Office.

To this he pleads, he is intituled to hold the same, and to exercise this Office, because he had married the Daughter of a Freeman, and in her, by the Custom, is intituled; and that the Right of admitting and swearing is in the Mayor and two Jurats, and that by them he was duly admitted into this Office. To this Plea there has been a Replication, which ends in a Demurrer; so not brought to be tried.

The King replies, That the sole Right of Swearing and Admitting is not in the Mayor and Jurats; and therefore the Defendant is not duly admitted to the Right of a Freeman.

The Right *Gibbon* has is not now in any Issue; but, supposing he had such a Right, Whether he should be sworn by the Mayor and two Jurats, exclusive of any other People? And the other Issue is about the Defendant's being duly admitted. If the Mayor and Jurats have a *sole Right* to admit, then *Gibbon* is duly admitted; and if they have not that *sole Right*, then he is not duly admitted, in the Sense of this Plea.

To prove the *sole Right* to be in the Mayor and Jurats, the Defendant has produced several Books; by which it appears, several Freemen have been admitted by the Mayor and Jurats *solely.* He particularly instances,

8 *March*, 1679, at a Common Assembly of the Mayor and Jurats and Commonalty of the Town and Port of *New-Romney*, in the Common Place, *Peter Martin* is elected, and ordered to be sworn in by the Mayor and Jurats.

3 *December*, 1694, another Instance of a Freeman admitted and sworn by the Mayor and Jurats.

16 *May*, 1698, another.

Another the 7th of *February*, 1708.

Another the 13th of *June*, 1715.

6 *August*, 1717, one *Widcomb* and another.

18 *November*, 1727, *Thomas Wilson.*

7 *June*, 1731, *William Gray.*

And there are other Instances, the 18th of *March*, 1668, and the 22d of *July*, 1683.

So here are People sworn and admitted by the Mayor and Jurats, but the Election is at a Common Assembly; and People elected have been chosen at such an Assembly, and must be so elected, unless they have another Right. But the Common Assembly have not a Right to swear these People; but the *sole Right*, *Gibbon* says, (for Swearing and Admitting are synonymous) is in the Mayor and Jurats.

The other Side say, it should be by the Common Assembly, rather than by the Mayor and Jurats only; and to shew you this, they have called for several Books, and shewn more Instances of admitting by the Mayor, Jurats, and Common Assembly, than by the Mayor and Jurats alone; and many Instances of admitting by the Common Assembly.

And this Swearing is a prescriptive Right, no Directions being in the Charter about it.

And the Crown says, that, by ancient Usage, he ought to be admitted by the Common Assembly, and not by the Mayor and Jurats solely; 1679 is the only Admittance.

But they instance, at *Lady-Day* 1571, at a Common Assembly, at the Election of Mayor and Jurats, several People, *John Amersham* and others, were admitted; *admissus et juratus.*

Soon after, 1579, at another Common Assembly, *Thomas Master admissus ad franchis', et juratus.*

In Book N°. 7, and in Book N°. 4, is an Election on the 25th *March*, 22 *Jac.* I. and there certain Men were admitted and sworn, one *Smith*, *Labden*, and one *Duke* paid his 3*s.* 4*d.*

Another Instance, in 162-, of a Person admitted and sworn at this Common Assembly.

By their *Admittance* I understand *elected.*

Another, in 1659, admitted to the Franchise, and sworn.

Another, the 15th of *October*, 1660, four Persons admitted to the Franchise then.

Another, 29 *May*, 1666, *Richard Strode* having taken the Oath of Freedom, according to the Custom.

2 *October*, 1699, *John Gray*, free-born, was admitted, and took the Oath: Though he was not intituled by their Election, but was free-born, yet the Common Assembly swore him.

4 *July*, 1683, at the Common Aſſembly, *John Walker*, free-born, and three others; they ſwore him and the others, and they were admitted.

4 *November*, 1704, *Whitfield* was admitted, and took the Oath.

10 *October*, 1710, *Robert Furneſe* was admitted.

20 *April*, 1713, Mr. *Watſon* admitted.

23 *March*, 1721, Mr. *Papillon* was admitted in the ſame Manner.

Which ſhews, the *ſole Right* was not in the Mayor and Jurats; becauſe the Common Aſſembly exerciſed this at the ſame Time, and did it before the Mayor and Jurats.

In 1679, a Perſon elected was ordered to be ſworn by the Mayor and Jurats: But ſure they have not the *ſole Right*, there being more Precedents againſt the *ſole Right* than for it.

The ancient Practice has been to ſwear them by the Common Aſſembly, and no modern Practice can take away that Right.

If you think the *ſole Right* is in the Mayor and Jurats, then you muſt find for the Defendant.

But, if you think it to be a concurrent Right with the Common Aſſembly, then the Iſſue is againſt the Defendant; for the Mayor and Jurats have not the *ſole Right*.

The ſecond Iſſue is, Whether the Defendant was ſworn by the Mayor and Jurats? But this depends on the former Iſſue; for, after the Mayor and Jurats Right is ſet forth to be the *ſole Right*, and the Defendant ſays he was duly admitted, it is, he was admitted according to the Right inſiſted on by the Plea. And if the Mayor and Jurats have not the *ſole Right*, we are not to ſuppoſe they have any *other Right*; for the Defendant has confined himſelf to the *ſole Right*. He ſays, he was duly admitted; which muſt be by the Right ſet forth by the Plea, which is the Right of *Swearing ſolely* by the Mayor and Jurats.

The Queſtion therefore is, Whether the Mayor and Jurats have the *ſole Right?*

If you find for the King, or for the Defendant, in the firſt Iſſue, you muſt find the ſecond Iſſue in the ſame Manner.

Verdict for the King in both Iſſues.

NUMBER XVII.

The KING againſt RICHARD ELLES,

Upon an Information, in the Nature of a *Quo Warranto*, by the King's Coroner and Attorney, againſt the Defendant, to ſhew by what Authority he claims to be Mayor of the Town and Port of *New-Romney*, at the Relation of *Benjamin Man*. Tried at *Kent* Aſſizes, held at *Maidſtone*, the 6th of *Auguſt*, 1734, before the Right Hon. the Lord Chief Juſtice *Eyre*.

Mr. *Knowler*.

MAY it pleaſe your Lordſhip, and you Gentlemen of the Jury; This is an Information, in the Nature of a *Quo Warranto*, againſt the Defendant *Elles*, to ſhew by what Authority he claims to be Mayor of the Town and Port of *New-Romney*: And the Information ſets forth, That the Town and Port of *New-Romney* is an ancient Town and Port, and one of the five ancient Ports of this Kingdom; and that the Barons and Inhabitants of the ſaid Town and Port are, and for ten Years laſt paſt, and long before, were, and have been, one Body Corporate and Politic, in Deed and in Name, by the Name of the Mayor, Jurats, and Commonalty of the Town and Port of *New-Romney*, in the County of *Kent*; and that the Office of Mayor of the ſaid Town and Port is, and for and during all the Time aforeſaid hath been, a public Office, and an Office of great Truſt and Preheminence, within the ſaid Town and Port, touching the Rule and Government of the ſaid Town and Port, and the Adminiſtration of public Juſtice within the ſame Town and Port; and that *Richard Elles*, of the Town and Port of *New-Romney* aforeſaid, Yeoman, on the 19th of *April*, in the ſeventh Year of his preſent Majeſty, at the Town and Port of *New-Romney* aforeſaid, did uſe and exerciſe, and from thence continually, to the Time of filing the Information, hath uſed and exerciſed, and yet doth there uſe and exerciſe, without any legal Warrant, Royal Grant, or Right whatſoever, the Office of Mayor of the ſaid Town and Port, and to have, uſe, and enjoy all the Liberties, Privileges, and Franchiſes thereof; which the ſaid *Richard Elles* upon his Majeſty hath uſurped, in Contempt of his Majeſty, and to the great Damage and Prejudice of his Royal Prerogative, and alſo againſt his Crown and Dignity: Whereupon he prays Proceſs, *&c.*

To this the Defendant has pleaded, That the ſaid Town and Port is an ancient Town and Port, and one of the Five ancient Ports of this Kingdom; and that the Barons and Inhabitants of the ſaid Town and Port are, and for the Space of ten Years laſt paſt, and long before, were, and have been, one Body Corporate and Politic, by the Name of Mayor, Jurats, and Commonalty of the Town and Port of *New-Romney*, in the County of *Kent*; and the Office of Mayor to be a public Office, and an Office of great Truſt and Preheminence, as by the Information is ſuppoſed.

And that the late Queen *Elizabeth*, by her Letters Patent, dated at *Northaw*, the 4th of *Auguſt*, in the fifth Year of her Reign, did will and grant, that the *Barons and Inhabitants* of the ſaid Town and Port (who before were incorporated by the Name of Jurats and Commonalty, as ſhe was informed) from thenceforth for ever ſhould and might be one Body in itſelf Incorporate, in Deed and Name, by the Name of Mayor, Jurats, and Commonalty of the Town and Port of *New-Romney*, in the County of *Kent*.

And thereby made and ordained *John Cheſſman*, then one of the ſaid Jurats, Mayor of the ſaid Town and Port, to have and exerciſe that Office until *Lady-Day* then next enſuing, if he ſhould ſo long live; and did thereby make, ordain, approve, and confirm *John Percker*, *William Ipſe*, *George Holton*, *Laurence Fane*, and *Jeffery Tomkin*, then Jurats of the ſaid Town and Port, to have and exerciſe that Office during their reſpective Lives, in Manner and Form as the Jurats of the ſaid Town before that Time exerciſed their ſaid Offices.

And thereby willed and granted, that upon *Lady-Day* then next enſuing, in the Pariſh-Church of *St. Nicholas*, within the ſaid Town and Port, one of the Jurats of the ſaid Town and Port ſhould and might be choſen Mayor, by the Jurats and Commonalty of the ſaid Town and Port, for one whole Year then next enſuing; which ſaid Jurat, ſo elected to be Mayor, if he ſhould be preſent, ſhould take his corporal Oath, for the due Execution of his Office, before his Predeceſſor, in like Manner and Form as the Mayor of the Town and Port of *Sandwich* uſed to take it; and if ſuch Perſon, ſo elected, ſhould not be preſent, then at the next Court to be holden within the ſaid Town and Port: And ſo from Year to Year, and from Time to Time, the Mayor ſhall be choſen for ever.

And that every one of the Jurats, from Time to Time, from thenceforth for ever, ſhould be choſen by the Commonalty, or the greater Part of them there preſent, out of themſelves, in like Manner and Form as before that Time they had been uſed to be choſen there; yet ſo that the Jurats at one Time ſhould not be, in the whole, above the Number of Twelve, beſides the Mayor.

And the Defendant by his Plea further ſaith, That upon the 25th of *March* laſt, and long before, he was, and ſtill is, one of the Jurats of the ſaid Town and Port: And ſo being a Jurat as aforeſaid, and *John Coates*, Eſq. then being Mayor, and then one of the Jurats, the then Jurats and Commonalty aſſembled themſelves together in the Pariſh-Church of *St. Nicholas*, within the ſaid Town and Port, for the Year then next enſuing, according to the Tenor of the ſaid Letters Patent; and being ſo aſſembled, then and there, at that Aſſembly, the major Part of the ſaid Jurats and Commonalty then preſent there (of which ſaid Jurats the ſaid *John Coates*, the then Mayor, then was one, and preſent there) choſe him the ſaid *Richard Elles*, then being one of the Jurats as aforeſaid, to be Mayor of the ſaid Town and Port for the Year then next enſuing, according to the Form and Effect of the ſaid Letters Patent: And the ſaid *Richard Elles* being ſo choſen into the Place and Office of Mayor of the ſaid Town and Port as aforeſaid, after his ſaid Election, to wit, then and there, at the ſame Aſſembly in the Pariſh-Church aforeſaid, he the ſaid *Richard Elles* was duly ſworn into his ſaid Office by *Robert Loftie*, then Town-Clerk of the ſaid Town and Port, before the ſaid *John Coates*, being the laſt Predeceſſor of the ſaid *Richard Elles* in the Office of Mayor of the ſaid Town and Port; and the ſaid *Richard Elles*, then and there, at the ſaid Aſſembly, took his corporal Oath, for the due Execution of his ſaid Office of Mayor of the ſaid Town and Port, before the ſaid *John Coates*, his laſt Predeceſſor as aforeſaid, the ſaid Oath being adminiſtered by the ſaid Town-Clerk as aforeſaid, (the ſame being the like Manner and Form, in which the Mayor of the Town and Port of *Sandwich*, in the ſaid Letters Patent named, at the Time of making the ſaid Letters Patent, was, and ever ſince hath been, and been uſed and accuſtomed to be ſworn into the ſaid Office of Mayor of the ſaid Town and Port of *Sandwich*) according to the Form and Effect of the Letters Patent aforeſaid: And by virtue thereof, the ſaid *Richard Elles*, after his Election and Swearing aforeſaid, upon the ſaid 25th of *March* laſt, and from thence continually afterwards, until the Time of exhibiting the Information, at the Town and Port aforeſaid, was, and ſtill is Mayor, and by that Warrant claims to be Mayor of the ſaid Town and Port; and traverſes the Uſurpation.

The King replies, That the ſaid *Richard Elles was not one of the Jurats of the ſaid Town and Port*, in Manner and Form as he hath alledged by Pleading; and prayeth that this may be inquired of by the Country; and the ſaid *Elles* prayeth the like.

So that, Gentlemen, the firſt Iſſue you are to try is, Whether the ſaid *Richard Elles* was one of the Jurats of the Town and Port of *New-Romney*, in Manner and Form as he hath alledged by his Plea?

And the ſecond Iſſue is, Whether the major Part of the Jurats and Commonalty of the ſaid Town and Port did chuſe the ſaid *Richard Elles* to be Mayor of the ſaid Town and Port for the Year then next enſuing, according to the Form and Effect of the ſaid Letters Patent, in Manner and Form as the ſaid *Elles* hath alſo alledged by Pleading?

Gentlemen, the third Iſſue is, Whether the ſaid *Richard Elles* was duly ſworn into the Office of Mayor of the ſaid Town and Port, in Manner and Form as he hath alledged by Pleading?

And the fourth Iſſue is, Whether the ſaid *Richard Elles* did take his corporal Oath, for the due Execution of the ſaid Office of Mayor of the ſaid Town and Port, according to the Form and Effect of the Letters Patent aforeſaid, in the Manner and Form as he hath alledged by Pleading?

And, Gentlemen, the fifth Iſſue you are to try is, Whether the Manner and Form, in which the ſaid *Richard Elles* hath alledged himſelf in his Plea to have been ſworn into the Office of Mayor of the ſaid Town and Port of *New-Romney*, be the like Manner and Form, in which the Mayor of the Town and Port of *Sandwich*, in the ſaid Letters Patent named, at the Time of making the ſaid Letters Patent, was, and ever ſince hath been, and been uſed and accuſtomed to be ſworn into the ſaid Office of Mayor of *Sandwich* aforeſaid, in Manner and Form as he hath alledged by Pleading?

If therefore, Gentlemen, Evidence is laid before you, to prove that the Defendant *Elles*, being one of the Jurats of this Town and Port,

was duly elected and ſworn into the Office of Mayor, then, Gentlemen, you will find a Verdict for him.

Mr. Serj. *Darnell.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury; I am Counſel for the Defendant *Elles*; and you will pleaſe to obſerve, that, by very great Art, theſe Iſſues are all turned upon the Defendant to prove. By his Plea he ſets forth the Conſtitutions of the Town and Port of *New-Romney*; that he was duly choſen into the Office of Mayor, and had taken the Oaths. But the other Side turn every Thing upon him by Proof: They ſay, he was not a Jurat; that the major Part of the Jurats and Commonalty did not chuſe him; and then, merely to multiply Iſſues, and for Delay, ſay, You are not a Jurat; the major Part of the Jurats and Commonalty did not chuſe you; you are not duly ſworn; that he did not take his Oath of Office according to the Form of the Letters Patent; that the Manner and Form, in which the ſaid *Richard Elles* is alledged by his Plea to be ſworn into his Office, is not according to the Cuſtoms of *Sandwich*.

My Lord, and Gentlemen of the Jury, there has lately been a very great Conteſt in the Court of *King's-Bench* about the Officers of this Town; and there were two Candidates for this Office of Mayor, one *Wightwick*, and the Defendant *Elles*; and upon the Poll it appeared, that *Elles* had eleven Votes, and *Wightwick* ten; ſo that *Elles* was choſen Mayor by the Majority of one Voice: But the preſiding Officer ſaid, he had a Man who was appointed to take the Poll; by which Poll it appeared, that *Gibbon* and *Darby*, who had never been allowed to be Freemen, had polled; and then, upon that Poll, there were twelve Votes for *Wightwick*, and Eleven for *Elles:* upon which the Oath of Office was adminiſtered, and both Candidates were ſworn.

Gentlemen, on Application to the Court of *King's-Bench*, *Elles* by Affidavits made it appear, that *Gibbon* and *Darby* had no Right to Freedoms; on which the Court declared, the Point would turn on *Gibbon*'s Right; and then the Queſtion was, Whether Perſons marrying Freemen's Daughters had a Right to Freedoms? and *Darby*'s Right was to abide the Fate of that. But they have declined this, and turn all the Circumſtances of proving upon us. We ſhall therefore, Gentlemen, fully prove every one of theſe Iſſues to you by Witneſſes; in the Courſe of which Evidence, you will hear, Gentlemen, of very great Sums of Money offered to engage thoſe Freemen, who were in *Elles*'s Intereſt, to vote for *Wightwick*. We ſhall prove to you, Gentlemen, that one hundred Pounds was offered for one Vote, and even ſo large a Sum as one thouſand Pounds for another, in order to procure *Wightwick* to be Mayor.

Under theſe Circumſtances, Gentlemen, two *Mandamus*'s iſſued from the Court of *King's-Bench* to admit theſe two Men; for they all agreed there was no Right by Marrying; and then theſe two Perſons were ſworn in by virtue of theſe *Mandamus*'s.

If therefore, Gentlemen, we ſhew there was a Majority for *Elles* upon the Poll as taken by the Town-Clerk; notwithſtanding the Pocket-Poll they have ſet up; we hope you'll take it upon the Foot of the Town-Clerk's Poll, and find a Verdict for the Defendant accordingly.

Mr. Serj. *Baynes.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury; I am Counſel in this Caſe with the Defendant: And this is an Information granted by the Court of *King's-Bench*, in order to procure Peace in *Romney*, where there were two acting Mayors at one and the ſame Time; and the Court granted this Information, to try which of them was duly elected. Upon this five Iſſues are joined: And the firſt Iſſue you are to try, Gentlemen, is, Whether *Elles* was a Jurat? And we ſhall ſhew he was firſt elected a Freeman, and then, in due Manner and Form, a Jurat. The ſecond Iſſue is, Whether the Mayor, Jurats, and Commonalty of the Town and Port of *New-Romney*, did chuſe the Defendant *Elles* Mayor? Gentlemen, in this Town, we ſee, there are twenty-one Voters: *Wightwick* ſtood in oppoſition to *Elles*; the Town-Clerk took the Poll; and on caſting it up, there appeared to be for *Elles* eleven Votes, and for *Wightwick* ten; ſo that *Elles* was duly choſen Mayor. But another Perſon pretended to take the Poll, and ſet down ſuch Perſons as he thought fit, and amongſt them *Gibbon* and *Darby*, as Voters for *Wightwick*; and that caſt the Majority of Voters on *Wightwick:* But *Darby* and *Gibbon*'s Votes ought not to have been taken, their Right being by marrying Freemen's Daughters; whereas there is no ſuch Cuſtom, nor ever was, nor ever attempted till the Year 1728, when it was ſet up by this *Gibbon:* And thereupon the Corporation ordered it to be entered in their Books, that he was not to be admitted, for that there was no ſuch Cuſtom; which, we ſhall call our Witneſſes, and fully prove to you.

The third Iſſue, Gentlemen, is, Whether the Defendant *Elles* was duly ſworn into the Office of Mayor, in Manner and Form as by his Plea he hath alledged? And we ſhall ſhew you, that he was ſworn by the Town-Clerk, before the Mayor.

The fourth Iſſue is, Whether *Elles* took his corporal Oath, for the due Execution of the Office of Mayor, according to the Form and Effect of the Letters Patent?

The fifth Iſſue is, Whether the Defendant *Elles* was ſworn according to the Manner and Form as the Mayor of *Sandwich* is ſworn?

Gentlemen, we ſhall call our Witneſſes, and make it plainly appear, that theſe Iſſues are for the Defendant *Elles*; and then we hope you will find a Verdict for him accordingly.

Mr. *Marſh.* My Lord, in order to be a Jurat, he muſt be a Freeman.

C. J. *Eyre.* Was he a Jurat?——Mr. *Knowler.* He acted as a Jurat.

Mr. Serj. *Darnell.* His acting as a Jurat is Evidence, *prima facie*, that he was a Freeman.

C. J. *Eyre.* Will you admit he was a Jurat?

Mr. *Marſh.* They may go on; I ſhall make no Bargains.

Mr. Serj. *Darnell.* Swear Mr. *Loſtie.* *(Which was done.)*

Mr. *Marſh.* What do they call him to? We object to him.

Mr. Serj, *Darnell.* To prove an Aſſembly-Book. Mr. *Loſtie*, is that the Entry of *Elles*'s Election to be a Jurat?---Mr. *Loſtie.* Yes.

Mr. Serj. *Darnell.* Read it,

Aſſociate reads ——

"*John Tooke*, Mayor. At a Common Aſſembly held the 23d *December*, "1730, Mayor, Jurats, and Commonalty duly elected *Edward Batchelor* "and *Richard Elles* to be Jurats."

Mr. *Lacy.* The Election-Day is the 25th of *March.*

C. J. *Eyre.* This proves an Election the 23d of *December*, 1730. Was he duly ſworn?

Mr. Serj. *Baynes.* Yes, my Lord. Read his Swearing.

Aſſociate reads —

"4 *January*, 1730, *Batcheler* and *Elles* took the Oath of Jurats."

C. J. *Eyre.* Go on, Iſſue by Iſſue: Firſt, Whether *Elles* was a Jurat? They inſiſt, by Cuſtom, the Jurats muſt be ſworn every Year: Prove it.

Mr. Serj. *Darnell.* My Lord, they have given us Notice, that every Qualification of the Jurats and Freemen would be objected to.

Mr. *Knowler.* A Jurat (*ſo MS. Q.* Mayor) is ſaid to be an annual Officer. We ſhall prove, my Lord, that *Elles* was choſen for the Year 1734.

C. J. *Eyre.* Mr. *Wellard*, you muſt not talk more than neceſſary.

Mr. *Marſh.* It is neceſſary to be a Freeman, in order to be a Jurat.

Mr. Serj. *Darnell.* A Man is a Jurat; Is it neceſſary he be a Freeman, in order to be qualified for a Jurat?

Mr. *Marſh.* If the Entry be ſufficient, it is needleſs to go on.

C. J. *Eyre.* The Qualifications of a Jurat are, A Jurat he muſt be, to be a Mayor; for a Jurat, he muſt be a Freeman.

Mr. *Marſh.* Theſe Points are often diſputed.

C. J. *Eyre.* Diſpute what you will; but he was owned a Freeman by the Corporation when he was made a Jurat.

Mr. *Marſh.* He was ſworn before the Mayor and Jurats only.

C. J. *Eyre.* The Entries are all ſo. Nothing has been read to ſhew they might not ſwear him. If he was ſworn by the Mayor and Jurats, that muſt be proved: We had nothing of that in the laſt Cauſe.

Mr. Serj. *Darnell.* The Queſtion is, Whether the major Part of the Mayor, Jurats, and Commonalty, did duly chuſe him Mayor, according to the Form and Effect of the Letters Patent? And, in order to prove that he was duly choſen, we are to ſhew what were the Number of Jurats and Freemen that voted for *Elles*; for which Purpoſe I ſhall call Mr. *Loſtie.*

Mr. *Marſh.* We object to *Loſtie:* He was one of the Perſons who voted for *Elles*, and therefore has given his Opinion already.

C. J. *Eyre.* I never knew it denied a Corporation-Man that voted; he is a legal Witneſs.

Mr. Serj. *Darnell.* Mr. *Loſtie*, was you preſent at the laſt Election of a Mayor for *Romney?*---Mr. *Loſtie.* Yes.

Mr. Serj. *Darnell.* Where was it made?---Mr. *Loſtie.* At *St. Nicholas.*

Mr. Serj. *Darnell.* What Number of Freemen were preſent and voted?

Mr. *Loſtie.* Twenty-one.

Mr. *Lacy.* Are you Town-Clerk of *Romney?* Do you keep a Book?

Mr. *Loſtie.* Yes.

Mr. *Lacy.* Where is that Book?--Mr. *Loſtie.* Mr. *Wellard* took it away.

Mr. *Wellard.* Here it is.

Mr. *Loſtie.* Mr. *Wellard* and Mr. *Wightwick* took away the Books, and Mr. *Wightwick* has entered the Proceedings of that Day himſelf.

C. J. *Eyre.* Are there any Entries made by you of the Proceedings of that Day?---Mr. *Loſtie.* I have a Copy of the Poll, my Lord.

C. J. *Eyre.* Why were they not entered?

Mr. *Loſtie.* Becauſe *Coates* inſiſted I ſhould take the Poll according to the Minutes they had taken.

C. J. *Eyre.* And you did not think it right?

Mr. *Loſtie.* No, my Lord; becauſe they had taken *Gibbon* and *Darby*'s Votes, who, I thought, had no Right to vote.

Mr. Serj. *Darnell.* You take an Oath; what is that Oath?

Mr. *Loſtie.* To enter faithfully and right all the Proceedings of the Corporation.

C. J. *Eyre.* You did not make an Entry of the Poll, becauſe every body did not agree to it; but you took a Copy of the Poll. Read the Oath of the Town-Clerk.

Aſſociate reads —

Mr. *Knowler.* Read the Poll again.

Mr. *Loſtie. Wightwick* and *Elles*—The Votes for Mayor—

For *Wightwick:*

John Coates, Eſq;
Wightwick,
Batchelor,
Rutton,
Baſſett,
Joſhua Coates,
Odiham Coates,
Wilſon,
Haffenden,
Dree.

Theſe were all that voted for *Wightwick*, but *Gibbon* and *Darby*, who, I apprehended, had no Right to vote; and therefore I did not inſert their Names.

For *Elles:*

Himſelf,
Robert Maſcall,
Norman,
Tookey,
Smith,
John Maſcall,
Weeden,
Langdon,
Loſtie,
Benjamin Cobb,
William Gray.

Mr. *Marſh. Darby* and *Gibbon* were there, but you did not take their Votes ---Was Nobody elſe there? Did not Mr. *Papillon* and *Wellard* ſend, that they might be admitted to come to exerciſe their Franchiſe of voting?

Mr. *Lacy.* I deſire to ſee the Poll-Paper, the very Paper you took in the Church, Mr. *Loſtie.*

(*Mr.* Loſtie *produces the Poll-Paper, as before.*)

Mr. *Lacy.* Did not you take another Liſt or Poll?

(*Mr.* Loſtie *produces another.*)

Mr. *Lacy.* He took one Liſt, and then, by *Elles*'s Direction, took another. Read it.

Mr. Loſtie *reads another Poll* —

For *Wightwick:*

John Coates, Eſq;
Wightwick,
Batchelor,
Rutton,
Baſſett,
Joſhua Coates,
Odiham Coates,
Wilſon,
Haffenden,
Dree,
John Darby,
John Gibbon,
Papillon,
Wellard.

For *Elles:*

Elles,
Robert Maſcall,
Norman,
Tookey,
Smith,
John Maſcall,
Weeden,
Langdon,
Loſtie,
Benjamin Cobb,
William Gray.

Mr.

Mr. *Marſh.* Where does this Aſſembly meet?
Mr. *Loſtie.* In the South Chancel of *St. Nicholas.*
Mr. Serj. *Darnell.* Is the Door uſually kept open, or ſhut?
Mr. *Loſtie.* Shut, to prevent People coming in, who have no Buſineſs.
Mr. *Smith.* Which of the two Polls did you minute down firſt?
Mr. *Loſtie.* The laſt-delivered.

Mr. *Marſh.* My Lord, this is the principal Iſſue; and we object to the Evidence of this Perſon who voted for this Mayor. He has given his Opinion already; and therefore I ſubmit it to your Lordſhip, whether he is a legal Evidence? Or otherwiſe we inſiſt, the Perſons taken down as Pollers, that they are more in Number than he has given an Account of. According to his Liſt, they are but ten; but there muſt be four Votes more added, two of which are Perſons not numbered by him.

My Lord, *Darby*'s and *Gibbon*'s Rights to vote depend upon their being free of this Corporation; and if we ſhew they are free, and are admitted, it will be ſufficient Reaſon for putting them on the Poll for *Wightwick*; and then *Elles* can't be Mayor. Beſides, there is Mr. *Papillon*'s Right, who was not in the Church, becauſe the Door was ſhut within ſide; and Mr. *Wellard* was alſo a Freeman, and he could not come in, the Door being ſhut. We ſhall ſhew you, Gentlemen, their Qualification, and that they could not get into the Church; that they went to the Door, but there was no Admiſſion to be had; that they ſent in a Letter to the Mayor, and demanded Admittance; and if they had been let in, they had voted for Mr. *Wightwick*; and they having a Right, and aſſerting that Right, theſe Votes ought to be allowed to them.

In the firſt of the late King, there was the Caſe of the Mayor of *Hythe* tried before my Lord *Macclesfield* at this Place. Two Perſons offered their Votes at the Poll, and being refuſed by the preſiding Officer, the Court was of Opinion, they were good Votes. And therefore we humbly hope your Lordſhip will allow theſe to be good Votes, and, in conſequence, that the Jury will find for us.

Mr. *Lacy.* The Iſſue now before your Lordſhip is, Whether the major Part of the Jurats and Commonalty did, or did not, chuſe the Defendant *Elles* Mayor? By *Loſtie*'s Poll it appears, there were eleven Votes for *Elles*, and ten for *Wightwick*: So that, if either of the four Votes diſallowed by him ſhall appear to be good, then, Gentlemen of the Jury, they do not prove their Iſſue. As to Mr. *Papillon*, he is a Freeman, admitted and ſworn; and though his Vote was refuſed, he tendered it, and ſent in a Note in Writing, ſignifying to the Mayor, that he voted for *Wightwick*, and is therefore a good Vote. And as to *Darby* and *Gibbon*, we ſubmit, whether, being ſworn, they are not in the Exerciſe of their Office, and ought to be allowed good Votes. We ſhall call our Witneſſes, and ſhew the Entries of *Gibbon* and *Darby*.—Mr. *Loſtie*, look upon the Book; Is it your Hand-writing?

Mr. *Loſtie.* Yes. Reads ——

" *J. Coates*, Mayor. Be it remembered, at a Court of Record held " the 25th of *March*, 1734, the Corporation having been ſerved with " a Writ of *Mandamus*, *Gibbon* and *Darby*, demanding their Freedoms, " were admitted and ſworn."

Mr. *Marſh.* Where is Mr. *Popillon* and Mr. *Wellard*'s Entry?
C. J. *Eyre.* *Gibbon* and *Darby* were admitted before the Election?
Mr. *Loſtie.* Yes, my Lord.
C. J. *Eyre.* How came you, then, to refuſe their Votes?
Mr. *Loſtie.* Becauſe I thought there was an Order made, that they ſhould not be admitted to vote.
C. J. *Eyre.* Were they elected by the Mayor and Jurats?
Mr. *Loſtie.* Never, my Lord.
Mr. *Wellard.* Read my Election, and then read my Swearing.

Aſſociate reads ——

" *Nicholas Durrant*, Mayor. At a Common Aſſembly of the Town " and Port of *New-Romney*, in the Common Place, 20 *October*, 1720, " *Nicholas Durrant*, Mayor, *&c.* elected *Charles Wellard*, an Inha- " bitant and Town-Clerk, to be a Freeman of this Town and Port; " and he was ordered to be ſworn, *more ſolito*, according to Brotherhood " and Ghueſtling.

" 19 *December*, 1720, he was ſworn and admitted."

Mr. Serj. *Darnell.* Is that the Aſſembly-Book?
Mr. *Wellard.* Yes.
Mr. Serj. *Darnell.* My Lord, all the Entries of ſwearing theſe People are in the Aſſembly-Book, and therefore it is but a delegated Power.
Mr. *Lacy.* Read the Mandate for chuſing two Barons to ſend to Parliament.

Aſſociate reads ——

" Whereas a Mandate for chuſing two Barons was read, the Mayor " and Jurats ——"

Mr. *Marſh.* Read Mr. *Papillon*'s Election and Swearing.

Aſſociate reads ——

" *New-Romney*, ſſ. Mayor. At a Common Aſſembly " of the ſaid Town and Port of *New-Romney*, held in the Common " Place there, the 23d of *March*, 1731, elected *David Papillon* a Free- " man of this Town and Port; and he was ſworn and admitted, *more* " *ſolito*, according to Brotherhood and Ghueſtling."

Mr. Dodd *called and ſworn.*

Mr. *Marſh.* Were you preſent at the laſt Election for Mayor?
Mr. *Dodd.* Yes.
Mr. *Marſh.* Was Mr. *Papillon* there?
Mr. *Dodd.* Yes; but he was not in the Church.
Mr. *Marſh.* And how came he not to get in?
Mr. *Dodd.* Becauſe the Door was locked.
Mr. *Marſh.* Did he try to get in? ——

" *Here the Chief Juſtice was told by a By-ſtander, that a Perſon was* " *taking Notes; on which he aſked,*

" C. J. *Eyre.* Who is it?—Who employed you? Give me the Paper.

" *On which the Notes were delivered to him; and, after turning them* " *over, he ſaid, with ſome Warmth,*

" C. J. *Eyre.* I obſerve my Name in it: Who was you employed by " to take thoſe Notes?

" *Short-hand Writer.* My Lord, I was employed by a Gentleman " concerned in the Event of theſe Iſſues.

" C. J. *Eyre.* Who?

" *Short-hand Writer.* Mr. *Papillon* deſired me to attend and take Notes.

" *Then the Chief Juſtice called croſs the Court to Mr.* Papillon:

" C. J. *Eyre.* Mr. *Papillon*, here is a Man taking Notes, that ſays " you employed him.

" Mr. *Papillon.* Yes, my Lord, I deſired him to attend, and take " Notes.

" C. J. *Eyre.* Who is he? I obſerve my Name in ſeveral Places. I " ſuppoſe, I ſhall next Week have my Name in Print.

" Mr. *Papillon.* My Lord, it is no common Short-hand Writer; it " is Mr. I never knew it was a Crime to take Notes in a " Court where your Lordſhip ſat.

" C. J. *Eyre.* Well, I hope you are the better for them.

" Mr. *Papillon.* I think I am, my Lord; and on ſome Occaſions " they have been of great Uſe to me.

" C. J. *Eyre.* I am glad to hear that.

" Mr. *Papillon.* Your Lordſhip preſides here; ſo do with the Papers " what your Lordſhip pleaſes.

" C. J. *Eyre.* No, no. Now I know it is done by Authority, if I " ſee any thing in Print, I ſhall know where to apply.

" Mr. *Papillon.* It is no Reaſon to ſuppoſe it ſhould come from me, " if your Lordſhip does; there are great Numbers now taking Notes, " as well as Mr. and it may ſure come as well from any " of them. My Lord, I never was a Libeller, nor ever in my Life " encouraged a Publication of this Sort. We are all liable to Accu- " ſations of this Sort: I have ſeen many Falſhoods printed, but never " thought them worth my Notice. My Lord, I am not anſwerable: " Do with the Notes what you will.

" C. J. *Eyre.* No; ſince it is your Writer, let the Man have his " Paper, and go on.

(The Notes being out of the Short-hand Writer's Poſſeſſion, he could not take down what was ſaid.)

" C. J. *Eyre.* *There, take down that, and print it too, if you will; I* " *don't care; though I don't ſay it is Law; nor will juſtify it as ſuch.*

" Mr. *Papillon.* Here, give me the Notes: Let my Lord have them, " ſince they give Offence.

" C. J. *Eyre.* No, I will not have them. Let the Man have his " Paper again, ſince it is done by Authority.

" Mr. *Papillon.* My Lord, pray do what you pleaſe with them; cut " them to Pieces, or put them in the Fire.

" C. J. *Eyre.* No, no. Let him go on, ſince he is your Writer.

" Mr. *Papillon.* Then pray let him go on, without Reflections."

Mr. *Lacy.* Pray, Mr. *Dodd*, where did they aſſemble?
Mr. *Dodd.* They went from Mr. *Coates*'s.
Mr. Serj. *Darnell.* Did Mr. *Papillon* and Mr. *Wellard* go with the People to the Church?-----Mr. *Dodd.* No.
Mr. *Marſh.* Was Mr. *Papillon* there?
Mr. *Dodd.* Yes.
Mr. Serj. *Darnell.* Why could not he go into the Church, as well as *Coates* and the reſt?
Mr. *Dodd.* I do not know.
Mr. Serj. *Darnell.* Did you ſee the Mayor go from the Houſe?
Mr. *Dodd.* Yes.
Mr. Serj. *Darnell.* What Time did they go?
Mr. *Dodd.* At Two o'Clock.
Mr. *Marſh.* Is that the uſual Time?-----Mr. *Dodd.* Yes.
Mr. *Marſh.* How long was the Door locked before Mr. *Papillon* and Mr. *Wellard* came?
C. J. *Eyre.* Did the Mayor and Jurats ſee them coming?
Mr. *Dodd.* I do not know.
Mr. Serj. *Darnell.* Is it not uſual to lock the Door on ſuch Occaſions?
Mr. *Dodd.* Yes; and not to open it till the Election is over.
Mr. Serj. *Darnell.* Did *Coates* or *Wightwick* give Orders to ſhu out Mr. *Papillon* or *Wellard?*
Mr. *Dodd.* I do not know.
Mr. Serj. *Darnell.* Was any body ſhut out beſides?
Mr. *Dodd.* Several.
Mr. *Knowler.* How long was Mr. *Wellard* in Town before the Election?
Mr. *Dodd.* About five Weeks.
Mr. *Knowler.* Whoſe Houſe was he at during that Time?
Mr. *Dodd.* At *Gibbon*'s.
Mr. *Knowler.* How long was it after the Door was ſhut, that Mr. *Papillon* and Mr. *Wellard* came to apply to get in?
Mr. *Dodd.* A Minute or two.
Mr. *Knowler.* Why did they not apply to the Door-keeper to be let in?
Mr. *Dodd.* I do not know.
Mr. *Marſh.* Did you ever know a Freeman refuſed, that came and applied to be let in, a little after the Door was ſhut?----Mr. *Dodd.* Yes.
Mr. Serj. *Baynes.* Was any particular Meſſage ſent to the Mayor by Mr. *Papillon* or Mr. *Wellard?*
Mr. *Dodd.* Not that I know of.

Mr. Wellard *ſworn.*

Mr. *Marſh.* Mr. *Wellard*, you was with Mr. *Papillon*: Pray, give an Account of his going to Church, and his Demand to come in.

Mr. *Wellard.* I went with him to the Church, where the Election was, in order to vote for *Wightwick*. As we were going, we ſaw the Witneſs laſt examined, and deſired him to take Notice we went for that Purpoſe. We went up to the Doors, and found them faſtened within.

Mr. *Marſh.* Did you obſerve any body about the Doors?

Mr. *Wellard.* Yes, the Mayor's Servant and others. I knocked and puſhed at the Door, but Nobody came, or gave any Anſwer.

Mr. *Marſh.* And by what Method did you acquaint the Aſſembly that you were there, and deſired Admiſſion, in order to give your Votes?

Mr.

Mr. *Wellard.* We ſent in Letters to the Mayor, to acquaint him we were at the Door. We gave the Letters to Mr. *Wightwick*, and deſired him to deliver them to the Mayor. We expected to be denied, and therefore gave Letters to *Wightwick*, to deliver to the Mayor.

C. J. *Eyre.* Mr. *Wellard*,———If you will not hear, I cannot help it. They went to the Church; you came after, and tried to get in. You ſent in a Letter to the Mayor by *Wightwick*; How could that be? becauſe he was gone into the Church before.

Mr. *Wel.* My Lord, I gave Mr. *Wightwick* my Letter to carry in with him, before he went.

C. J. *Eyre.* It was to acquaint him, you were ready to come in, and give your Vote?—Can you tell whether *Wightwick* delivered that Letter, or not?

Mr. *Wel.* Yes, my Lord; he told me, after the Election was over, he had delivered it.

Mr. *Marſh.* Did you not, on the Day of the Election, dine with *Coates?* Did not the Mayor, and all the Jurats and Freemen, dine there, and go from thence? And if you had had a Mind, could you not have got in with them?

Mr. *Wel.* No; the Mayor told us, if we had a Mind, we ſhould not come in.

Mr. *Knowler.* Was you not in the Church before the Buſineſs was over? Did not you come into the Chancel?

Mr. *Wel.* Not till after the Mayor was ſworn, and had Poſſeſſion of the Staff.

Mr. *Knowler.* Did you *then* tender yourſelf to vote?

Mr. *Wel.* No; it was all over.

Mr. Serj. *Darnell.* You dined with *Coates*; Did you prognoſticate there would be a Shutting of the Door, and a Refuſal?

Mr. *Wel.* Yes; becauſe the Mayor had told us, we ſhould not come in.

Mr. Serj. *Darnell.* Did you write Word Mr. *Papillon* was with you?

Mr. *Wel.* I ſent in the following Letter:

(*Produces and reads it.*)

" Mr. Mayor,

" I Am at the Church, and demand to be admitted, to give my Vote, " as others, for Mayor. If I am denied, pray take Notice, that I give " my Vote for Mr. *Humphry Wightwick* to be Mayor for the Year enſu- " ing, I being at this Time a Reſiant in this Town. *C. Wellard.*"

Mr. Serj. *Darnell.* Whoſe Advice did you write that Letter by?

Mr. *Wel.* I *demur* to that Queſtion. *In Point of Law* I ought not to anſwer it.

C. J. *Eyre.* I think, Mr. *Wellard*, you ſhould anſwer the Queſtion, becauſe it is an indifferent Queſtion.

Mr. *Wellard.* Mr. *Papillon* and I concerted it, in order to preſerve our Rights.

C. J. *Eyre.* You thought they would not let you in: therefore you wrote this Letter, and ſent it?—Mr. *Wel.* Yes, my Lord.

Mr. *Lacy.* Did Mr. *Papillon* write this Letter?

Mr. *Wel.* I know his Hand; I ſaw him write it, and deliver it to *Wightwick.*

Aſſociate reads ——

" Mr. Mayor,

" I Am at the Church, and demand to be admitted, to give my Vote, " as others, for Mayor. If I am denied, pray take Notice, that I give " my Vote for Mr. *Humphry Wightwick* to be Mayor for the Year enſuing, " I being at this Time a Reſiant in this Town. *D. Papillon.*"

Mr. Batchelor *called and ſworn.*

Mr. *Lacy.* Look upon the two Papers ſigned *Papillon* and *Wellard*; Were they delivered by Mr. *Wightwick* to the Mayor?

Mr. *Batch.* I ſaw *Wightwick* deliver them to *Coates*, the Mayor.

Mr. *Lacy.* Was it before or after the Choice?

Mr. *Batch.* It was before; and the Mayor ſaid, he would admit no Foreigners to come in. The Mayor ſhewed the Letters about, and gave them to me to read, and ſaid, he would admit no Foreigners in.

Mr. *Lacy.* Had the Freemen given their Votes?

Mr. *Batch.* No; they were gone to the Chancel to vote, but had not voted.

Mr. *Lacy.* Did you ſee the Letters delivered to *Wightwick?*

Mr. *Batch.* No.

Mr. *Lacy.* How do you know them to be the ſame?

Mr. *Batch.* Becauſe they were open. I ſaw *Coates* ſign at the Bottom, " This was brought me at the Time of the Election of Mayor, and " *We refuſed it.*"

Mr. *Knowler.* Did *Coates* acquaint the Aſſembly he had received ſuch Letters, and reſolved not to admit them?—Mr. *Batch.* Yes.

Mr. *Knowler.* Did any other Perſon demand to be admitted?

Mr. *Batch.* No.

Mr. *Knowler.* Did you ever know any Foreigners vote for Mayor?

Mr. *Batch.* No.

Mr. *Marſh.* Was there Time for them to have given their Votes, if they had been let in as ſoon as the Letters were delivered?

Mr. *Batch.* Yes; they were juſt gone out, and hardly got into the Chancel, before *Wightwick* delivered them.

C. J. *Eyre.* Did you ever know any one let in after the Door was ſhut?

Mr. *Batch.* No, my Lord.

Mr. *Lacy.* After they are let into the Church, and the Door ſhut, cannot a Freeman be let in?

Mr. *Batch.* I never knew or remember it in my Life, after the Church-Door ſhut.

C. J. *Eyre.* Did you ever know or hear, that *Coates* was to make the Election void, as their Friend, by refuſing to let them in? *Coates* voted for *Wightwick*, and knew that on Refuſal it would be a void Election. If People that had a Right were excluded, I think it a void Election.

Mr. *Lacy.* My Lord, they all joined to exclude Foreigners.

Mr. Papillon *called*; *and, whilſt ſwearing,*

Mr. Serj. *Darnell.* So they were to ſerve, *or ſwear for* one another.

Mr. *Wellard.* I don't know what you mean by that Inſinuation: We regard an Oath as much as you do.

Mr. Serj. *Darnell.* My Lord, Mr. *Wellard* ſays, I inſinuated Mr. *Papillon* would aſſert a Falſehood. I ſcorn it; I ſaid no ſuch Thing.

Mr. *Marſh.* Pray, Sir, give an Account what paſſed on or before the Day of Election.

Mr. *Papillon.* There was an Inſinuation, that I deſigned to vote at the Election for Mayor; on which they applied to the Mayor, to know if he would admit me. He told them, No; and it was refuſed at the Inſtance of the Gentlemen of the other Side. I do not know that I thought of voting before; but then I aſked the Mayor about it, and he refuſed me, becauſe I was their Member, and therefore ought not to meddle. I did not chuſe to make any Diſturbance, and therefore wrote the Letter, and then followed myſelf, as ſoon as I could. I delivered the Letter to *Wightwick*, to give it to the Mayor. I deſired him to take Notice, I inſiſted on my Vote. I waited all the Time of the Election at the Church-Door, but could not get in. *Coates* has put me to much Trouble, and was always my Enemy.

Mr. Serj. *Darnell.* Did not *Coates* vote for *Wightwick?*

Mr. *Papil.* The Poll will tell you.

Mr. Serj. *Darnell.* He voted on your Side. Read the Letter.

Aſſociate reads ——

" Mr. Mayor, I am at the Church-Door, *&c.*" *verbatim as Mr.* Wellard's *Letter.*

Mr. Serj. *Baynes.* Did you ſee the Men go to vote?

Mr. *Papil.* I cannot be ſure; but I thought the propereſt Time to be refuſed was when they were aſſembled. I did not deſign to make a Diſturbance, and therefore delivered a Letter to Mr. *Wightwick*; and afterwards I knocked at the Door, which was ſhut. The Proclamation was ready to be read; for there was great Reaſon to think there would be a Diſturbance created.

Mr. Serj. *Baynes.* Might you not, upon your Oath, have gone in with the other Gentlemen, if you had thought fit?

Mr. *Papil.* I believe not, *upon my Oath*; becauſe *Coates* told me, he would not admit me.

Mr. *Knowler.* Did you not ſtay in *Coates*'s Parlour purpoſely, when he went out, that the Church-Door might be ſhut?

Mr. *Papil.* I cannot tell.

Mr. *Knowler.* Pray, Sir, recollect yourſelf.

Mr. *Papil. Upon my Oath*, I cannot recollect whether I was then in the Houſe; I think not.

Mr. *Knowler.* Was there any Diſturbance at the Election?

Mr. *Papil.* No; they knew the Proclamation was ready.

Mr. *Knowler.* Were there not other Gentlemen reſiant, as well as you, refuſed?—Mr. *Papil.* I believe not.

Mr. *Knowler.* How long had you been a Reſiant? Did not you come the Day before the Election?

Mr. *Papil.* I cannot recollect as to the Day.

Mr. Serj. *Darnell.* You ſay in your Letter, you were reſiant; Pray, Sir, how long had you been ſo?

Mr. *Papil.* I cannot recollect. If you allow my Letter is a good Demand, I will explain it.

Mr. *Smith.* Would there not have been a Diſturbance, if you had ruſhed into the Church?

Mr. *Papil. Upon my Oath*, I believe there would.

Mr. *Lacy.* My Lord, we ſubmit this Iſſue here.

Mr. Serj. *Darnell.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury; This, my Lord, is the principal Iſſue; and the Gentlemen of the other Side, in order to prove that a Majority did not chuſe the Defendant *Elles* Mayor, ſay, that this Poll was not a Majority of the whole, and have endeavoured to ſhew, that other People had a Right to vote, beſides the Perſons who appear upon the Poll; that *Gibbon* and *Darby* were admitted Freemen, and their Votes not taken; therefore, inſtead of the one Majority for *Elles*, if they had been admitted, there would have been a Majority of one for *Wightwick.* Now, my Lord, it appears from the Evidence, that *Gibbon* and *Darby* were admitted the very Morning of the Election, not by the Mayor, Jurats, and Commonalty, but by other Perſons, at another Place, and upon producing *Mandamus's.* We ſhall ſhew you, Gentlemen, that when the *Mandamus's* were brought, though this Matter had been a great while kept private, it was unanimouſly reſolved, at a Common Aſſembly, That no Freeman's Daughter ſhould by Marrying intitle her Huſband; and that they would conteſt any ſuch Claim at Law. We ſhall ſhew you, Gentlemen, that, the Day before the Election came on, one hundred Guineas were offered to one Man, a thouſand Guineas to another: But, when neither would do, being both abſolutely refuſed, then the *Mandamus* was produced, and two Men ſworn in the very Morning before the Election. I appeal to the common Senſe of every Man; is there any Pretence of Right for this? The Swearing and Admitting can give no Right; the Man muſt be legally choſen by the Body: But this was not at all the Caſe; inſtead of this, an Order was made by the Aſſembly, and entered in their Books, That the *Mandamus* ſhould be controverted.

After this, they offered Mr. *Papillon* and Mr. *Wellard* as Voters; and their Proceeding in this is as extraordinary as the *Mandamus.* It is true, they were Freemen; but no Man not reſiant, can be admitted to vote; and therefore they were refuſed by the Body.

But, Gentlemen, they tell you, We have done all we could; we ſent in Letters to the Mayor, and came to the Church-Door in order to get in, and were refuſed; and therefore their Votes ought not to be objected to, as they ſtand on the Poll.

Pleaſe, Gentlemen, to obſerve how this Affair has been cooked up between Mr. *Papillon* and Mr. *Wellard. Wellard* tells you, the Letters were written before Dinner on the Day of the Election; they are Word for Word the ſame, Letter for Letter. The Subſcription is exactly in the ſame Words. " We refuſed it, *John Coates*, Mayor." *Coates* had propoſed it to the Body, and they refuſed it. But *Coates* is in Mr. *Papillon*'s Intereſt, and votes for him: Can he ſay this, *We refuſed this?* No; 'tis only to give a Handle of Complaint, that Men have been unjuſtly refuſed, and that therefore the Election is void: Though I never yet heard that a Man was to be admitted to vote by Letter, or that a Vote was to be put into a Pocket.

As to the Case of *Hythe*, the Men were actually there at the Poll, and offered their Votes for the Candidates, and were actually refused by the presiding Officer; and if he refuses, the Person has his Remedy; But I never before heard of a Vote put into a Pocket. If this is to be admitted, there can be no Certainty in any Election. A Corporate Body assembled are not to be broke in upon, after the Doors are locked, and the Keys taken in, (as in the House of Commons) to prevent Confusion; and therefore all Right of Voting is excluded, when this Body is once assembled. Besides, they dined with *Goates*, and might have gone in with him, and the rest of the Freemen, if they would: But, instead of that, for particular Purposes, they say, No; we will not claim it in Person, we will demand it by Letter.

Upon the whole Circumstances of this Case, we hope, Gentlemen, it has been clearly made out to you, that *Elles* had the Majority; that the *eleven* that voted for him were *legal Votes*, and that but *ten legal Votes* voted for *Wightwick*; and therefore, Gentlemen, that you will find a Verdict for us.

Mr. Serj. *Baynes*. My Lord, the Gentlemen of the other Side have endeavoured to make out, that four legal Voters were excluded; and that, *Gibbon* and *Darby* being sworn in, though they were rejected by the Assembly, they are to be looked on as if they had given their Votes.

The Right of Voting is, to be elected by the Mayor, and Jurats, and Commonalty: But they were never elected, or duly sworn in, by the Mayor and Jurats; it was done by *Mandamus*: And though it was agreed and resolved, at a Common Assembly, to contest it, yet the Mayor and two Jurats swore them in; and therefore it was right to refuse them their Votes; and then there is plainly a Majority for *Elles*.

And, Gentlemen, as to Mr. *Papillon* and *Wellard*'s Votes, if there be any Fraud or Collusion in that Matter, their Votes are to be set aside: And they came for their Right, after the Church-Door was shut. It is agreed, that, on the Election of a Mayor, the Keys of the Church are laid down on the Table, and the Doors are shut: This, Gentlemen, is the Constitution of the Town. The Evidences tell you, they were all met at *Coates*'s, and went after Dinner to Church, to vote for *Wightwick*; but the Mayor would not admit them. How could this create a Disturbance? But he did not admit them for Fear of a Disturbance, and they were kept out; and any Part of the Assembly are to be excluded, if they come too late, as in the House of Commons.

But the Gentlemen of the other Side say, their Offer to vote should be looked on in the same Manner as if they had voted. And this, Gentlemen, we admit, is Law in the House of Commons, but was never determined to be Law in any of the Courts in *Westminster-Hall*: It is the Practice there, but never at Common Law. So that, Gentlemen, there is a plain Majority of those assembled for the Defendant *Elles*; and therefore we hope you will find that he is duly elected.

Mr. *Knowler*. My Lord, there is an Entry upon the Assembly-Book, where *Gibbon*'s and *Darby*'s Right were taken into Consideration by the whole Body; and it was unanimously resolved, that they had no Right; and, to make it the more solemn, the Mayor, Jurats, and Commonalty subscribed it; and *Coates*, and the others, who admitted them, have also subscribed it.—Read the Entry of the 1st of *March*, 1728.

C. J. *Eyre*. It signifies nothing, an Act in 1728: They gave their Judgment, what signifies it?

Mr. *Knowler*. Read the Entry.

Associate reads—

"*New-Romney*, 1 *March*, 1733. Reciting that *Gibbon* and *Darby* had "threatened to bring their *Mandamus*, to be admitted to the Freedom of "this Town and Port; It was resolved to return as Counsel shall advise, "and the Suit to be defended at the Charge of this Corporation."

Mr. *Marsh*. I hope, my Lord, we are proper to reply.

C. J. *Eyre*. You are not regular to reply. You laid down a Rule the Beginning of this Circuit, and now you do not keep to it: But I will hear you, regular or irregular.

Mr. *Marsh*. My Lord, we humbly insist, the last Entry is no Evidence.

C. J. *Eyre*. You are the Master of Order; I submit to you.

Mr. *Marsh*. My Lord, I had not objected, but that four People who voted for *Wightwick*, that had no Disqualification, are left out of their Poll. By their own Evidence it appears, that this was upon a Right, in having married a Freeman's Daughter; and I submit it to your Lordship, that a Resolution to contest that Right surely can never take it away, especially if afterwards it appears to be a Right not contested—

C. J. *Eyre*. It should be a Custom proved as a Foundation for this Right.

Mr. *Marsh*. My Lord, a Point of Law depending on the Demurrer, we submit, whether your Lordship will not save it, in case we lay proper Evidence before your Lordship to support it: For, if the Charter puts them on the same Freedom with *Sandwich*, and the Custom there is, that the Daughter of a Freeman, by Marrying, intitles the Man to a Freedom; then it will be a Point, Whether the Charter warrants that Custom? A Pretence of Right, however, they have; the Entry of *Gibbon* and *Darby* is by their own Officer, and they were sworn in by the Mayor and Jurats.

And, my Lord, it is admitted on all Sides, that Mr. *Papillon* and *Wellard* are Freemen; and if they did all they could to get into the Church and vote, then, my Lord, we humbly insist, they are as much Voters as if they had been at the Poll, and were actually in the Case of the Men of *Hythe* mentioned before.

Therefore, Gentlemen, if the Mayor told Mr. *Papillon* and Mr. *Wellard*, that, if they came to the Church, they would not be admitted; and said to Mr. *Papillon*, You are our Member, do not insist upon it; and when they offered themselves to vote, refused them; we humbly insist, they are as good Voters, as if they had been at the Poll, and actually voted.

And, as to *Gibbon* and *Darby*, they had this Right by Marrying, and were warranted by the Charter

C. J. *Eyre*. It is not regular.

Mr. *Lacy*. My Lord, the Gentlemen of the other Side object to the Fact laid by us in Point of Law, that we do not come up to what we contend for by our Plea, as to the *sole Right*: But, if *Darby* and *Gibbon* had a Right, other than by Election, where they are sworn in; I would submit it to your Lordship, Whether, till disqualified, they are not in the complete Exercise of that Franchise? There may be Rights that come not in by Election. Mr. Serjeant *Darnell* says, that the Majority of those present are to chuse the Mayor: But, my Lord, if we did all we could to get in, as has been fully proved to your Lordship and the Jury; we humbly insist, we are intituled to a Vote as much, as if we had been actually present at the Poll, and had given our Votes.

It has been said, that, when the Business is begun, Nobody is to interfere: But, my Lord, we were present by Letter before: and if they read it not, that was not our Fault.

Mr. *Smith*. My Lord, we admit, that all Persons are to be chosen by a Majority of Freemen pteseut; and we humbly insist, Mr. *Papillon* and Mr. *Wellard* were present in Point of Law; and, in fact, in the House of Commons it never was otherwise.

My Lord, in the Case of *Ashby* and *White*, (*Vol.* VIII.) the Question was, Whether an Action would lie for refusing a Vote? It was resolved that it would, because the common Remedy in the House of Commons would give no Relief. And the Authority of the Men of *Hythe*'s Case was fully with us: *Darby* and *Gibbon* being admitted, we apprehend, when they voted, they were in the Exercise of their Franchise, and are therefore good Votes.

C. J. *Eyre*. Gentlemen of the Jury, The Question upon this Issue is, Whether the Defendant *Elles* was duly elected by a Majority of the Jurats and Commonalty of the Town and Port of *New-Romney*? And it appears from the Evidence, that twenty-one Freemen being assembled, *Wightwick* had ten Voices, *Elles* had eleven; and that two People were present, whose Votes were not taken, *Darby* and *Gibbon*. It was on the 25th of *March*; and these two People were admitted by the Mayor and Jurats, on producing a *Mandamus*, which is a Precept from a superior Court; but that confers no Right, nor mends the Thing, if there be no Evidence of a prior Right.

They tell you, on one Side, that *Darby* and *Gibbon* being sworn in by the Mayor and Jurats, they are put in Possession of their Office, and are to be regarded as People that have a Right in the Election of Mayor: But, unless some such Right be proved, such as Birth, Election, or some other Right, the *Mandamus* confers none.

But they tell you, this is a particular Right, supported by a particular Custom: and therefore the Question is, Whether this Admittance can give a Right?

Now, Admittance and Swearing can give no Right, without a previous Right. A *Mandamus* may be brought, when they were never elected; and such Admittance will do nothing of itself.

But no such Custom has been proved, and the Corporation has protested against it; and therefore *Darby* and *Gibbon* had no Right to vote.

But they say, Mr. *Papillon* and *Wellard* had a Right; and if one more Vote be added to the Poll, then *Wightwick* had it.

They were certainly Freemen; but yet they could not send in their Votes by Letter, or vote otherwise than personally; they must be *corporaliter congregati*.

Mr. *Papillon* was told, the Mayor would not admit him---What then? Should he not then have endeavoured to go in with the rest? I think he ought, if he will give his Vote; there can be no reasonable Excuse.

The Mayor having told him, they would not admit a Foreigner; they tell you, they sent in Letters, and did what they could to get in.

But they have not done what they could: For they should have attended the Mayor, and gone to the Church, and got in with him and the rest: But they do not come till after the Church-Door is shut; and the Evidences all say, that, after the Church-Door is shut, Nobody can be admitted; and that, when they go in, they lock the Door, take up the Keys, and then Nobody is ever admitted. If they do not come in Time, therefore, they exclude themselves. They must be there, and come at the usual Time; and if they did not, they excluded themselves: And is the Law, or the Method of Elections, to be changed for them?

Mr. *Papillon*'s--- (I would not insinuate ---) sending the Letters is attended with odd Circumstances. The Letters are given to *Wightwick*, and he is to deliver them to *Coates*; then they are refused by the Assembly; and afterwards the Letters are returned into their Hands again, with a Note, "We have received this Letter, and it has been refused."

Gentlemen, I think the Letter will do nothing: They were wrong in their Judgment; and not coming in Time, they ought not to be let in, any more than any body else. A Man cannot send in his Vote by Letter; he must be present in the Assembly.

And therefore neither of these four Gentlemen had any Right to vote, in my Opinion; and then the Majority is for *Elles*, and he is duly elected.

Verdict for the Defendant.

Mr. Serj. *Darnell*. My Lord, the next Issue is, That he was not duly sworn.---Mr. *Loftie*, Do you know whether Mr. *Elles* was sworn in Mayor of *Romney*?

Mr. *Loftie*. Yes; he was sworn in by me in the Church, in the Manner as other Mayors are sworn.

Mr. *Marsh*. As to the Oath to be taken by the Mayor, you are only Ministerial: Did not the Mayor say to you, *Wightwick* was the Man that was to be sworn in Mayor? Did not *Coates* tell you, "I administer the "Oath to *Wightwick*," and strike *Elles*'s Hand off the Book?

Mr. *Loftie*. No, not that I heard.

Mr. *Lacy*. Did not he order you to swear *Wightwick*?

Mr. *Loftie*. He ordered me to swear the Mayor.

Mr. *Lacy*. Did he not order you to swear Mr. *Elles*?

Mr. *Loftie*. Not to my Knowledge.

Mr. *Smith*. Did *Coates* say who he thought was Mayor?

Mr. *Loftie.* Yes; he ſaid *Wightwick* had the Majority.

C. J. *Eyre.* Where two People are ſworn in, the Right muſt be in the Man that had the Poſſeſſion of the Staff.

Mr. Batchelor *ſworn.*

Mr. *Marſh.* Was you preſent in the Church the Day the Mayor was choſen?

Mr. *Batchelor.* Yes.

Mr. *Marſh.* What Declaration was made by *Coates,* as to the Perſon choſen Mayor?

Mr *Batchelor.* He told the Town-Clerk, *Wightwick* was Mayor; and ſaid, "I would have you ſet down *Darby* and *Gibbon* as Voters for *Wight-*"*wick,*" and called them over: But *Loftie* would not ſet them down, becauſe it was againſt his Inclination. *Coates* gave the Staff to *Wightwick*; and ſaid, "I reſign this to you; you ſhall be the Mayor; you had the "moſt Votes."

Mr. *Marſh.* Who then called for the Oath?

Mr. *Batchelor.* The old Mayor.

Mr. *Marſh.* Did he call on any one to adminiſter the Oath?

Mr. *Batchelor.* Yes; he bid *Loftie* adminiſter the Oath to *Wightwick*; and then *Wightwick* and *Elles* laid their Hands on the Book, and *Coates* ſaid, He would ſwear *Wightwick* only, and ſhoved *Elles*'s Hand off the Book twice.

C. J. *Eyre.* Read the Clauſe in the Charter that relates to the chuſing of a Mayor; the Queſtion being, Whether the Mayor or Town-Clerk ſhould adminiſter the Oath?

Aſſociate reads——

"The ſaid late Queen by Letters Patent granted, that on *Lady-Day,* "in the Chancel of *St. Nicholas,* one of the Jurats ſhould be choſen into "the Mayoralty for the Year enſuing, and ſhould take his Oath, in "Manner as the Mayor of *Sandwich* takes it."

C. J. *Eyre.* The Mayor muſt adminiſter the Oath.

Mr. Serj. *Darnell.* My Lord, the Oath is always read by the Town-Clerk; and I humbly apprehend, it is taking the Oath, when it is read by him in Preſence of the Mayor.

C. J. *Eyre.* The Mayor muſt conſent to the Oath; he is the Judge, whether the proper Perſon be ſworn, or not. The Oath is to be adminiſtered by the old Mayor; and it appears it was againſt his Conſent; he thought another elected, and ſtruck *Elles*'s Hand off the Book.

Mr. Serj. *Darnell.* Suppoſe a Man to take an Oath to qualify him for an Office; ſhall a Juſtice of the Peace refuſe it?

C. J. *Eyre.* Can a Man take an Oath that is not adminiſtered to him? The Town-Clerk has no more to do with it than you or I. A Man is guilty of Perjury, if a Clerk will adminiſter an Oath, when a Court forbid him. Beſides, the Mayor delivered the Enſigns of his Power to *Wightwick.*

Mr. Benjamin Cobb *ſworn.*

Mr. *Marſh.* Was you preſent at the Election of the Mayor?

Mr. *Cobb.* Yes.

Mr. *Marſh.* Did you ſee the Oath adminiſtered?

Mr. *Cobb.* Yes.

Mr. *Knowler.* Was *Elles* ſworn?

Mr. *Cobb.* No.

C. J. *Eyre.* Did not the Mayor deliver his Staff into the Hands of *Wightwick?*

Mr. *Cobb.* Yes, my Lord.

Mr. Langdon *ſworn.*

Mr. *Lacy.* Was you preſent at the Election of the Mayor?

Mr. *Langdon.* Yes.

Mr. *Lacy.* Was the Oath adminiſtered to *Wightwick?*

Mr. *Langdon.* Yes.

Mr. *Lacy.* Did *Coates* make any Objection to the ſwearing *Elles?*

C. J. *Eyre.* Did *Coates* think *Elles* was choſen Mayor?

Mr. *Langdon.* I believe not.

C. J. *Eyre.* Who did *Coates* think was Mayor?

Mr. *Langdon.* My Lord, he ſaid *Wightwick* was Mayor, on Account of *Darby* and *Gibbon.*

Mr. *Marſh.* Did *Wightwick* take the Staff, or did *Coates* deliver it to *Elles?*

Mr. *Langdon. Wightwick* had the Staff, and went Home with the Staff.

Mr. *Wynne.* Did *Elles* walk as near the Staff as the other?

Mr. *Langdon.* I believe he did.

Mr. Gray *ſworn.*

Mr. Serj. *Baynes.* Was you preſent at the Choice of Mayor? Did *Coates* ſay any Thing, or ſtrike *Elles*'s Hand off the Book? Was you near?

Mr. *Gray.* I was preſent; he never touched his Hand.

Mr. *Lacy.* Did not *Coates* order *Wightwick* to be ſworn?

Mr. *Gray.* I do not know he ordered any body to be ſworn.

C. J. *Eyre.* Had *Wightwick* the Staff in his Hand, when he was ſworn?

Mr. *Gray.* No.

C. J. *Eyre.* Where was it?

Mr. *Gray.* It lay down upon a Tomb-Stone.

C. J. *Eyre.* I take it, he ordered the Mayor to be ſworn.

Mr. *Gray.* I do not know his Thoughts.

Mr. *Marſh.* Is it uſual for the Mayor to have the Staff in his Hand, when ſworn?

Mr. *Gray.* I do not know.

Mr. *Marſh.* Whom did he name?

Mr. *Gray.* I heard him mention Nobody.

Mr. *Lacy.* Who was *Wightwick* declared Mayor by?

Mr. *Gray.* By Mr. *Coates.*

Mr. *Lacy.* When did the Mayor ſay this?

Mr. *Gray.* At the Time of the Election.

Mr. *Lacy.* Mr. *Loftie,* was you near *Coates,* when the Mayor was ſworn? Did he ſtrike *Elles*'s Hand off the Book?

Mr. *Loftie.* Not that I ſaw.

Mr. Tookey *ſworn.*

Mr. *Lacy.* Was you preſent at the Election of the Mayor?

Mr. *Tookey.* Yes; I was very cloſe to Mr. *Coates.* I did not hear him declare *Wightwick* Mayor, or ſee him ſtrike *Elles*'s Hand off the Book. He mentioned *Wightwick,* and ſaid, *Wightwick* ſhould be ſworn.

Mr. *Marſh.* Did he order him to be ſworn, or deliver to him his Staff?

Mr. *Tookey.* He ſaid, he ſhould be ſworn; but I did not ſee him deliver his Staff to him.

Mr. Halſenden *ſworn.*

Mr. *Marſh.* Was you preſent at the ſwearing Mr. *Wightwick* Mayor?

Mr. *Halſenden.* Yes, I was preſent, and ſaw *Coates* ſhove *Elles*'s Hand from the Book. I heard him ſay, he would not ſwear *Elles,* and ſaw him, after Swearing, deliver the Staff to *Wightwick*; and I ſaw *Elles*'s Hand ſtruck off twice.

Mr. *Marſh.* Did *Elles* walk even with the Mayor?

Mr. *Halſenden.* I cannot tell.

Mr. Gibbon *ſworn.*

Mr. *Marſh.* Was you preſent at the ſwearing in the Mayor by *Coates?*

Mr. *Gibbon.* Yes; he gave Orders to take the Poll; and after it was taken, he aſked, Who was Mayor? *Loftie* told him, *Elles*; *Wilſon* ſaid, *Wightwick.* Then *Coates* ſaid, that *Wightwick* was choſen Mayor, and ſhould be ſworn; and then *Coates* delivered the Staff to *Wigthwick.* I ſaw it delivered, and ſaw *Coates* ſhove *Elles*'s Hand off the Book, and heard him ſay, "Mind, I ſwear *Wightwick* Mayor."

Mr. *Marſh.* We ſhall trouble your Lordſhip no more.

C. J. *Eyre.* Gentlemen of the Jury, The Queſtion on this Iſſue is, Whether the Defendant *Elles* was ſworn Mayor, or not?

It muſt be done by his Predeceſſor.

Loftie ſays, That *Coates* ordered him to ſwear the Mayor, and that he read the Oath: If this was done by *Coates*'s Order, then he was well ſworn.

But, if it was done contrary to his Order, and he declared another Man, and ſhoved *Elles*'s Hand off the Book, and ſaid, "Take Notice, "I ſwear *Wightwick* Mayor," and not the other, and delivered the Staff to him, and did all he could to oppoſe the ſwearing *Elles*; then *Elles* was not ſworn Mayor.

The Town-Clerk cannot ſwear the Mayor; and the Evidence is ſtrong that *Coates* oppoſed ſwearing *Elles.* The Man that has the Right, he is the Man that muſt be ſworn; but none but the former Mayor can ſwear him.

The Queſtion therefore is, Whether he was ſworn by a proper Authority?

If you think him ſworn by a proper Authority, and that *Coates* meant that *Elles* ſhould be the Mayor, then you muſt find for him.

But if you think he meant *Wightwick* ſhould be ſworn Mayor, then you muſt find for *Wightwick.*

Verdict for the King.

NUMBER XVIII.

HENRY MOORE, *Plaintiff,*

AGAINST

The Mayor, Jurats, and Commonalty of the Town and Port of *Haſtings,* in the County of *Suſſex,* Defendants.

Tried on *Tueſday, July* the 20th, at the Sittings after *Trinity* Term, 1736, before the Right Honourable *Philip* Lord *Hardwicke,* Lord Chief Juſtice of his Majeſty's Court of *King's-Bench,* on a *Mandamus* for admitting the Plaintiff to be a Freeman of *Haſtings,* in Purſuance of a Cuſtom there; which Cuſtom the Defendants by their Return deny, and thereupon Iſſue is joined.

PLEAS before our Lord the King at *Weſtminſter,* of *Hilary* Term, in the ninth Year of the Reign of our Sovereign Lord *George* the Second, by the Grace of God, of *Great-Britain, France,* and *Ireland* King, Defender of the Faith.

Amongſt the Pleas of the King-Roll.

Middleſex. SOME Time ago, that is to ſay, upon the 28th Day of *November,* in the ninth Year of the Reign of our Sovereign Lord *George* the Second, by the Grace of God, of *Great-Britain, France,* and *Ireland* King, Defender of the Faith, before our ſaid Lord the King at *Weſtminſter,* the ſame Lord the King commanded, to the Mayor, Jurats, and Commonalty of his Town and Port of *Haſtings,* in his County of *Suſſex,* his Writ cloſed, in theſe Words; that is to ſay, "*George* "the Second, by the Grace of God, of *Great-Britain, France,* and "*Ireland* King, Defender of the Faith; To the Mayor, Jurats, and "Commonalty of the Town and Port of *Haſtings,* in our County "of *Suſſex,* greeting: Whereas the ſaid Town and Port is an an-"cient Town and Port, and one of the five ancient Ports of this "Kingdom: And whereas there is, and Time out of Mind hath "been, a certain ancient and laudable Cuſtom, uſed and approved "within the ſaid Town and Port, That every Perſon, being the "eldeſt Son of any Freeman of the ſaid Town and Port, and "born

" born within the ſaid Town and Port, after the Admiſſion and Swearing " of his Father into the Place and Office of one of the Freemen of the " ſaid Town and Port, hath a Right, *in Reſpect thereof*, and alſo upon " paying a *reaſonable Fine*, to be admitted and ſworn into the Place and " Office of one of the Freemen of the ſaid Town and Port, and ought by " you to be admitted and ſworn into the Place and Office of one of the " Freemen of the ſaid Town and Port, according to the Cuſtom of the ſaid " Town and Port: And whereas one *Henry Moore* is the eldeſt Son of " *Samuel Moore*, one of the Freemen of the ſaid Town and Port, and was " born within the ſaid Town and Port, after the Admiſſion and Swearing " of his Father into the Place and Office of one of the Freemen of the ſaid " Town and Port: And whereas the ſaid *Henry Moore*, by virtue thereof, " and upon paying a reaſonable Fine according to the ſaid Cuſtom, ought " by you ſo to be admitted and ſworn into the Place and Office of one of " the Freemen of the ſaid Town and Port; yet you, well knowing the " Premiſſes, but not regarding your Duty in this Behalf, have not as yet " admitted the ſaid *Henry Moore* into the ſaid Place and Office of one of " the Freemen of the ſaid Town and Port; nor have you adminiſtered the " Oaths to the ſaid *Henry Moore*, which are in that Caſe uſually adminiſ- " tered and taken, although you often have been requeſted ſo to do by the " ſaid *Henry Moore*; but have refuſed, and yet do refuſe, to admit and " ſwear the ſaid *Henry Moore* into the ſaid Place and Office of one of the " Freemen of the ſaid Town and Port, although the ſaid *Henry Moore* " has tendered to you a reaſonable Fine on that Behalf; in Contempt of " Us, and to the no ſmall Damage and Grievance of him the ſaid *Henry* " *Moore*, and to the manifeſt Injury of his Eſtate, as We have been in- " formed from his Complaint to Us: We therefore being willing that due " and ſpeedy Juſtice be done to the ſaid *Henry Moore* in this Behalf, (as " it is reaſonable) do command you, by firmly injoining, that, immediately " after the Receipt of this our Writ, you do without Delay, upon the " ſaid *Henry Moore*'s paying a reaſonable Fine, admit, or cauſe to be ad- " mitted, the ſaid *Henry Moore* into the ſaid Place and Office of one of " the Freemen of the ſaid Town and Port, together with all the Liberties, " Privileges, Franchiſes, Emoluments, and Commodities, to a Freeman " of the ſaid Town and Port belonging and appertaining; and that you " adminiſter, or cauſe to be adminiſtered, to the ſaid *Henry Moore*, the " Oaths which are in that Caſe uſually adminiſtered and taken according " to the ſaid Cuſtom; or ſhew to Us Cauſe to the contrary thereof, that " the ſame Complaint may not, by your Default, be repeated to Us. And " how you ſhall have executed this our Writ, make it appear to Us at " *Weſtminſter*, on *Friday* next, after the Octave of *St. Hilary*, returning " then to Us this our Writ. And this you are not to omit, upon Peril " that may fall thereon. Witneſs *Philip* Lord *Hardwicke*, at *Weſtminſter*, " the 28th Day of *November*, in the ninth Year of our Reign."

Upon which ſaid *Friday* next after the Octave of *St. Hilary*, before our ſaid Lord the King at *Weſtminſter*, the ſaid Mayor, Jurats, and Commonalty of the ſaid Town and Port of *Haſtings*, in the ſaid County of *Suſſex*, returned the ſaid Writ as followeth; that is to ſay, " The Anſwer of the Mayor, Jurats, and Commonalty of the Town " and Port of *Haſtings*, within mentioned, to this Writ, appears in " a certain Schedule to this Writ annexed: We, the Mayor, Ju- " rats, and Commonalty of the Town and Port of *Haſtings*, mentioned " in the Writ, hereunto annexed, do, according to the Command of " the ſaid Writ, humbly certify to our Sovereign Lord the King, That " there is not, nor Time out of Mind hath been, any ſuch ancient and " laudable Cuſtom, uſed and approved within the ſaid Town and Port, " That every Perſon, being the eldeſt Son of any Freeman of the ſaid " Town and Port, and born within the ſaid Town and Port, after the " Admiſſion and Swearing of his Father into the Place and Office of one " of the Freemen of the ſaid Town and Port, hath a Right, in Reſpect " thereof, and alſo upon paying a reaſonable Fine, to be admitted and " ſworn into the Place and Office of one of the Freemen of the ſaid Town " and Port, as in the ſaid Writ is alledged: And, for this Cauſe, We, " the ſaid Mayor, Jurats, and Commonalty of the ſaid Town and Port of " *Haſtings*, have not admitted, nor cauſed to be admitted, neither ought " we to admit, or cauſe to be admitted, *Henry Moore*, in the ſaid Writ " named, into the Place and Office of one of the Freemen of the ſaid " Town and Port, together with all the Liberties, Privileges, Fran- " chiſes, Emoluments, and Commodities to a Freeman of the ſaid Town " and Port belonging and appertaining; neither have we adminiſtered, " nor cauſed to be adminiſtered, nor ought we to adminiſter, or cauſe to " be adminiſtered, to the ſaid *Henry Moore*, the Oaths which are in that " Caſe uſually adminiſtered and taken, as by the ſaid Writ we are com- " manded to do."

And hereupon, upon the ſame *Friday* next after the ſaid Octave of *St. Hilary*, before our ſaid Lord the King at *Weſtminſter*, came as well the ſaid *Henry Moore*, in the ſaid Writ, and Return named, by *Henry Maſterman* his Attorney, as the ſaid Mayor, Jurats, and Commonalty of the ſaid Town and Port of *Haſtings*, in the ſaid County of *Suſſex*, in the ſame Writ and Return mentioned, by *Henry Walrond* their Attorney. And the ſaid *Henry Moore*, having had *Oyer* of the ſaid Writ and Return, ſaith, That for any Thing above alledged by them, the ſaid Mayor, Jurats, and Commonalty, in their ſaid Return to the ſaid Writ of *Mandamus*, he the ſaid *Henry Moore* ought not to be barred from having a peremptory Writ of *Mandamus*, in order to be admitted and ſworn into the ſaid Place and Office of one of the Freemen of the ſaid Town and Port; becauſe he ſaith, that there is, and Time out of Mind hath been, ſuch ancient and laudable Cuſtom, uſed and approved within the ſaid Town and Port, That every Perſon, being the eldeſt Son of any Freeman of the ſaid Town and Port, and born within the ſaid Town and Port, after the Admiſſion and Swearing of his Father into the Place and Office of one of the Freemen of the ſaid Town and Port, hath a Right, in Reſpect thereof, and alſo upon paying a reaſonable Fine, to be admitted and ſworn into the Place and Office of one of the Freemen of the ſaid Town and Port, in Manner and Form as in the ſaid Writ of *Mandamus* is above alledged. And the ſaid *Henry Moore* prayeth, that this may be inquired into by the Country; and the ſaid Mayor, Jurats, and Commonalty pray the like.

Mr. *Clarke*. May it pleaſe your Lordſhip, and you Gentlemen of the Jury; *Henry Moore* is the Plaintiff; and the Mayor, Jurats, and Commonalty of the Town and Port of *Haſtings*, are the Defendants. And, Gentlemen, this is a *Mandamus*, directed to the Defendants, the Mayor and Jurats of that Town and Port, to admit and ſwear in the Plaintiff *Henry Moore* into the Place and Office of one of the Freemen of this Town.

And, Gentlemen, the *Mandamus* ſets forth, That the Town and Port of *Haſtings* is an ancient Town and Port, and one of the Five ancient Ports of this Kingdom; and that there is, and for Time out of Mind has been, a certain and ancient laudable Cuſtom, uſed and approved within that Town and Port, That every Perſon being the eldeſt Son of any Freeman there, and born within the ſaid Town, after the Admiſſion and Swearing of his Father into the Place and Office of one of the Freemen of the ſaid Town and Port, has a Right, in Reſpect thereof, and alſo upon paying a reaſonable Fine, to be admitted and ſworn into the Place and Office of one of the Freemen there, according to the Cuſtom of that Town and Port.

Gentlemen, the *Mandamus* further ſets forth, That the Plaintiff *Henry Moore* is the eldeſt Son of *Samuel Moore*, one of the Freemen of the ſaid Town and Port, and was born within the Town, after the Admiſſion and Swearing of his Father into the Place and Office of Freeman; and that the Plaintiff, by virtue thereof, and upon paying a reaſonable Fine according to the Cuſtom, ought to have been admitted and ſworn by the Defendants into the Place and Office of a Freeman; but that the Defendants, contrary to their Duty in this Caſe, have refuſed, and ſtill refuſe, to admit and ſwear him, although he has tendered to them a reaſonable Fine on that Behalf.

And this, Gentlemen, the Defendants are laid to have done in Contempt of the King, to the great Damage and Grievance of the Plaintiff, and to the manifeſt Injury of his Eſtate.

And therefore the Writ proceeds to command the Defendants, immediately, upon the Plaintiff's paying a reaſonable Fine, to admit and ſwear him into the Place of a Freeman, or to ſhew Cauſe why they do not.

To this Writ, Gentlemen, the Mayor, Jurats, and Commonalty have returned for Anſwer, That there neither is, nor for Time out of Mind has been, any ſuch ancient and laudable Cuſtom, uſed and approved, within the Town and Port of *Haſtings*, as is alledged in the Writ; and this, they ſay, is the Reaſon they have not admitted the Plaintiff.

Gentlemen, upon this Iſſue is joined; and the only Queſtion you are now to try, is, Whether there be ſuch a Cuſtom in the Town and Port of *Haſtings*, as the Plaintiff has laid in the *Mandamus*? If therefore, Gentlemen, Evidence is laid before you, that there is, and Time out of Mind has been, ſuch a Cuſtom, you will pleaſe, Gentlemen, to find a Verdict for the Plaintiff.

Sir *Thomas Abney*. May it pleaſe your Lordſhip, and you Gentlemen of the Jury; I am alſo of Counſel of the ſame Side with the Plaintiff; and you will pleaſe, Gentlemen, to obſerve, that the ſingle Iſſue you are to try is, Whether there now is, and Time out of Mind has been, an ancient and laudable Cuſtom in the Town and Port of *Haſtings*, in the County of *Suſſex*, That every Perſon, being the eldeſt Son of a Freeman of the ſaid Town and Port, and born within the ſaid Town and Port, after the Admiſſion and Swearing of his Father into the Place and Office of one of the Freemen of the ſaid Town and Port, hath a Right, in Reſpect thereof, and alſo upon paying a reaſonable Fine, to be admitted and ſworn into the Place and Office of one of the Freemen of the ſaid Town and Port?

This, Gentlemen, is the Iſſue you are now to try; and it will not, I believe, be neceſſary to trouble you with an Account of the *Cinque Ports*, and their Privileges and Cuſtoms.

But, Gentlemen, the Matters of Proof we ſhall lay before you will be of three Kinds.

And the firſt which offers itſelf to your Conſideration, ariſes from a very ancient Record, called the Cuſtomal; which is a very ancient Deed, without any Date; it being an uſual Thing for ancient Deeds and Evidences to be without any Date; and this Cuſtomal is the Rule and Law of all the *Cinque Ports*.

Gentlemen, this Cuſtomal is ſo old, and goes ſo far back as the Year 1573; it contains fifty-nine Articles. Our Right ariſes upon this Cuſtomal; and therefore I will beg Leave to read the Title, and ſome Paſſages out of it, to you.

Hic ſequuntur Conſuetudines Quinque Portuum, et earum Membrorum, à tempore quo non extat memor' hom' uſitat' et approbat'.

Gentlemen of the Jury, the Words we ground our Right upon are theſe:

Art. 34. " *Poſſunt Majores et Jurati, Ballivi et Jurati, et Jurati, in quo-* " *libet Portu et Membro ubi Major et Ballivus de communi electione non fue-* " *rit, in præſentia Communitatis, recipere et facere liberes tribus modis:*

" *Uno modo, per Nativitatem infra Libertatem ſuam, ſi pater ſuus, tem-* " *pore nativitatis ſuæ, fuit liber:*

" *Alio modo, per Liberum Tenementum perquiſit':*

" *Tertio, per Emptionem.*

" *Et notand', quod nullus gaudebit libertatem alicujus Portus, ſive Membri,* " *quouſque ſacramentum ſuum præſtitit, quod eſſe debet, à die illo, uſque ad* " *finem vitæ ſuæ, bonus et fidelis Domino noſtro Regi Angliæ, et hæredibus* " *ſuis; ſtatutaque et libertates Quinque Portuum, et ſpecialiter illius Portus* " *ſive Membri ubi commoratur, pro poſſe ſuo maintenebit; obedienſque Majori et* " *Juratis, Ballivo et Juratis, vel Juratis, ſemper erit; ſemper paratus tam* " *ad ſcottand' et lottand', ſi quæ taxat' pro communi utilitate fuerint, quam* " *in armis pro defenſione inimicorum Domini Regis, cum per Gubernatores ipſius* " *Portus ſive Membri habuerit in mandatis; et quod non audiat aliquod ad* " *deterioration em libertat' prædict', ſive ad reprobationem Majoris, Ballivi,* " *et Juratorum, ubi commoratur, vel eorum alicujus, niſi ipſe inde eis dabit* " *notitiam. Sic ſe adjuvent ſancta ſanctor', &c.*"

" *Poſſunt Majores et Jurati, Ballivi et Jurati, et Jurati, in quolibet* " *Portu, &c. recipere & facere liberes tribus modis:*

" Una

"*Uno modo, per Nativitatem infra libertatem ſuam, ſi pater ſuus, tempore* "*nativitatis ſuæ, fuit liber*——

That, Gentlemen, is the Point we ground our Right upon; the firſt Right. If a Perſon be the eldeſt Son of a Freeman, and born within the ſaid Town and Port, after the Admiſſion and Swearing of his Father into the Office of one of the Freemen of the ſaid Town and Port; we ſay, ſuch eldeſt Son is intituled.

"*Alio modo, per Liberum Tenementum perquiſit'.*

"*Tertio, per Emptionem.*"

So that, Gentlemen, by this 34th Article of this Cuſtomal you ſee what the ancient Law and Uſage was; That the eldeſt Son of every Freeman, under theſe Circumſtances, is intituled to his Freedom: And therefore we ſay, that the Plaintiff *Henry Moore*, as the eldeſt Son of *Samuel Moore*, has, and he is undoubtedly intituled, under this Right, to his Freedom.

And, Gentlemen, as this Cuſtomal mentions three diſtinct Methods of making free, *viz.* by Birth, by a Freehold Tenement, and by Purchaſe; ſo it has made a manifeſt Diſtinction between the Freedom acquired by Birth, and by either of the other two Ways.

For, Gentlemen, the Fine that is paid by the Son of a Freeman, upon his being admitted and ſworn, is only 6*s.* 8*d.* That is the reaſonable Fine, that is always paid, when a Man is intituled as the Plaintiff is: But all other Perſons, whether they are made free by a Freehold or by Purchaſe, they always paid 13*s.* 4*d.* or, however, always more than the Perſon who was admitted as the eldeſt Son of a Freeman.

My Lord, and Gentlemen of the Jury, when you have heard this Cuſtomal (which we ſhall lay before you) read, we ſhall then read to you ſome Hundreds of Entries out of the Corporation-Books; from whence it will appear, that the eldeſt Sons of Freemen, under the Circumſtances of the preſent Caſe, have been always admitted; and from whence there will reſult ſo uniform and clear a Teſtimony in Support of the Plaintiff's Right, that we defy the Gentlemen of the other Side to produce one Entry, in any of the Corporation Books, to contradict, or at leaſt to impeach, our Entries.

Gentlemen, theſe are old Entries, many of them in Queen *Elizabeth*'s Time; and, therefore, they are not ſo exact in the Stile as modern Entries uſually are. Sometimes the Son is ſaid to be admitted, "*Quia pater ejus* "*liber erat, et ipſe natus fuit infra libertatem.*" Sometimes the Stile is, "*Quia maximus natu filius.*" And ſometimes, "*Quia filius liberi* "*hominis.*"

And, Gentlemen, by comparing the Times of their Fathers Admiſſions, and the Births or Baptiſms of the Perſons admitted (which we ſhall prove to you by authentic Copies from the Pariſh Regiſter-Books in *Haſtings*), it will appear to you to be the moſt clear and ſtrong Caſe that ever came before a Jury.

Gentlemen of the Jury, another Part of our Evidence will ariſe from living Witneſſes; very ancient Men, who, by their own Knowledge and Obſervation for fifty or ſixty Years together, and by converſing with their Anceſtors, many of whom lived to be eighty and ninety Years old, will prove, that this has always been the Cuſtom, That the eldeſt Son of a Freeman, born within the Liberties, and after his Father was made free, has always been intituled to his Freedom; till the other Day, when the Rights of the Town were to be played into a narrower Compaſs, and no Man was to be intituled to his Freedom, but at the Will and Pleaſure of the Mayor and Jurats. And theſe Witneſſes, Gentlemen, are not only ancient Men, but Perſons free and diſintereſted; not a few Men diſfranchiſed To-day, to ſerve a particular Purpoſe, and be made free again To-morrow: But our Witneſſes are Men of great Age and Experience, not intereſted. We doubt not, therefore, Gentlemen, when you have heard our Evidence, that you will be of Opinion, that the Plaintiff has an undoubted Right, as the eldeſt Son of a Freeman, and find the Cuſtom for the Plaintiff accordingly.

Mr. *Strange*. May it pleaſe your Lordſhip, and you Gentlemen of the Jury; I am alſo of Counſel for the Plaintiff: And, my Lord, this Caſe has been ſo fully and clearly opened by the Gentlemen who have gone before me, that I ſhall not take up any of your Lordſhip's Time in ſtating any of the Circumſtances in the Plaintiff's Caſe; and I ſhall beg Leave, Gentlemen, only to obſerve, that the ſingle Queſtion now to be tried by you is, Whether the Cuſtom in the Town and Port of *Haſtings* be, That every Perſon, being the eldeſt Son of a Freeman of the ſaid Town and Port, and born there, after the Admiſſion and Swearing of his Father, has a Right, in Reſpect thereof, and alſo upon paying a reaſonable Fine, to be admitted into the Office of one of the Freemen of the ſaid Town and Port? For, Gentlemen, if this be the Cuſtom there, the Plaintiff *Moore* is within every Part of this Cuſtom.

In this Caſe, Gentlemen, three Things are to be proved:

Firſt, That the Plaintiff be the Son of a Freeman, that was admitted and ſworn into the Franchiſe of this Town.

Secondly, That he be born within the Liberties of the Town.

Thirdly, That he be born under this Circumſtance, after the Time of his Father's Swearing and Admiſſion into this Freedom.

And we ſhall apply ourſelves to lay before your Lordſhip and the Jury ſuch an Evidence, as ſhall fully make out the Cuſtom, That the eldeſt Son of a Freeman, born within the Borough, is, upon paying 6*s.* 8*d.* as a reaſonable Fine, to be admitted and ſworn into the Freedom of the Town.

My Lord, and Gentlemen of the Jury, the particular Evidence we ſhall lay before you, has been minutely opened to you; and I would beg Leave only to obſerve, that, as I humbly apprehend, the Cuſtom now inſiſted on by the Plaintiff is a Sort of common Right of all the Subjects of *England*, there being no Corporation in the Kingdom (*I might ſay, upon the Face of the Earth*), but where the Sons of Freemen, born after their Fathers Freedom, are intituled, according to the ſeveral Uſages of the reſpective Boroughs where they claim their Freedom; ſo I do not know, I own, of one Inſtance, that I ever yet heard of, to the contrary.

But, my Lord, as we do not rely on that general Cuſtom, but on the particular Evidence which has been opened; we ſhall begin with an old Record in 1573, as ancient as the old Cuſtomal of the *Cinque Ports*. We ſhall then, Gentlemen, read to you the Entries of Perſons who have been admitted as Sons of Freemen, for near two hundred Years paſt; and then produce to you ſeveral ancient living Witneſſes, who will ſpeak to the Uſage and Cuſtom, and will prove to you, that it has been ſo Time out of Mind: And then, Gentlemen, we hope that, upon hearing theſe Records, and the Opinion of the old Witneſſes, you will find a Verdict for the Plaintiff.

Mr. *Marſh*. My Lord, we had a Rule for inſpecting the Corporation-Books; therefore they are not in our Hands: But we have taken authentic Copies of the old Cuſtomal and Entries on Stamps, which we are ready to prove.----Swear Mr. *Cranſton*.

Mr. Attorney-General (Sir *John Willes*). My Lord, we have the Original in our Hands; and if we produce the Original, they cannot read their Copy. But, my Lord, we ſay, with great Submiſſion to your Lordſhip, that the Original itſelf is no Evidence.

Lord *Hardwicke*. Mr. Attorney, ſome Light ſhould be given what it is, and then I ſhall be able to judge.

Mr. *Strange*. If your Lordſhip pleaſes, we may as well prove our Copy.

Lord *Hardwicke*. If the Original is here, I cannot read the Copy.

Mr. Cranſton *ſworn.*

Mr. *Strange*. Where had you that Book?

Mr. *Cranſton*. From the Town-Clerk of *Haſtings*.

Mr. *Marſh*. Where was it kept? Among the Corporation-Books and Records?——Mr. *Cranſton*. Yes.

Mr. *Marſh*. Turn to the 34th Article.

Sir *Tho. Abney*. My Lord, it is an ancient Book, kept among the other Records of the Corporation; and I never knew a Trial of this Kind, but the ancient Books of the Corporation were always read.

Mr. Att. Gen. My Lord, I humbly ſubmit it to your Lordſhip, that, as they open it, ſuch a Book ought not to be read in Evidence; beſides that there are ſeveral other Objections to it.

My Lord, they open it as the Cuſtomal of all the *Cinque Ports*, but not as the Cuſtomal of this Borough in particular: And, my Lord, this *Mandamus* takes no Notice of any Privileges that belong to all the *Cinque Ports*; and therefore the Cuſtomal they ought to produce, ſhould be the Cuſtomal of that particular Town: But, to ſhew that this will be Evidence, they ſhould make it appear, that there is one concurring Cuſtom throughout the whole *Cinque Ports*.

And, my Lord, though there are ſome general Cuſtoms which do affect all the *Cinque Ports*; yet, with great Submiſſion to your Lordſhip, I muſt beg Leave to inſiſt, that this particular Cuſtomal, in caſe it could be read, no more affects this Corporation, than the Cuſtoms of a County affect every particular Borough or Hundred in that County. In order to make this Evidence, they ſhould prove one concurring Cuſtom throughout all the *Cinque Ports*.

But, my Lord, if that were ſo, I ſubmit it to your Lordſhip, that this cannot be read as Evidence.

The Gentlemen of the other Side ſay, that it is an ancient Record, becauſe it is without a Date; and therefore it is ancient. And this, my Lord, would have been proper, if they had had the old, ancient Cuſtomal itſelf to produce. And I ſubmit it to your Lordſhip, that they muſt either produce that Cuſtomal, or ſhew that it cannot be come at, before this can be read. This is only an Entry in the Corporation-Books, in the Year 1573, of an ancient Cuſtomal.

This, my Lord, is what they would offer to your Lordſhip and the Jury, as Evidence: It is only a Copy; and if it be only a Copy, I humbly inſiſt, they ought to produce the Original, or ſhew that they cannot come at it. But I believe they will be at a Loſs to ſhew, it was ever entered at all by the Corporation's Order: For there is an Entry juſt before this, in the Year 1573, of a Mortgage; there are Abundance of Scraps put together, which nothing at all can be made of; ſome in 1609, ſome in 1592; a hundred Things got together, and entered at different Times, by Nobody knows who. *Non conſtat*, but this pretended Cuſtomal may be ſewed into the Book; for there is nothing entered in this Book, that can be given in Evidence. If it was the Corporation-Book, there would have been other Entries, of the Manner of electing Freemen, Officers of the Corporation, and Members to ſerve in Parliament, and other Corporation-Affairs: But, becauſe it is found among the Corporation-Papers, therefore it is to be given in Evidence; though found amongſt a Medley of a hundred Sorts of trifling Things, in no wiſe relating to the Corporation, and that belong to God knows who. In the Book there are Copies of Mortgages, not one of them from Perſons who ſtood indebted to the Corporation in one Farthing; an Account of a Rental of a Noble Lord's Eſtate; the Reſolution of the Judges upon the Statute relating to the Poor; a hundred miſcellaneous Things got together, Nobody knows how, or why: My Lord, I ſay, when it appears in this Light before your Lordſhip, I ſubmit, that, as it does not at all appear what this Medley of a hundred Things are, becauſe it is found amongſt ſome Papers in the Cuſtody of the Town-Clerk, and there is one Thing which relates to the Cuſtom of all the *Cinque Ports*, and a hundred other Things not relating either to them or to this Borough, whether it be any Evidence at all. I ſubmit it therefore to your Lordſhip, in the firſt Place, that as, upon the Face of it, it appears to be only a Copy of a Thing; and as it appears *that* Thing does not relate to this Borough in particular; and as it does not appear what Book this is, nor how it came amongſt the Books of the Corporation; and as it is only a Collection of uſeleſs, miſcellaneous Papers; I think it ought not to be read.

Lord *Hardwicke*. If I could get off from reading this Book lawfully, yet, from the Nature of this Cauſe, I muſt look upon the Book. In Caſes of this Nature, I think it, *prima facie*, proper to be read in Evidence. There may be Objections to the reading it of different Kinds; ſome, from the Nature of the Cuſtody in which it has been kept; ſome intrinſical, from the Book itſelf. Thoſe from the Nature of the Cuſtody, when, where, and how long it has been kept, are proper againſt reading it at all: But, when they ariſe from the Book itſelf, it is impoſſible to ſay it ſhould not be read; becauſe the Court cannot judge whether it be proper or no, till they have heard it. I think, therefore, it muſt be read. If, upon reading, there appear to be any material Objections to the Book, I will hint them to the Jury, when I come to ſum up.

Mr. Att. Gen. My Lord, we ſubmit it to your Lordſhip, that it is torn and defaced, and in many Places not legible.

Mr. *Strange.* Why did not you keep it better? This Book has not been in our Cuſtody. If you do not take proper Care of your Corporation-Books, are we to be prejudiced by your Neglect?

Mr. *Marſh.* Mr. *Salkeld*, pleaſe to read the Title: If they have put *Chevy-Chaſe* in it, what is that to our Cuſtomal?

Aſſociate reads——

"The Cuſtomal of the Town of *Haſtings*, tranſlated out of *Latin* into "*Engliſh*—"

Mr. Att. Gen. Don't impoſe upon the Court, by reading a Tranſlation of an old, miſcellaneous, uſeleſs Paper, without any Date.

Sir *T. Abney.* We ſhall read what Part we think fit.

Lord *Hardwicke.* What is the Title of that Part you are now going to read---the *Latin* Title?

Sir *T. Abney.* Read the *Latin* Title.

Aſſociate reads——

"*Hic ſequuntur Conſuetudines Quinque Portuum, et eorum Membrorum, à "tempore quo non extat memor' hom' uſitat' et approbat'.*

Lord *Hardwicke.* Mr. Attorney, it is ſuggeſted in the *Mandamus*, that *Haſtings* is one of the *Five Ports*.

Mr. Att. Gen. But, my Lord, this is not the Cuſtomal of *Haſtings*: Here is Page 1. in the Middle of the Book.

Aſſociate reads——

"*Hic ſequuntur Conſuetudines, &c.*"

Mr. *Strange.* Turn to *Article* 34.

Sir *T. Abney.* Begin at *Poſſunt Majores et Ballivi.*

Aſſociate reads——

"*Poſſunt Majores et Jurati, Ballivi et Jurati, et Jurati, in quolibet Portu "et Membro ubi Major et Ballivus de communi electione non fuerit, in "præſentia Communitatis, recipere et facere liberes tribus modis: Uno modo,* per Nativitatem infra libertatem ſuam, ſi pater ſuus, tempore nativitatis ſuæ, fuit liber: *alio modo, per Liberum Tenementum perquiſit': "tertio, per Emptionem. Et notand', quod nullus gaudebit libertatem alicujus "Portus ſive Membri, quouſque ſacramentum ſuum præſtitit, quod eſſe debet, à "die illo, uſque ad finem vitæ ſuæ, bonus et fidelis Domino noſtro Regi Angliæ, "et hæredibus ſuis; ſtatutaque et libertates Quinque Portuum, et ſpecialiter "illius Portus ſive Membri ubi commoratur, pro poſſe ſuo maintenebit; "obedienſque Majori et Juratis, Ballivo et Juratis, vel Juratis, ſemper erit; "ſemper paratus tam ad ſcottand' et lottand', ſi quæ taxat' pro communi "utilitate fuerint, quam in armis pro defenſione inimicorum Domini Regis, "cum per Gubernatores ipſius Portus ſive Membri habuerit in mandatis; et "quod non audiat aliquod ad deteriorationem libertat' prædict', ſive ad reprobationem Majoris, Ballivi, et Juratorum, ubi commoratur, vel eorum alicujus, "niſi ipſe inde eis dabit notitiam. Sic ſe adjuvent ſancta ſanctor', &c.*"

Mr. *Strange.* Read on the 35th, 36th, 37th, 38th, and 39th Articles.

Aſſociate reads——

Art. 35. "*Et quilibet gaudere intendens libertatem Quinque Portuum per "Emptionem, inveniet quatuor manucaptores reſident' de omnibus et ſingulis "præmiſſ' perimplend'.*"

36. "*Et ſi fuerit extraneus, in partibus tranſmarinis oriundus, et in aliquo "Portu ſive Membro bonæ famæ et conditionis permanſit, et poſtmodum in "eodem Portu ſive Membro maritat' fuerit, ac libertatem gaudere deſiderans, "fiat ipſe liber per emptionem, ut prædict' eſt, per totam libertatem Quinque "Portuum; ſalvo, quod non ad electionem Majoris, Ballivi, Jurat', ſive "alior' officiar', nec de conſilio ſive negotiis Communitatis fiend', quouſque habuerit literas Domini Regis, pro indigenat' cognoſci poteſt.*"

37. "*Et poteſt Dominus Cuſtos Quinque Portuum, ſive ejus Locum-tenens, "ſemel dum in officio fuerit, mandare et facere unum extraneum, ultra mare "natum, liberum in quolibet Portu et Membro, in forma liberis per Emptionem, abſque aliquo fine communitati ubi ipſe extraneus commoratur pro eodem "perſolvend', except' officiar' feod' ad hoc uſque conſuet'.*"

38. "*Et ipſi, qui ſunt in omnibus et ſingulis formis prædictis facti liberi in "aliquo Portu ſive Membro, habeant libertatem conſuet' in omnibus aliis "Portubus.*"

Sir *T. Abney.* Now read the next, *Nullus fiat liber per Emptionem.*

Aſſociate reads——

39. "*Et nullus fiat liber per Emptionem, quouſque in Portu vel Membro "ubi libertatem deſiderat, per unum annum et unam diem permanſit, et ſi bene et "honeſte habuerit, &c.*"

Mr. *Strange.* My Lord, we ſhall read no more.

Lord *Hardwicke.* Are there any other Parts, Mr. Attorney, you would have read?

Mr. Att. Gen. Let me ſee the Book. *(Turns it over.)* My Lord, here is an Entry in 1606, before the Entry of 1573. Here are counter-parts of Leaſes. We muſt, I believe, trouble your Lordſhip with reading one of them.—Read that Leaſe.

Aſſociate reads——

"This Indenture made the 10th Day of *Auguſt*, in the fifteenth Year "of the Reign of our Sovereign Lady *Elizabeth*, &c. between *Theophilus "Johnſon*, of *Lamberhurſt*, in the County of *Kent*, Gent. of the one Part, "and *James Woodgate*, Yeoman, of the other Part"——

Mr. Att. Gen. Read the Judges Opinion about the Statute of Queen *Elizabeth.*

Mr. *Strange.* They would inſinuate, that becauſe a few miſcellaneous Papers are bound up with our Cuſtomal, therefore it is not authentic.

Lord *Hardwicke.* There is no Weight in that at all: The Town Clerk may bind up what he pleaſes with the Corporation-Books. The Queſtion is, Whether the general Declarations of the *Cinque Ports* are binding in the particular Ports, or no?

Mr. Att. Gen. My Lord, I ſubmit it to your Lordſhip, that the Things bound up with it, appearing to be miſcellaneous, uſeleſs Papers, take off from the Authority of it.

Lord *Hardwicke.* There are Copies of Leaſes bound up with it, Mr. Attorney: Will that take off from its Authority?

Mr. Att. Gen. If you will admit what I ſtate, we will read it.

Mr. *Strange.* You may ſtate what you will, and read what you will out of it; it is your own Book.

Mr. Att. Gen. Then here is the Rental of a certain Noble Lord's Eſtate.

Mr. *Strange.* That looks as if the Corporation were in Hopes he would leave it them.

Mr. *Marſh.* Not at that Time of Day. There are ſome Addreſſes, that may be a Proof of their Loyalty.

Lord *Hardwicke.* Let me ſee the Book *(which was delivered)*. There is an Entry of ſome Leaſes, with a Rental of an Eſtate.

Mr. Att. Gen. Let me ſee the Book.

Sir *T. Abney.* My Lord, we beg Leave firſt to read the Entries of eldeſt Sons, born within the Liberties, after their Fathers were admitted, and that were admitted on paying their Fines of 6*s.* 8*d.*—Read *Jeremiah Brybam.* He was admitted into the Freedom the 27th of *April*, 12 *James* I. *anno* 1614, and paid his Fine of 6*s.* 8*d.* He was baptized, my Lord, the 9th of *November*, 1587, and admitted as the eldeſt Son of *James Brybam*, Jurat. *(Produce the Copy on Stamps.)*

Lord *Hardwicke.* What is that? Where had you it from? Is it a true Copy?

Mr. *Cranſton.* My Lord, it is a true Copy. I had it from the Corporation-Books; I examined it with the Entry in the Book.

Aſſociate reads——

"*Memorandum.* 27° *Aprilis*, 12° *Jacobi* I^mi, *anno* 1614. *Haſtings*, ſſ. "At the Court of our Sovereign Lord the King, came *Jeremiah Brybam*, "and prayed to be admitted to the Freedom and Liberty of this Town; "and by Mr. Mayor and his Brethren was admitted and ſworn, and kiſſed "the right Cheek of Mr. Mayor, *more ſolito, pro fine* 6*s.* 8*d. duntaxat*, "*quia filius ſen' eſt liberi hominis et Jurat' hujus villæ, &c. viz. filius Jacobi "Brybam, Jurat' defunct', &c.*"

Mr. *Strange.* That, my Lord, is the Cuſtom: He kiſſed the Mayor's Cheek, "*more ſolito, pro fine* 6*s.* 8*d. duntaxat, quia filius ſen' eſt liberi "hominis et Jurat' hujus villæ, &c. viz. filius Jacobi Brybam, Jurat' de"funct', &c.*"

Sir *T. Abney.* My Lord, we beg Leave now to ſhew when he was born, and when his Father was admitted. He was born or baptized the 9th of *November*, 1587.—Read the Certificate. Did you compare it with the Pariſh Regiſter-Book of *Haſtings?* Is it a true Copy?

Mr. *Cranſton.* Yes; it is a true Copy; I examined it with the Regiſter.

Aſſociate reads——

"1587, *November* 9th, ——

Sir *T. Abney.* This is the Birth or Baptiſm of this *Jeremiah Brybam.*

"Chriſtened, *Jeremiah*, the Son of *James Brybam.*"

Sir *T. Abney.* My Lord, to ſhew that his Father was a Freeman, we ſhall read to your Lordſhip and the Jury an Entry, whereby it will appear, that his Father acted as a Freeman *January* 4, 18 *Eliz.* 1576.

Lord *Hardwicke.* He is mentioned to be a Jurat in this Entry; therefore that is needleſs.

Mr. *Strange.* My Lord, the next Entry is the 20th of *December*, 1620, *James*, the Son of *James Laſher.*—Where is that? Did you examine that with the Entry in the Corporation-Book? Is it a true Copy?

Mr. *Cranſton.* Yes; I examined it; it is a true Copy.

Aſſociate reads——

"*Haſtings*, ſſ. Aſſembly holden the 20th *December*, *anno regni Regis "Jac.* 18°, 1620, *ſecundum conſuetudinem, &c.* At which Court appeared "*Richard Waller*, Mayor; *James Laſher, Martin Liſe, William Byſhop, "Richard Withers, Jeremiah Brybam, Richard Boys, John Brett, Nathaniel Laſher, Thomas Bryan, John Barley, William Barker*, Jurats; *Robert "Mills* ——

Mr. *Strange.* Paſs over the Names.

"At this Aſſembly, *Samuel Moore* and are "elected Barons of this Town: ——

Sir *T. Abney.* My Lord, this *Samuel Moore* was the Plaintiff's Grandfather.

"——And at this Court it is decreed, that *James Laſher* inſtantly re"quiring the ſame, was admitted to the Liberty and Freedom of this "Town, by Conſent of all; *et fecit ſacramentum, et oſculatus eſt malam "dextram Majoris, more ſolito, et ſolvit pro fine* 6*s.* 8*d. quia primogenitus "filius Jacobi Laſher, Jurat'.*"

Sir *T. Abney.* Becauſe he was the eldeſt Son of his Father. Now, my Lord, we ſhall ſhew he was born within the Borough, and after the Time of his Father's being admitted a Freeman.—Look out the Certificate of *James Laſher*'s Baptiſm, the 27th *April*, 1579. Is that a true Copy, Sir? Did you examine it with the Regiſter?

Mr. *Cranſton.* It is; I examined it.

Aſſociate reads——

"27 *April*, 1579. Chriſtened, *James*, the Son of *James Laſher*, Jurat."

Mr. *Strange.* The Father is ſaid to be a Jurat at the Time of regiſtering the Son's Baptiſm.

Mr. *Marſh.* My Lord, the next Inſtance we go upon is *Thomas Lovell*, (Look out that) the eldeſt Son of *William Lovell.* The Father was admitted the 6th of *September* 1636. *Thomas* the Son was born the 10th of *February*, 1640; he was admitted a Freeman on the 20th of *April*, 1667.—Read the Son's Admiſſion. Did you examine it?

Lord *Hardwicke.* Is that a true Copy?

Mr. *Cranſton.* It is, my Lord; I examined it.

Aſſociate reads——

"*Haſtings*, ſſ. 20 *April*, 1667. In public Court came *Thomas Lovell*, "jun. eldeſt Son of *William Lovell*, late Jurat, deceaſed, and prayed the "Franchiſe of this Town; to which, for his Fine of 6*s.* 8*d.* he is "admitted, took his Oath, and kiſſed the Mayor's right Cheek, *more "ſolito.*"

Mr. *Marſh.* To prove that his Father was a Freeman, ſhew the Entry of the 6th of *September*, 1636. Is it examined?

Mr. *Cranſton.* Yes.

Associate reads ——

"*Hastings*, ss. *Memorand'*, *quod* 6th *September*, 1635, came *William* "*Lovell*, and prayed to be admitted into the Freedoms of this Town and "Port, and took the Oaths, *more solito*, and was admitted accordingly."

Mr. *Strange*. My Lord, his Father had been four Years a Jurat, when the Son was baptized.---Read the Certificate of the 10th of *February*, 1640. Is it a true Copy? Did you examine it?

Mr. *Cranston*. I did.

Associate reads ——

"1640, *February* 10th. Baptized, *Thomas*, the Son of *William Lovell*, "Jurat."

Mr. *Filmer*. My Lord, the next Instance is *William Batchelor*, eldest Son of *James Batchelor*. He was admitted the 2d of *May*, 1669.---Read that. Is it a true Copy? Did you examine it?

Mr. *Cranston*. It is; I examined it.

Associate reads ——

"*Hastings*, ss. 2 *Maii*, 22 *Car.* II^di, 1669. At this Election and As-"sembly, *William Batchelor*, eldest Son of *James Batchelor* eldest, Free-"man above-named, at his humble Request, is also made a Freeman, "and admitted into the Franchise of this Township, for his Fine of a "Demi-Mark, and thereunto sworn, and kissed the Mayor's Cheek, "*more solito*, &c."

Mr. *Filmer*. My Lord, he was baptized the 17th of *July*, 1636.---Read that Certificate. Did you examine it? Is it a true Copy?

Mr. *Cranston*. It is.

Associate reads ——

"17 *July*, 1636. Baptized, *William*, the Son of *James Batchelor*."

Mr. *Filmer*. My Lord, his Father was admitted nineteen Years before, 17th *September*, 15 *Jac.* I. 1617.---Read his Admission. Is it a true Copy? Did you examine it?

Mr. *Cranston*. I did; it is a true Copy.

Associate reads ——

"15° *Regis Jacobi* I^mi, *Jacobus Batchelor admissus est ad libertatem hujus* "*villæ, et osculavit malam dextram Majoris, more solito, pro fine suo* 13*s.* 4*d.*"

This *James* was the Father, and he paid a Fine of 13*s.* 4*d.* because he was not admitted as the Son of a Freeman. He was admitted by a Freehold, or by Purchase.

Mr. *Clarke*. My Lord, the next Instance we shall trouble your Lordship with, is *William Parker*, jun. He was admitted the 9th of *May*, 1670, for a Fine of 6*s.* 8*d.*---Read his Admission. Is that a true Copy? Did you examine it?

Mr. *Cranston*. Yes; I examined it.

"*Hastings*, ss. 9° *die Maii*, 22 *Car.* II. 1670. *Assemblat' tent' ibidem* "*coram Majore villæ et portus Hastings prædict'*,

"*William Parker*, jun. eldest Son of *William Parker*, Jurat, came here "in Court, praying his Freedom, &c. which is granted him for a Demi-"Mark; took his Oath, and kissed the Mayor's Cheek, *more solito*, &c."

Mr. *Clarke*. My Lord, we have a Certificate of the Son's Baptism, the 14th of *August*, 1644.---Is it a true Copy?

Mr. *Cranston*. It is.

Associate reads ——

"14 *August*, 1644. Baptized, *William*, the Son of *William Parker*."

Mr. *Clarke*. We shall now shew your Lordship, that his Father acted as a Freeman six Years before the Birth of the Son, and as a Jurat two Years after.---Is that a true Copy? Did you examine it?

Mr. *Cranston*. It is.

Associate reads ——

"*Hastings*, ss. *Elect' Majoris villæ et portus de Hastings prædict'*, *tent'* "*ibidem* 15° *die Aprilis*, *anno regni Regis nostri Car' Angl'*, &c. 14°, 1638. "*Ad hanc diem Johannes Barley electus est in offic' Majoris hujus villæ pro* "*hoc anno sequent'*——"

Lord *Hardwicke*. Who was present?

"—— *per voces horum liberorum hominum villæ prædict'*, *videlicet*, *Nic.* "*Staplus*, *Ric. Staplus*, *Wil. Goldham*, *Wil. Chapman*, *Johannis Sargent*, "*sen. Wil. Turpine*, *Ric. Wheeler*, *Johannis Harys*, *Wil. Dighton*, *Tho.* "*Rainolds*, *Sam. Gawen*, *Geo. Fletcher*, *Ric. Wynter*, *Hen. Lasher*, *Humf.* "*Blinkerne*, *Jo. Hithe*, *Mich. Lasher*, *Phil. Girdler*, *Wil. Lunsford*, *Geo.* "*Easton*, *Ric. Sargent*, *Sack. Franke*, *Jo. Sargent*, *jun. W. Parker*, *Jo.* "*Wynter*, *Ro. Marshall*, *Tho. Stevenson*, *jun. Jo. Hollybone*, *Ro. Phillip*, "*Dr. Ellis*, *Marci Pontes*, *Wil. Lovell*, *jun. et Jac. Batchelor*: *Qui quidem* "*Major sic elect' sacramentum suum præstitit corporale ad offic' illud exercend'* "*prout decet*, *more solito*, &c."

Sir *T. Abney*. The next Person we shall trouble your Lordship with, is——

Mr. Serj. *Eyre*. Was any body else admitted at that Time?

Sir *T. Abney*. There were nine made free.---My Lord, the next is *John Fantley*. He was admitted the 5th of *December*, 1674.---Is it a true Copy? Did you examine it?

Mr. *Cranston*. I examined it; it is a true Copy.

Associate reads ——

"*Hastings*, ss. 5 *Decembris*, 1674, 26 *Car.* II^di. *Assemblat' tent' ibidem* "*coram Majore*, &c. *villæ et portus Hastings prædict'*, *in plena curia venit* "*Johannes Salmon*, *et petit libertatem hujus villæ*; *Johannes Fantley*, *jun. et* "*Willielmus Genner*, *jun. et admittuntur*, *scilicet*, *prædict' Salmon pro* 13*s.* "4*d. et prædict' Fantley* 6*s.* 8*d. et prædict' Genner* 6*s.* 8*d. quia filii sen'* "*patr' eor' liber'*; *qui omnes fecerunt inde sacramentum*, *et malam dextram* "*Majoris osculaverunt*, *more solito*, &c."

Sir *T. Abney*. My Lord, the Father of *Fantley* was admitted a Freeman the 8th of *July*, 1626. *Fantley* the Son was baptized the 13th of *December*, 1640; just thirty-four Years before he was admitted a Freeman, which was the 5th of *December*, 1674.---Read the Certificate of his Baptism. Is it a true Copy?

Mr. *Cranston*. It is.

Associate reads ——

"*Hastings*, ss. 13 *December*, 1640. Baptized, *John Fantley*, the Son of *John* and *Margaret Fantley*."

Sir *T. Abney*. We shall now shew your Lordship, that his Father was admitted to his Freedom the 8th of *July*, 1626, thirteen Years before the Birth of his Son.---Read the Father's Admission. Is it a true Copy? Did you examine it?----Mr. *Cranston*. I did.

Associate reads ——

"*Hastings*, ss. 8 *Julii*, 1626. *Johannes Fantley admissus est ad libertatem* "*hujus villæ*, *pro fine* 13*s.* 4*d.*"

Mr. Serj. *Eyre*. There the Fine is 13*s.* 4*d.*

Sir *T. Abney*. This is the Father.

Mr. Serj. *Eyre*. That is a very material Difference. The Son's Fine is 6*s.* 8*d.* but every body that is admitted by any other Right, pays for his Fine 13*s.* 4*d.*

Mr. *Strange*. The Fine of 6*s.* 8*d.* is a particular Indulgence to the Sons of Freemen, and all others paid 13*s.* 4*d.* or more.---My Lord, the next Instance is *Philip Bayley*, the eldest Son of *John Bayley*. He was admitted the 10th of *April*, 1691; he was born the 14th of *May*, 1669. ---Read his Admission. Did you examine it? Is it a true Copy?

Mr. *Cranston*. It is.

Associate reads ——

"10 *April*, 1691, 3 *W.* and *Mar. Hastings*, ss. This Day, being "*Good-Friday*, *Philip Bayley*, eldest Son of *John Bayley*, deceased, for-"merly Mayor of *Hastings*, for his Fine of 6*s.* 8*d.* was admitted to the "Freedom of this Town and Port, by *Thomas Lovell*, Mayor, *Edward* "*Milward*, *Richard Watts*, and *John Medhurst*, Jurats; who took his "Oath, and kissed the Mayor's right Cheek, *more solito*, and also took "the Oaths of Allegiance and Supremacy."

Mr. *Strange*. We shall now produce the Copy of the Registry of his Baptism, which was the 14th of *May*, 1669.

Mr. *Cranston*. It was the 19th of *May*, 1667.

Mr. *Strange*. Read the Certificate of the 19th of *May*, 1667, of *Philip Bayley*'s Baptism. Did you examine it? Is it a true Copy?

Mr. *Cranston*. It is.

Associate reads ——

"1667, *May* 19. Baptized, *Philip*, the Son of *John Bayley* and *Anne* "his Wife."

Mr. *Strange*. My Lord, we shall now read the Copy of the Entry of the 28th of *April*, 1656; whereby it will appear, *John Bayley* his Father was then a Freeman.---Is it a true Copy? Did you examine it?

Mr. *Cranston*. I examined it; it is a true Copy.

Associate reads ——

"*Hastings*, ss. The Election of the Mayor of the Town and Port of "*Hastings*, the 28th Day of *April*, 1656, in the Court-Hall of the "same Town, according to the Use and Custom thereof, Time "out of Mind used, &c.

"At this Day was chosen *Thomas Delves* into the Office of Mayoralty "of the same Town, for the Year ensuing, by the Voices of these "Freemen of the said Town following:----

Mr. *Strange*. Who was present?

"—— That is to say, of *Richard Wheeler*, *William Dighton*, *Richard* "*Sargent*, sen. *Philip Girdler*, *John Lasher*, *William Barker*, *Mark Pontes*, "*James Batchelor*, *Daniel Downe*, *James Lasher*, Gent. *Drew Richardson*, "*Thomas Jarret*, *John Spey*, *Samuel Smershall*, *John Fyssenden*, *Richard* "*Stevenson*, *James Redames*, *William Geerey*, *Robert Bursey*, *Thomas Hyder*, "*Daniel Stevens*, *John Brunnel*, *John Bayley*, jun. *Thomas Penbuckle*, "*Edward Hildring*, *Simon Waters*, *James Chowe*, *Ralph Barnicle*, *John* "*Shoesmith*, *John Fantley*, *Peter Stanbynooth*."

Mr. *Marsh*. My Lord, the next Instance is *Jeremiah Redames*. He was admitted the 11th of *January*, 1691.----Look out that. Did you examine it? Is it a true Copy?——Mr. *Cranston*. It is.

Associate reads ——

"*Hastings*, ss. *Memorandum*. The 11th Day of *January*, 1691, be-"fore Mr. Mayor, assisted by *Philip Lovell*, *John Stevens*, and Dr. *Peter* "*Fiat*, Jurats, came *Jeremiah Redames* and *Philip Girdler*, and craved to "be admitted into the Freedom of this Town and Port; and they were "accordingly admitted into the Freedom, and took the Oath of a Free-"man, and also the other Oaths, and kissed the Mayor's right Cheek, "*more solito*; and for a Fine paid, *viz. Philip Girdler*, a Mark; and "*Jeremiah Redames*, being the eldest Son of a Freeman, half a Mark; "which was *extr'* to the Chamberlain."

Mr. *Marsh*. My Lord, the Time of his Baptism was the 2d of *January*, 1655.---Read that Certificate. Have you examined it? Is it a true Copy?——Mr. *Cranston*. It is.

Associate reads ——

"*Hastings*, ss. 2 *January*, 1655, *Jeremiah*, the Son of *James Redames*, "was baptized."

Mr. *Marsh*. My Lord, *James Redames* was a Freeman in *April* 1649.

Mr. *Clarke*. My Lord, the next Instance is *Thomas Boyce*. He was admitted as an eldest Son.

Lord *Hardwicke*. You must shew *Jeremiah Redames* was born after the Father's Admission, if you would apply this Instance.

Mr. *Clarke*. My Lord, we will shew that *James Redames*, the Father, acted as a Freeman the 28th of *April*, 1649, six Years before the Son was born.---Look out that Entry. Is it a true Copy?

Mr. *Cranston*. It is.

Associate reads ——

"*Hastings*, ss. The Election of the Mayor of the Town and Port "of *Hastings*, the 28th Day of *April*, 1656, in the Court-Hall of "the same Town, according to the Use and Custom there Time out "of Mind used.

"This Day was chosen *Thomas Delves* into the Office of Mayoralty of "the same Town, for the Year ensuing, by the Voices of these Free-"men of the said Town; that is to say, of *Richard Wheeler*, &c. *James* "*Redames*, &c." *ut supra.*

Mr. Serj. *Eyre*. Read it again.

Lord *Hardwicke*. It is only mentioned as a Fact.

Mr. *Clarke*. My Lord, the next Instance is *Thomas Boyce*, admitted as an eldest Son the 26th of *December*, 1691. He was baptized the 3d of *August*, 1671.---Read his Admission. Is it a true Copy?

Mr. *Cranston*. It is.

Associate

Associate reads—

" *Hastings*, ff. *Memorandum*, That the 26th Day of *December*, 1691, " before Mr. Mayor, assisted by *Thomas Lovell*, *Philip Lovell*, *John Stevens*, " and Dr. *Peter Fiat*, Jurats, came *Thomas Boyce*, jun. *Richard Broad-" bridge*, *Benjamin Meadow*, and *Thomas Wheeler*, and craved to be admit-" ted into the Freedom of this Town and Port; and they were accord-" ingly admitted into the Freedom, and took the Oaths of Freemen, and " also the Oaths of Allegiance to their Majesties King *William* and Queen " *Mary*, and kissed the Mayor's right Cheek, *more solito*; and for a Fine " paid, *viz. Thomas Boyce*, jun. and *Richard Broadbridge*, being Freemen's " eldest Sons, paid each 6*s.* 8*d.* and *Benjamin Meadow* and *Thomas* " *Wheeler*, 13*s.* 4*d.* each; which was *extract'* to the Chamberlain. And " forasmuch as the said *Thomas Boyce*, jun. *Richard Broadbridge*, and *Ben-" jamin Meadow*, are not yet House-keepers, their Friends have under-" taken and promised for them, that they shall pay what Scot and Lot " shall be assessed upon them, also Watch, Ward, and Search, and do all " Duties incumbent upon Freemen, *viz. Thomas Boyce*, for his Son *Tho-" mas Boyce*, jun. and *John Stevens*, Son of *Henry*, for *Richard Broadbridge* " and *Benjamin Meadow*."

Mr. *Clarke*. My Lord, he was baptized the 3d of *August*, 1671.—Read the Certificate of his Baptism. Is it examined?

Mr. *Cranston*. Yes.

Associate reads—

" *Hastings*, ff. 1671, *August* 3d. Baptized, *Thomas*, the Son of *Thomas* " *Boyce*."

Mr. *Strange*. Now read the Admission of *Thomas Boyce* the Father. Did you examine it? Is it a true Copy?

Mr. *Cranston*. It is.

" *Hastings*, ff. *Assemblat' tent' ibidem 20° die Novembris, anno regni Regis* " *nostri Caroli secundi, Angliæ, &c.* 15°, 1663.

" *Hastings*, ff. *Memorand', quod 5° die Decembris, hoc anno prædict', ve-" nerunt Thomas Boyce et Willielmus Genner coram Majore et Juratis in " plena curia, et pet' seipsos ad libertatem hujus villæ admitti; et admittuntur, " et osculati sunt malam dextram Majoris, et sacramentum suum tunc ibidem " præstiterunt, more solito, pro fine utriusque eorum* 13*s.* 4*d.*"

Mr. *Clarke*. My Lord, the next Instance is *Stephen Peregoe*. He was admitted the 11th of *August*, 1716; baptized the 29th of *January*, 1690; and his Father was admitted the 12th of *May*, 1683.—Read the Son's Admission. Is it a true Copy? Have you examined it?

Mr. *Cranston*. Yes.

Associate reads—

" *Hastings*, ff. *Cur' tent' ibidem undecimo die Augusti, anno regni Regis* " *nostri Georgii* I^mi, *Magnæ Britanniæ, &c. tertio, anno* 1716.

" *Memorandum*. The 11th of *August*, *Stephen Peregoe*, jun. was sworn a " Freeman of this Town, *more solito*, *&c.* at the *Bell* Inn in *Hastings*, be-" fore the Mayor and Jurats, and paid 6*s.* 8*d.* Fine, as being the eldest " Son of a Freeman; and the Reason of his being now sworn out of " Court was, because it had been before unanimously agreed to, in full " and open Court, by the Mayor and Jurats."

Mr. Serj. *Eyre*. Who is that?

Sir *T. Abney*. *Stephen Peregoe*.

Lord *Hardwicke*. What, is the Fine 6*s.* 8*d.*?

Mr. *Clarke*. Yes, my Lord; he paid 6*s.* 8*d.* as being the eldest Son of a Freeman.—Now read the Certificate of his Baptism. Is that a true Copy? Did you examine it?

Mr. *Cranston*. I did.

Associate reads—

" *January* 29, 1690. Baptized, *Stephen*, the Son of *Stephen* and *Mar-" garet Peregoe*."

Mr. *Clarke*. The Time of his Father's Admission was the 12th of *May*, 1683.—Read that. Did you examine it? Is it a true Copy?

Mr. *Cranston*. It is.

Associate reads—

" *Hastings*, ff. 12 *May*, 1683. Before the Mayor and Jurats, came " *Stephen Peregoe*, and prayed to be admitted into the Freedom of this " Town and Port; whereupon he is admitted for his Fine.'

Mr. *Filmer*. My Lord, *Benjamin Meadow*, admitted the 6th of *May*, 1721, is the next.—Read his Admission. Did you examine that? Is it a true Copy?

Mr. *Cranston*. Yes.

Associate reads—

" *Hastings*. ff. At the Court of Record held the 6th of *May*, 1721, " *Benjamin Meadow*, jun. was, with the unanimous Consent and Appro-" bation of the Mayor and Jurats, made a Freeman of this Town and " Port, for his Fine of 6*s.* 8*d.* as the eldest Son of a Freeman."

Mr. Serj. *Eyre*. By the unanimous Consent of the Mayor and Jurats, he was made free.

Mr. *Filmer*. My Lord, he was baptized the 25th of *August*, 1697.—Read the Certificate. Did you examine it? Is it a true Copy?

Mr. *Cranston*. It is.

Associate reads—

" *Hastings*, ff. 25 *August*, 1697. Baptized, *Benjamin*, Son of *Benjamin* " and *Meadow*."

Mr. *Filmer*. My Lord, his Father's Admission was the 26th of *December*, 1691, six Years before the Birth of the Son.—Read that. Did you examine it? Is it a true Copy?

Mr. *Cranston*. I did.

Associate reads—

" *Hastings*, ff. *Memorandum*, 26 *December*, 1691, before Mr. Mayor, " assisted by *Thomas Lovell*, *Philip Lovell*, *John Stevens*, and Dr. *Peter* " *Fiat*, came *Thomas Boyce*, jun. *Richard Broadbridge*, *Benjamin Meadow*, " and *Thomas Wheeler*, and craved to be admitted into the Freedoms of " this Town and Port; and took the Oaths, and were admitted accord-" ingly," *prout supra*.

Lord *Hardwicke*. What do you read that for?

Mr. *Strange*. My Lord, to shew that *Benjamin Meadow* was a Freeman so many Years before the Birth of *Benjamin Meadow*, the eldest Son: He came, and prayed to be admitted, and took the Oaths.—My Lord, our next Instance is *John Barley*. He is not mentioned in the Entry as the eldest Son, but as the Son of such a Man, who was free; and from thence we infer, that the Man had no other Sons.

Lord *Hardwicke*. Who is that?

Mr. *Strange*. *John Barley*, my Lord. He was admitted in *May*, 1608. We chuse to put them together, though we are now gone a hundred Years back.—Read his Admission. Did you examine it? Is it a true Copy?

Mr. *Cranston*. Yes.

Associate reads—

" *Hastings*, ff. 6° *Jacobi* I^mi, 1608. *Memorandum*, That on the 7th of " *May*, *hoc anno*, *John Barley* and *Richard Kempsall* were admitted to the " Freedom and Liberty of this Town, and were sworn, and kissed Mr. " Mayor's right Cheek, *more solito*; whose Fines appear upon their Heads."

Mr. *Strange*. See the Fine of 6*s.* 8*d.* paid by *Barley*.

Associate reads—

" *John Barley*, *Hastings*, *quia pater suus liber homo, ideo, secundum consue-" tudinem, finis ejus est* 6*s.* 8*d.*

" *Kempsall*, 13*s.* 4*d.*"

Mr. *Strange*. " *Quia pater suus liber homo, ideo, secundum consuetudinem,* " *finis ejus est* 6*s.* 8*d.*"

Lord *Hardwicke*. What was *Kempsall*'s Fine?

Mr. *Strange*. 13*s.* 4*d.* my Lord.—Now read his Certificate. Have you examined it? Is it a true Copy?

Mr. *Cranston*. It is.

Associate reads—

" *Hastings*, ff. 19 *May*, 1588. Baptized, *John*, the Son of *John Barley*."

Mr. Serj. *Eyre*. Mr. *Cranston*, you say you have examined the Register; Did not you find an elder Brother of this *John Barley*?

Mr. *Cranston*. No.

Mr. *Strange*. My Lord, we shall now shew, that his Father acted as a Freeman *anno* 1561.—Read the Entry. Is it a true Copy?

Mr. *Cranston*. It is.

Associate reads—

" *Hastings*. *Election' Ballivi tent' ibidem die Aprilis, viz. die Do-" minica prox' post Hock-day, anno tertio Elizæ, nunc Reginæ Angl' A. D.* " 1561. *Ad quem diem electus est ad officium Ballivi villæ præd' pro hoc anno* " *Tho. Wyks, per voces et nominationem Edw. Aywood*, Shipwright, *Hen.* " *Taught, Wil. James, Johannis Hemlyng, Ed. Smyth, Hen. Smyth, Johan-" nis Barley, Tho. Lake, Johannis Hollands, Wil. Cresey, Rob. Payne, Ric.* " *White*, Cooper, *Johannis Stanbynooth, Tho. Palmer, Steph. Dallery, Hen.* " *Bessam, Johannis Smyth, Tho. Losher, Ric. Down, Al. Becher, Johannis* " *Austen, Tho. Matchyn, Johannis Horsey, Wil. Stevens, Johannis Jeffery,* " *Rob. Taught, Wil. Churche, Johannis Bossam, sen. Johannis Stryde, Alani* " *Morris, Tho. Chatfield, Alani Partridge, Rob. Grave, Tho. Harrison, Wil.* " *Lockett, Thomæ Mott, Johannis Sargent, et Johannis Derle.*"

Mr. *Marsh*. My Lord, the next Instance is *William Goldham*. He was admitted the 7th of *May*, 1609.

Sir *T. Abney*. His Great Grandson is just by.

Mr. *Marsh*. Read the Entry. Is it examined?

Mr. *Cranston*. Yes.

Associate reads—

" 7 *Maii*, 7° *Jac.* I^mi, 1609. *Hastings*, ff. *Septimo die Maii, hoc anno* " *septimo Jacobi Regis, Willielmus Goldham admissus est ad libertatem hujus* " *villæ, et sacramentum præstitit corporale, et osculatus est malam dextram Ma-" joris, more solito; et finis ejus pro admissione sua assessatur ad* 6*s.* 8*d. quia* " *filius liberi hominis, &c.*"

Mr. *Marsh*. Now look out the Certificate of his Baptism. Have you examined it? Is it a true Copy?

Mr. *Cranston*. It is.

Associate reads—

" 29 *November*, 1584. Baptized, *William*, the Son of *John Goldham*."

Mr. *Marsh*. My Lord, he was admitted a Freeman the 15th of *April*, 1575, nine Years before the Birth of his Son.—Read the Father's Admission. Is it examined?

Mr. *Cranston*. Yes.

Associate reads—

" *Hastings*, ff. *Memorandum, quod* 15° *Aprilis*, 1575, *Richardus Frenche,* " *Willielmus Coombes, Richardus Edborough, Johannes Goldham, et Wil.* " *Mychell, jun. admissi sunt ad libertatem villæ prædict', et facti sunt liberi* " *homines secundum usum et consuetudinem villæ prædict', et sol' feod', et osc'* " *Ball', &c.*"

Mr. Serj. *Eyre*. Does it appear what the Fine was?

Mr. *Filmer*. No.—My Lord, the next Instance is *John Sargent*. He was admitted the 14th of *July*, 1610.—Read the Entry of his Admission. Is it a true Copy?

Mr. *Cranston*. Yes.

Associate reads—

" 1610. *Hastings*, ff. 14 *die Julii, hoc anno octavo regni Regis Jacobi,* " *Johannes Sargent admissus est ad libertatem hujus villæ, et sacramentum præ-" stitit corporale, et osculatus est malam dextram Majoris, more solito; et finis* " *ejus pro admissione sua est* 6*s.* 8*d. quia pater ejus liber erat.*"

Mr. *Filmer*. My Lord, he was baptized the 21st of *November*, 1568. Read the Certificate. Is it a true Copy?

Mr. *Cranston*. Yes.

Associate reads—

" *Hastings*, ff. 21 *November*, 1568. Baptized, *John*, the Son of *John* " *Sargent*."

Mr. *Filmer*. My Lord, *April* 3d, 1561, his Father acted as a Freeman; that was seven Years before.—Read the Entry. Is it examined?

Mr. *Cranston*. Yes.

Associate reads—

" *Hastings. Elect' Ballivi tent' ibidem die Aprilis, viz. die Domi-" nica prox' post Hock-day, anno tertio Dominæ Elizæ, nunc Reginæ An-" gliæ, &c. A. D.* 1561. *Ad quem diem electus est ad officium Ballivi villæ* *prædict'*

" *prædict' pro hoc anno Tho. Wyks, per voces et nominationem Edw. Aywood,*
" Shipwright, *et (inter alios) Johannis Sargent,*" *ut supra.*

Mr. *Clarke.* My Lord, the next Inſtance is *Thomas Rainolds.* He was admitted the 27th *May*, 1622.—Read his Admiſſion. Have you examined it? Is it a true Copy?

Mr. *Cranſton.* It is.

Aſſociate reads —

" *Haſtings*, ſſ. *Cur' tent' die* 27 *Maii*, 1622, *coram Roberto*
" *Lloyd, ſecundum conſuetud'. Memorandum, quod ad hanc cur' Thomas*
" *Rainolds, filius Melchioris Rainolds, liberi hominis hujus villæ, venit et petit*
" *ſe ad libertatem hujus villæ admitti; et admittitur, et ſacramentum ſuum*
" *more ſolito præſtitit, et malam dextram Majoris ſecundum uſum oſculatus eſt,*
" *pro fine ſuo inde, &c.*"

Mr. Serj. *Eyre.* Is there any Thing mentioned what the Fine was?

Mr. *Clarke.* No.

Lord *Hardwicke.* It is *pro fine ſuo.*

Mr. *Clarke.* My Lord, he was baptized the 15th of *December*, 1601.---Read the Certificate. Is it examined?

Mr. *Cranſton.* Yes.

Aſſociate reads —

" *Haſtings*, ſſ. 1601, *December* 15th. Baptized, *Thomas*, the Son of
" *Melchior Rainolds.*"

Mr. *Clarke.* We ſhall now ſhew, that his Father acted as a Freeman the 17th of *April*, 1597.---Read that Entry. Did you examine it? Is it a true Copy?

Mr. *Cranſton.* It is.

Aſſociate reads —

" *Haſtings*, ſſ. *Elect' Majoris villæ prædict' tent' ibidem die Dominica*
" *prox' poſt Hock-day, viz.* 17° *die Aprilis, anno regni noſtræ Dominæ Elizæ,*
" *Dei gratia Angliæ, Franciæ, et Hiberniæ Reginæ, fidei Defenſor', &c.*
" *tricesimo nono*, 1597. *Ad hanc electionem Ric. Lyſe, Major; Tho. Lake,*
" *Ric. Calverley, Rog. Ferrys, Ric. Frankc, Ric. Frencne, Martinus Lyſe,*
" *Jurat'; liberi homines, Johannes Cooney, Marcus Sargent, Tho. Stevenſon,*
" *Willielmus Byſhop, Willielmus Coombes, Ric. Hackwood, Johannes Durant,*
" *Johannes Horſey, Tho. Young, Rob. Jenkin, Ric. Field, Tho. Colgat, Tho.*
" *Mannington, Rob. Mills, Johannes Brett, Ric. Porter, Johannes Knight,*
" *Steph. Porter, Ric. Burckam, Johannes Fiſſenden, Martinus Harriſon,*
" *Melchior Rainolds, Michael Stunt, Nic. Staplus, Bernardus Borne, Petrus*
" *Hurry, Johannes Bailey, Rob. Parkes.*"

N. B. At this Day *Richard Lyſe* was choſen Mayor, and *Melchior Rainolds* Town-Clerk.

Sir *T. Abney.* My Lord, we ſhall next lay before your Lordſhip and the Jury other Inſtances of Perſons admitted as eldeſt Sons of Freemen, and born within the Borough. The firſt of them was admitted in 1610.

Lord *Hardw.* That comes under the firſt Head.

Sir *T. Abney.* My Lord, we ſhall ſhew that they were the eldeſt Sons of Freemen. We begin with *Thomas Streat.*

Mr. *Strange.* And born within the Borough.

Sir *T. Abney.* *Thomas Streat*, my Lord, was admitted the 29th of *April*, 1610. He was born within the Borough the 31ſt of *March*, 1580. So that he was thirty Years of Age, when he was admitted.---Read the Entry of his Admiſſion. Did you examine it? Is it a true Copy?

Mr. *Cranſton.* Yes.

Aſſociate reads —

" *Haſtings*, ſſ. 29 *Aprilis*, 1610, 8° *Jac.* Imi.
" *Quinto die Maii, hoc anno* 8° *Jacobi Regis, venit Thomas Streat, maxi-*
" *mus natu filius Thomæ Streat defunct', nuper unius liberorum hominum*
" *hujus villæ, et petit ſe admitti ad libertatem hujus villæ; et per Ma-*
" *jor' et Jurat' antedictos admiſſus eſt, et ſacramentum præſtitit corporale,*
" *et oſculatus eſt malam dextram Majoris, more ſolito; et finis ejus pro*
" *admiſſione ſua eſt* 6 *s.* 8 *d. quia pater ſuus liber erat, ſecundum conſuetudi-*
" *nem, &c.*"

Sir *T. Abney.* Now read the Certificate of his Baptiſm, the 31ſt of *March*, 1580, to ſhew that he was born within the Borough. Is it a true Copy?

Mr. *Cranſton.* It is.

Aſſociate reads —

" *Haſtings*, ſſ. 31 *March*, 1580. The ſame Day baptized, *Thomas*,
" the Son of *Thomas Streat.*"

Lord *Hardwicke.* What Regiſter is that a Copy of; now it comes to be more neceſſary to aſk?

Mr. *Cranſton.* My Lord, it is a true Copy of the Pariſh-Regiſter of *Haſtings.*

Mr. *Strange.* My Lord, the next is *William Lovell.* His Father was not only a Freeman, but a Jurat. He was admitted the 6th of *September*, 1636.

Mr. Attorney General. You go backwards and forwards in a very irregular Manner.

Mr. *Strange.* We'll go regularly on; you will not be able to follow us.—Read the Entry of the 6th of *September*, 1636, of the Admiſſion of *William Lovell*, jun.

Mr. Att. Gen. You muſt prove *William Lovell* the Father was a Freeman; you read him before as Father.

Lord *Hardw.* What is the Time of *William Lovell*'s Admiſſion?

Mr. *Strange.* My Lord, the 6th of *September*, 1636.

Sir *T. Abney.* My Lord, we read it before, to ſhew that he was born before *Thomas Lovell.* He is the third Inſtance we ſpoke to under the firſt Head.

Lord *Hardw.* The 20th of *April*, 1667, *Thomas*, the Son of *William Lovell*, was admitted.

Sir *T. Abney.* And now, my Lord, we read his Father's Admittance, the 6th of *September*, 1636.

Lord *Hardw.* You did not read it before?

Sir *T. Abney.* My Lord, we read him before, as a Jurat.

Mr. *Strange.* My Lord, it has been read, to ſhew that the Father was a Freeman at the Time of the Son's Birth.—Read it again. Did you examine it? Is it a true Copy?

Mr. *Cranſton.* Yes.

Aſſociate reads —

" *Haſtings*, ſſ. 6 *September*, 1636, *William Lovell*, jun. eldeſt Son of his
" Father, Jurat, who is now made free of this Corporation for 6 *s.* 8 *d.*
" Fine, took his Oath, and kiſſed the Mayor's right Cheek, *more ſolito,*
" *&c.*"

Mr. *Strange.* Now produce the Regiſter of the 31ſt *December*, 1639. Is it a true Copy?

Mr. *Cranſton.* Yes.

Aſſociate reads —

" *Haſtings*, ſſ. 31 *December* 1639. Baptized, *William*, Son of *William*
" *Lovell.*"

Mr. *Marſh.* My Lord, the next Inſtance, under this Head, is *Thomas Frank.* He was admitted the 26th *February*, 1662.—Read his Admiſſion. Did you examine it? Is it a true Copy?

Mr. *Cranſton.* Yes.

Aſſociate reads —

" *Haſtings*, ſſ. *Aſſemblat' in Aula Curial'*, 26° *Februarii*, 15° *Car.* IIdi,
" 1662. At this Aſſembly alſo, *Thomas Gawen* and *Thomas Frank*, upon
" their Prayer in that Behalf, are admitted to the ſeveral Freedoms of
" this Town and Port, for their ſeveral Fines, *viz. Thomas Gawen*, 13*s.* 4*d.*
" and *Thomas Frank* 6 *s.* 8 *d.* he being the eldeſt Son of a Freeman here;
" who alſo took their ſeveral Oaths, and kiſſed the Mayor's right Cheek,
" *more ſolito, &c.*"

Mr. *Marſh.* The 6th of *May*, 1632, he was baptized, my Lord.—Read the Certificate. Did you examine it? Is it a true Copy?

Mr. *Cranſton.* It is.

Aſſociate reads —

" *Haſtings*, ſſ. 6 *May*, 1632. Baptized, *Thomas*, the Son of *Frank.*"

Mr. *Clarke.* My Lord, the next Inſtance is *Robert Sargent.* He was admitted the 12th of *May*, 1663.---Read the Admiſſion. Is it a true Copy?

Mr. *Cranſton.* Yes.

Aſſociate reads ----

" 12 *May*, 1663. 16° *Car.* IIdi. By Mr. Mayor and his Brethren, in
" full Court, *Robert Sargent*, of this Town, Seaman, upon his humble
" Suit, is made free of the Franchiſement of this Town, and took his
" Oath, and kiſſed the Mayor's right Cheek, *more ſolito, &c.* His Fine
" paid is 6 *s.* 8 *d.* He was eldeſt Son of *John Sargent*, his Father, late
" Freeman of this Town, deceaſed, *&c.*"

Mr. *Filmer.* My Lord, he was baptized the 3d of *November*, 1604.---Read the Certificate of his Baptiſm. Is that a true Copy? Did you examine it?

Mr. *Cranſton.* It is.

Aſſociate reads ----

" *Haſtings*, ſſ. 3 *November*, 1604. Baptized, *Robert Sargent*, Son of
" *John Sargent.*'

Mr. Serj. *Eyre.* He was fifty Years old, and upwards, when he was admitted. If he had a Right as an eldeſt Son, how came he not to claim it before?

Mr. *Strange.* The Entry tells you he was a Seaman; till he left the Sea, it was not worth his while to take up his Freedom.

Mr. *Clarke.* My Lord, the next Inſtance is *Thomas Stevenſon.* He was admitted the 25th *April*, 1667.---Read his Admiſſion. Did you examine it?

Mr. *Cranſton.* Yes.

Aſſociate reads ---

" *Haſtings*, ſſ. 25 *April* 1667. Before *William Parker*, Eſq; Mayor;
" *Philip Girdler, Samuel Smerſhall, William Lunsford*, and *John Hyde*,
" Jurats; came *James Shingleton* and *Thomas Stevenſon*, and prayed to be
" admitted to the Liberty and Franchiſes of this Town; and by the ſaid
" Mayor and Jurats then preſent are thereunto admitted; who thereupon
" took the Oath accuſtomed, kiſſed the Mayor's right Cheek, *more ſolito*;
" and either of them are to pay, *viz.* the ſaid *James* a Mark, and the ſaid
" *Thomas* half a Mark, he being the eldeſt Son of his Father *Richard*
" *Stevenſon*, a late Freeman of this Town, deceaſed, to the preſent Cham-
" berlain of this Town, for ſuch their Admittance."

Mr. *Clarke.* Now look out the Certificate of his Baptiſm. Read that. Did you examine it? Is it a true Copy?

Mr. *Cranſton.* Yes.

Aſſociate reads ----

" *Haſtings*, ſſ. 1642, *November* 6. Baptized, *Thomas*, Son of *Richard*
" *Stevenſon.*"

Sir *T. Abney.* My Lord, the next is *Richard Walter.* He was admitted the 8th of *January*, 1669.---Read his Admiſſion. Is it examined?

Mr. *Cranſton.* Yes.

Aſſociate reads ----

" *Haſtings*, ſſ. 8 *January*, 1669. In full Court then alſo holden before
" Mr. Mayor and his Brethren, came *Richard Walter*, and prayed the
" Infranchiſement of this Town; who being the eldeſt Son of his Father
" *Simon Walter*, a Freeman, is thereunto admitted, for his Fine of a
" Demi-Mark; and in like Manner *Robert Boykett* and *Robert Philip*,
" for their ſeveral Fines of a Mark a-piece; who all took the Oath
" accuſtomed, and kiſſed the Mayor's Check, *more ſolito.*"

Sir *T. Abney.* My Lord, he was baptized the 5th of *December*, 1641.---Is that examined?

Mr. *Cranſton.* Yes.

Aſſociate reads ---

" *Haſtings*, ſſ. 5 *December*, 1641. Baptized, *Richard Walter*, Son of
" *Simon Walter.*"

Lord *Hardw.* Let me ſee it; it is *Walthers.*---Who do you call next, Mr. *Strange?*

Mr. *Strange.* My Lord, *William Genner.* In 1674 he was admitted. He was born the 6th of *June*, 1647.

Mr. Att. Gen. Why do not you keep your own Order? We never know where we are. You read that before.

Mr. *Strange.* He is in the ſame Paper with *John Fantley*, who was read before.---Read the Admiſſion again, the 5th of *December*, 1674.

Aſſociate reads ----

" *Haſtings*, ſſ. 5 *Decembris*, 1674, 26 *Car.* IIdi. *coram Major' et*
" *Jurat' in plena curia venit Johannes Salmon, et petit libertatem hujus villæ;*
" *Johannes Fantley, jun. et Willielmus Genner, jun. et admittuntur, ſolvit,*
" *prædict' Salmon pro* 13 *s.* 4 *d. et prædict' Fantley* 6 *s.* 8 *d. et prædict' Genner*
" 6 *s.* 8 *d. quia filii ſen' patr' eor' liber'; qui' omnes fecerunt inde ſacramentum,*
" *et malam dextram Majoris oſculaverunt, more ſolito, &c.*

Mr.

Mr. *Strange*. My Lord, he was baptized the 6th of *June*, 1647.—— Read the *Haſtings* Regiſter; there are two Pariſhes. Is it examined?

Mr. *Cranſton*. Yes.

Aſſociate reads ——

" 6 *June*, 1647. *Haſtings*, ſſ. Baptized, *William*, the Son of *William* " *Genner*, a Jurat."

Mr. *Strange*. This falls within the firſt Head.

Mr. *Marſh*. My Lord, the next Inſtance is *Richard Sargent*. He was admitted the 12th of *March*, 1676. ——Is that examined?

Mr. *Cranſton*. Yes.

Aſſociate reads ——

" *Haſtings*, ſſ. 12 *March*, 1676, 29 *Car*. II^di. Before Mr. Mayor, Mr. " *Hyde*, and Mr. Thomas *Lovell*, Jurats, in the Court-Hall, came " *Richard Sargent*, eldeſt Son of *Richard*, and prayed his Freedom; " which was granted him by the ſaid Mayor and Jurats, for his Fine of " 6 *s*. 8 *d*. and then and there took his Oath, and kiſſed the Mayor's " Cheek, *more ſolito*."

Mr. *Marſh*. My Lord, he was born the 26th of *December*, 1624.

Lord *Hardwicke*. His Father is not ſaid there to be a Freeman.

Mr. *Strange*. My Lord, it is only ſaid, " *Richard Sargent*, eldeſt Son " of *Richard*."

Mr. *Marſh*. My Lord, he was born the 26th of *December*, 1624.

Lord *Hardwicke*. Can you ſhew his Father to be a Freeman?

Mr. *Marſh*. It is only, " eldeſt Son of *Richard*;" if he be a Stranger, they mention the Father to be ſo; and the Fine is 6 *s*. 8 *d*.

Lord *Hardwicke*. If the Father be a Freeman, you ſhould ſhew it.

Mr. *Strange*. Now and then a Town-Clerk ſtitches a few Things together ——

Mr. *Filmer*. My Lord, the next Inſtance is *Thomas Gawen*, admitted the 21ſt of *December*, 1767.—Read it. Is it examined?

Mr. *Cranſton*. Yes.

Aſſociate reads ——

" *Haſtings*, ſſ. 21 *December*, 1677. By and before *Thomas Carlton*, " Mayor; *Thomas Lovell*, and *Thomas Dyne*, Jurats, in the Court-Hall " being preſent at the Seat; *James Batchelor*, jun. *Thomas Gawen*, eldeſt " Son of *Thomas* a Freeman, *Mark Philips*, and *James Moore*, upon their " inſtant Suits, are admitted to the Freedom of this Town and Port, for " their ſeveral Fines, as upon their Heads appeared; who thereupon took " the Oath, and kiſſed the Mayor's right Cheek, *more ſolito*. *Gawen* 6*s*. 8*d*. " *Batchelor* and *Philips* 13 *s*. 4 *d*. each."

Mr. *Filmer*. My Lord, he was born in *Haſtings*, the 27th of *Auguſt*, 1653.—Read the Certificate. Is it examined?

Mr. *Cranſton*. Yes.

Aſſociate reads ——

" *Haſtings*, ſſ. *Auguſt* 27, 1653. Baptized, *Thomas*, the Son of *Thomas* *Gawen*."

Mr. *Clarke*. My Lord, the next is *Thomas Bayliffe*, admitted the 21ſt of *November*, 1678.—Read his Admiſſion. Did you examine it?

Mr. *Cranſton*. Yes.

Aſſociate reads —

" *Haſtings*, ſſ. At a Court held the 21ſt of *November*, 1678, 30 *Car*. II^di, " appeared *Thomas Bayliffe*, Seaman, eldeſt Son of *Thomas* a Freeman, for " his Fine of 6*s*. 8*d*. and *Andrew Skeeth* Seaman, for his Fine of 13 *s*. 4 *d*. " upon their earneſt Prayer and Requeſt, are admitted, at this Aſſembly, " to the Freedom and Franchiſe of this Town; who both took the Oath " accuſtomed, and kiſſed the Mayor's right Cheek, *more ſolito*, *&c*."

Mr. *Clarke*. My Lord, he was born in *Haſtings*, *January* 14, 1637.— Read the Certificate. Is it a true Copy?

Mr. *Cranſton*. Yes.

Aſſociate reads ——

" *Haſtings*, ſſ. *January* 14, 1637. Baptized, *Thomas*, the Son of *Thomas* " *Bayliffe*."

Sir *T. Abney*. My Lord, the next Inſtance is *Henry Coombes*. He was admitted the 17th of *December*, 1679.—— Read his Admiſſion. Did you examine it?

Mr. *Cranſton*. Yes.

Aſſociate reads ——

" *Haſtings*, ſſ. 13 *December*, 1679, 30 *Car*. II^di. In open Court then and " there holden, *Henry Coombes* is made free and ſworn, being eldeſt Son " to his Father, a Freeman, deceaſed, for 6 *s*. 8 *d*. *more ſolito*."

Sir *T. Abney*. The Certificate of his Birth or Baptiſm is the 18th *September*, 1642.——Is that examined?

Mr. *Cranſton*. Yes.

Aſſociate reads ——

" *Haſtings*, ſſ. 18 *September*, 1642. Baptized, *Henry*, the Son of " *George Coombes*."

Mr. *Strange*. My Lord, the next is *Mark Bailey*, admitted the 28th of *November*, 1691.—Read his Admiſſion. Did you examine it?

Mr. *Cranſton*. Yes.

Aſſociate reads —

" *Memorandum*, That the 28th Day of *November*, 1691, before *Robert* " *Phipps*, Mayor; *Thomas Lovell*, *Philip Lovell*, *John Stevens*, Dr. *Peter* " *Fiat*, and *John Medhurſt*, Jurats; came *Richard Adams*, *Nicholas Da-* " *nyel*, *Mark Bayley*, and *Richard Hart*, all Inhabitants of this Town, " and ſeparately craved to be admitted to the Franchiſe of this Town " and Port; and they were accordingly admitted into the Freedom, and " took the Oaths of Freemen, and at the ſame Time took the Oaths of " Fidelity to their Majeſties King *William* and Queen *Mary*, and kiſſed " the Mayor's right Cheek, *more ſolito*; and for a Fine paid, *viz*. *Richard* " *Adams*, *Nicholas Danyel*, and *Richard Hart*, each 13 *s*. 4 *d*. and *Mark* " *Bayley*, being the eldeſt Son of a Freeman, 6 *s*. 8 *d*. *extr'* to the Cham- " berlains."

Mr. *Strange*. Now read the Certificate of his Baptiſm. Is it examined?

Mr. *Cranſton*. Yes.

Aſſociate reads ——

" *Haſtings*, ſſ. 22 *May*, 1664. Baptized, *Mark Bayley*, the Son of " *Mark*."

Mr. *Marſh*. My Lord, the next Inſtance is *Richard Broadbridge*. His Name has been mentioned before; but your Lordſhip, I believe, has not taken him as an eldeſt Son. He was admitted the 26th of *December*, 1691.

Lord *Hardwicke*. I have it; he was admitted for 6 *s*. 8 *d*.

Mr. *Filmer*. My Lord, the next is *Robert Bartholomew*. He was admitted the 26th of *November*, 1692.—Read the Entry. Did you examine it?

Mr. *Cranſton*. Yes.

Aſſociate reads ——

" *Haſtings*, ſſ. *Memorandum*, That the 26th Day of *November*, 1692, " before *Peter Fiat*, Eſq; Mayor; *Thomas Lovell*, *John Stevens*, *Edward* " *Milward*, and *John Medhurſt*, Jurats; came *Robert Bartholomew*, and " craved to be admitted into the Freedom of this Town and Port; and " he was accordingly admitted into the Freedom, and took the Oath " of a Freeman, and alſo the other Oaths, and kiſſed the Mayor's right " Cheek, *more ſolito*; and for his Fine paid 6 *s*. 8 *d*. being the eldeſt Son " of a Freeman, *extr' Camerar'*."

Mr. *Filmer*. He was baptized the 10th of *January*, 1654.—Read the Certificate of his Baptiſm. Is it examined?

Mr. *Cranſton*. It is.

Aſſociate reads ——

" *Haſtings*, ſſ. 10 *January*, 1654. This Day baptized, *Robert*, Son of —— *Bartholomew*."

Mr. *Clarke*. My Lord, the next is *Thomas Hide*, admitted the 11th of *March* 1692.—Read that. Did you examine it?

Mr. *Cranſton*. Yes.

Aſſociate reads ——

" *Memorandum*, The 11th of *March*, 169¾, before *Peter Fiat*, Eſq; " Mayor; *John Hide*, *Thomas Lovell*, and *Philip Lovell*, *John Stevens*, " *Edward Milward*, *Robert Phipps*, and *John Medhurſt*, Jurats; came " *Thomas Hide*, of this Town, eldeſt Son of a Freeman, and craved to " be admitted into the Freedom of the ſaid Town; and he was accord- " ingly admitted into the Freedom of the ſame Town; and took the Oath " of a Freeman, and alſo the other Oaths, and kiſſed the Mayor's Cheek, " *more ſolito*, and for his Fine paid 6 *s*. 8 *d*. *extr' Camerar'*."

Mr. *Clarke*. He was born the 10th of *March*, 1667.—Read the Certi- ficate of his Baptiſm. Did you examine it?

Mr. *Cranſton*. Yes.

Aſſociate reads ——

" *Haſtings*, ſſ. 10 *March*, 1667. This Day *Thomas Hide*, Son of " *Thomas Hide*, was baptized."

Sir *T. Abney*. My Lord, the next is *John Sparrow*. He was admitted the 3d of *February*, 1693. He was born the 5th of *April*, 1668.—Read his Admiſſion. Is it a true Copy?

Mr. *Cranſton*. Yes.

Aſſociate reads ——

" *Memorandum*, That the 3d of *February*, *anno Domini* 169¾, before " *John Medhurſt*, Eſq; Mayor; *Thomas Lovell*, *Robert Phipps*, and Dr. " *Peter Fiat*, Jurats; came *John Sparrow*, jun. and *John Fellows*, jun. and " craved to be admitted into the Freedom of this Town and Port; which " was accordingly granted to them, and they took the Oaths thereby " required, and kiſſed the Mayor's Cheek, *more ſolito*, and for their Fines " paid as follows; the ſaid *John Sparrow*, being the eldeſt Son of a " Freeman, the Sum of 6 *s*. 8 *d*. and the ſaid *John Fellows*, 13 *s*. 4 *d*. " *extr' Camerar'*, *more ſolito*."

Sir *T. Abney*. He was baptized the 5th of *April*, 1668.——Read the Certificate. Is it examined?

Mr. *Cranſton*. Yes.

Aſſociate reads ——

" *Haſtings*, ſſ. 5 *April*, 1668. Baptized, *John*, the Son of —— " *Sparrow*."

Mr. *Strange*. My Lord, the next Inſtance is *Michael Penbuckle*. He was admitted the 8th of *February*, 1693.—Read that Admiſſion. Is it a true Copy?

Mr. *Cranſton*. Yes.

Aſſociate reads ——

" 8 *February*, 169¾. At this Court came *Michael Penbuckle*, and craved " to be admitted into the Franchiſe of this Town and Port; which was " granted him, and he accordingly took the Oaths thereby required, " and kiſſed the Mayor's Cheek, *more ſolito*; and for his Fine, being the " eldeſt Son of a Freeman, paid 6 *s*. 8*d*. *extr' Camerar'*."

Mr. *Strange*. My Lord, he was born the 21ſt of *September*, 1668, and was twenty-five Years old when he was made free.—Read the Certificate of his Baptiſm. Is it examined?

Mr. *Cranſton*. Yes.

Aſſociate reads ——

" *Haſtings*, ſſ. 21 *September*, 1668. Baptized, *Michael*, the Son of —— *Penbuckle*."

Mr. *Marſh*. My Lord, the next Inſtance we ſpeak to (and we ſhall read but ſeven more) is *Robert Fellows*, admitted the 17th of *February*, 1693.— Read his Admiſſion. Did you examine it?

Mr. *Cranſton*. Yes.

Aſſociate reads ——

" *Memorandum*, That the 17th of *February* 169¾, before *John Med-* " *hurſt*, Eſq; Mayor; *John Hide*, *Thomas Lovell*, *Philip Lovell*, *John* " *Stevens*, *Edward Milward*, and Dr. *Peter Fiat*, Jurats; in open Court, " came *Robert Fellows*, ſen. *Mark Meadow*, and *Auſtin Lacket*, and craved " to be admitted into the Franchiſe of this Town and Port; which was " granted them, and they accordingly took the Oaths thereby required, " and kiſſed the Mayor's Cheek, *more ſolito*; and for their Fines did ſe- " verally pay as followeth; the ſaid *Robert Fellows*, being the eldeſt Son " of a Freeman, paid 6*s*. 8*d*. and the ſaid *Mark Meadow* and *Auſtin Lacket* " paid 13 *s*. 4 *d*. each, *extr' Camerar'*."

Mr. *Marſh*. He was baptized the 1ſt of *July*, 1656.—— Read the Copy of the Regiſter. Is it a true Copy?

Mr. *Cranſton*. Yes.

Associate reads—

" *Hastings*, ff. *July* 1656. First Day of this Month *Robert Fellows* was " baptized, the Son of *George*."

Mr. *Filmer*. My Lord, the next is *John Hussey*.—Read his Admission. Is it examined?—Mr. *Cranston*. Yes.

Associate reads—

" *Memorandum*, The 5th Day of *January*, 1694, before Mr. Mayor, " and three Jurats, there came *Jeffery Glyde*, *John Hussey*, jun. and *Hen-* " *ry Barry*, and craved to be admitted into the Freedom of this Town " and Port of *Hastings*; and they were accordingly admitted into the " Freedom, and took the Oaths of Freemen, and also the other Oaths, " and kissed the Mayor's right Cheek, *more solito*, and for their Fines " paid severally as follows, *viz.* the said *Jeffery Glyde* 13*s.* 4*d.* the said " *John Hussey*, being the eldest Son of a Freeman, 6*s.* 8*d.* and the said " *Henry Barry* 13*s.* 4*d. extr' Camerar'*.

Mr. *Filmer*. My Lord, he was baptized in *April* 1680.—Read the Register. Is it examined?—Mr. *Cranston*. It is.

Associate reads——

" *Hastings*, ff. *April*, 1680. Baptized, *John*, the Son of " *Matthew Hussey*, and ——— his Wife."

Mr. *Clarke*. The next, my Lord, is *John Geery*. He was admitted the 25th of *October*, 1707.—Read his Admission. Is it examined?

Mr. *Cranston*. Yes.

Associate reads——

" *Hastings*, ff. 25 *October*, 1707. At the same Court *Richard Hudson*, " *John Geery fil' Johannis*, *et Thomas Gyles*, were sworn Freemen of this " Town and Port, for their several Fines following, *viz. Richard Hudson* " 13*s.* 4*d. John Geery*, as eldest Son of a Freeman, 6*s.* 8*d.* and *Thomas* " *Giles* 13*s.* 4*d. more solito*."

Mr. *Clarke*. He was baptized the 9th of *April*, 1682.—Read the Certificate. Is it examined?—Mr. *Cranston*. Yes.

Associate reads—

" *Hastings*, ff. *April* 9, 1682. *John*, the Son of *John Geery* and *Eliza-* " *beth* his Wife, was baptized."

Sir *T. Abney*. My Lord, the next Instance is *William Shorter* and *Jacob Fantley*, admitted the 11th of *August*, 1722.—Read the Admission. Is it a true Copy?—Mr. *Cranston*. Yes.

Associate reads—

" *Hastings*, ff. 11 *August*, 1722. Mr. *John Mead*, *William Shorter*, " *John Harman*, and *Jacob Fantley*, were admitted and sworn Freemen and " Combarons, by the Mayor and several of the Jurats, according to the " ancient Custom and Use, for their several Fines following; *William* " *Shorter*, as eldest Son of a Freeman, 6*s.* 8*d. John Mead* 13*s.* 4*d. John* " *Harman* 6*s.* 8*d.* and *Jacob Fantley*, as eldest Son of a Freeman, 6*s.* 8*d.*"

Sir *T. Abney*. My Lord, *William Shorter* was baptized the 29th of *June*, 1689.—Read his Certificate. Is it examined?—Mr. *Cranston*. Yes.

Associate reads——

" *Hastings*, ff. 29 *June*, 1689. Baptized, *William*, Son of *William* " *Shorter*."

Sir *T. Abney*. My Lord, we have many more Entries, not distinguishing between Sons and eldest Sons: But we shall not trouble your Lordship with them, but go to our living Witnesses.—Call *Robert Evernden*.

Robert Evernden *sworn*.

Sir *T. Abney*. How old are you?—*Evernden*. Sixty-five Years old.

Mr. *Lacy*. Was your Father a Freeman of *Hastings*?---*Evernden*. No.

Sir *T. Abney*. Where was you born?---*Evernden*. At *Robertsbridge*, fifteen Miles from *Hastings*; but I have lived fifty Years in *Hastings*.

Sir *T. Abney*. What do you know of the Custom in *Hastings*, as to what Right the eldest Sons of Freemen have to their Freedoms?

Evernden. I have heard Gentlemen say---I know no otherwise—

Sir *T. Abney*. Who have you heard say?

Evernden. I have heard Mr. *Thomas Moore* and *John Moore*, who were both Justices of Peace, and Jurats.

Mr. Serj. *Eyre*. My Lord, here is a Man prompts this Witness.

Lord *Hardwicke*. Let him go on the other Side.

Mr. Att. Gen. My Lord, I apprehend this is not Evidence.

Mr. *Strange*. You say, you lived fifty Years in *Hastings*, and knew *Thomas Moore* and *John Moore*, Justices of the Peace, and Jurats; Give my Lord and the Jury an Account, what you have heard them say in relation to the Right of eldest Sons of Freemen to be free.

Evernden. I heard them say, that the eldest Son of a Freeman had a Right.

Mr. *Strange*. Where must they be born?

Evernden. Born in Town, to be sure.

Mr. *Strange*. Whether must they be born before their Fathers were made free, or after?

Evernden. They must be born in their Fathers Freedom.

Mr. *Strange*. What Fine do they usually pay?

Evernden. Six and eight Pence.

Mr. *Strange*. Did you ever know an eldest Son of a Freeman, during the fifty Years you have lived in *Hastings*, refused?

Evernden. Some did not require it.

Mr. *Strange*. Was any body denied, that ever demanded it?

Lord *Hardwicke*. He only tells you what he heard the *Moore*'s say.—— You say, you had this Conversation with *John Moore*, and he was a Justice; What did he tell you?

Evernden. He told me, that the eldest Son of a Freeman had a Right.

Lord *Hardwicke*. Was *John Moore* a Jurat?—*Evernden*. Yes, my Lord.

Lord *Hardwicke*. And these two Men told you this?

Evernden. Yes, my Lord.

Mr. *Strange*. How long ago is it that they told you this?

Evernden. I cannot tell.

Mr. *Strange*. But, according to your Memory, how long do you think it may be?

Evernden. It was, I believe, in the last King's Reign, or Queen *Anne*'s, that they spoke it; I cannot tell to a Year.

Mr. *Strange*. Have you seen them lately?—*Evernden*. No.

Mr. *Strange*. Within twenty or thirty Years?---*Evernden*. Yes.

Mr. *Strange*. Did both, or one of them, mention this? and how long is it since, according to the best of your Remembrance?

Evernden. About Ten or a Dozen Years ago.

Mr. *Strange*. Had you any Conversation with any other Freeman about this Right?---*Evernden*. Yes, with *Robert Bartholomew*.

Mr. *Strange*. Was he a Freeman?

Evernden. Yes; he had been Mayor.

Mr. *Strange*. What have you heard him say about this Right?

Evernden. I have heard him say, the eldest Son of a Freeman had a Right.

Mr. *Marsh*. Do you know Dr. *Fiat*? During so many Years as you lived in *Hastings*, do you remember him to say any Thing about the Right of eldest Sons?---*Evernden*. He has been dead some Time.

Mr. *Marsh*. What was he?

Evernden. He was a Doctor, and Mayor of the Town.

Mr. *Marsh*. Did he ever say any Thing to you about this Right?

Evernden. No, not that I remember.

Mr. *Strange*. During the fifty Years you lived in *Hastings*, what was the general Report there concerning the Right of eldest Sons, that what they informed you about it was true?

Evernden. I never heard any body say but that they had such a Right.

Mr. *Clarke*. How old were *Robert Bartholomew* and the two *Moore*'s, when you heard them say this?

Evernden. They were very ancient Men.

Mr. Att. Gen. You know nothing of your own Knowledge; it is only by Hear-say?

Evernden. No.

Mr. Att. Gen. What did you hear them say; it was only in general?

Evernden. That the eldest Son of a Freeman had a Right.

Mr. Att. Gen. Was it to the eldest Son of a Freeman generally, without confining it to being born within the Borough, or to any particular Case?

Evernden. They said, that the eldest Son of a Freeman had a Right.

Mr. Att. Gen. Are you sure they confined it to the eldest Son of a Freeman? Did they say nothing, that all the Sons had a Right?

Mr. *Strange*. If all the Sons have a Right, then an eldest Son has.

Lord *Hardwicke*. Mr. *Evernden*, you said, they must be born in the Town during the Fathers Freedom; Did *Thomas Moore* or *John Moore* say whether they must be born in *Hastings*, or after their Fathers Freedom?

Mr. *Evernden*. No, my Lord.

Lord *Hardwicke*. Then why did you say that?

Evernden. They said, that the eldest Son of a Freeman had a Right, if any body had.

Several Counsel. Ay, *if any body had!*

Lord *Hardwicke*. What is the Right of Freedom?

Evernden. None at all, but by the Election of the Mayor and Jurats.

Sir *T. Abney*. They are glorious Fellows!

Mr. *Lacy*. Did *Moore* say any Thing of Residence?—*Evernden*. No.

John Couzens *sworn*.

Mr. *Strange*. How old are you, Mr. *Couzens*?—*Couzens*. About sixty.

Mr. *Strange*. Where was you born?

Couzens. In *Hastings*, and have lived all my Time there.

Mr. Att. Gen. Was your Father a Freeman?——*Couzens*. No.

Mr. *Strange*. During all that Time you have lived in *Hastings*, what have you heard any ancient People say concerning the Right of eldest Sons to be free?

Couzens. I have heard several ancient People say, the eldest Son of a Freeman had a Right by his Father's Charter.

Sir *T. Abney*. Did you hear them say any Thing, where he was to be born?

Couzens. I cannot tell; but they said he had a Right by his Father's Charter.

Sir *T. Abney*. What is a Charter?

Couzens. I take it, his Father was to be free first.

Sir *T. Abney*. Can you recollect the Names of any ancient Inhabitants you have heard say this?

Couzens. Yes; I lived with Dr. *Fiat* when he was Mayor, and was to and fro with him; and I heard him say, the eldest Son of a Freeman had a Right by his Father's Charter.

Sir *T. Abney*. Did you hear any others say so?

Couzens. Yes; several others, both *Thomas* and *John Moore*, Jurats.

Sir *T. Abney*. Have you heard any others say so?

Couzens. I have heard it from several others; but I cannot recollect their Names.

Sir *T. Abney*. Did you ever know the eldest Son of a Freeman refused?

Couzens. No, not till I heard of the Plaintiff *Moore*'s being refused.

Sir *T. Abney*. Not till you heard of the Plaintiff *Moore!* They are an ancient Family in *Hastings*, I think?---*Couzens*. Yes.

Mr. *Marsh*. My Lord, this Dr. *Fiat* was Mayor; he was Town-Clerk and Doctor, and had the Records of the Town in his Custody when Mayor, and must know the Custom. He was a Jurat in 1691.

Mr. Serj. *Eyre*. Mr. *Evernden*, suppose a Freeman has several Sons, are all these Sons entitled as well as the eldest?---*Evernden*. I cannot say.

Mr. Serj. *Eyre*. Did you ever know a younger Son refused?

Drew Shengleton *sworn*.

Lord *Hardwicke*. How old are you, Mr. *Shengleton*?

Shengleton. Sixty-nine Years of Age.

Mr. *Strange*. How long have you lived in *Hastings*?

Shengleton. I have lived ſixty Years in *Haſtings*, in the Town.

Mr. *Strange.* What is the Uſage and Right there of Freemen's eldeſt Sons?

Shengleton. I was not born there, though I was a Child when I went to live at *Haſtings.*

Mr. *Strange.* Do not you know what the Cuſtom and Uſage is there?

Shengleton. I have heard ſay, the eldeſt Sons had a Right.

Mr. *Strange.* Who has told you?

Shengleton. I cannot nominate them, they were ſo many; but I can tell it is a Diſcourſe among a great many People.

Mr. *Strange.* Was it the common Report, when you went to live in *Haſtings*, and ſince, that the eldeſt Sons of Freemen had a Right?

Shengleton. So far as I have heard, it was.

Mr. *Strange.* Did you ever know an eldeſt Son refuſed?

Shengleton. I know nothing about it.

Mr. *Strange.* Have you heard any ancient People, that are dead, talk about it?——*Shengleton.* I cannot remember.

Mr. *Strange.* Have not you heard them ſay, that the eldeſt Son of a Freeman had a Right? Have not you heard your Mother ſay ſo?

Shengleton. She told me my Father was a Freeman.

Mr. *Strange.* When was that?—*Shengleton.* When I was a Child.

Mr. *Strange.* What did ſhe tell you elſe?

Shengleton. I have heard my Mother ſay, that the eldeſt Son of a Freeman was to be free, and that my elder Brother had a Right.

Mr. *Strange.* Was your elder Brother a Freeman?——*Shengleton.* No.

Mr. *Strange.* Why had he it not?

Shengleton. My Mother ſaid, ſhe had loſt my Father's Franche or Charter, and that was the Reaſon; and ſhe ſaid, her Son ſhould go into the Hall, and demand it.

Mr. *Strange.* How came ſhe to ſay ſo?

Lord *Hardwicke.* How long is it ſince you heard this Diſcourſe, that Freemen's eldeſt Sons had a Right?

Shengleton. It is many Years; I cannot tell exactly how many.

Lord *Hardwicke.* How many do you think? Is it ten, or twelve, or twenty Years back?

Shengleton. Yes, it is full twenty Years back.

Mr. *Clarke.* Did you never hear the Report, when you was a young Man, that the eldeſt ſons of Freemen had a Right?

Shengleton. Yes; but I cannot nominate them.

Mr. *Clarke.* You cannot name one Perſon that ever ſaid ſo?

Shengleton. No.

John Boykett *ſworn.*

Mr. *Marſh.* Mr. *Boykett*, how old are you?

Boykett. Turned of Sixty.

Mr. *Marſh.* How long have you known *Haſtings?*

Boykett. I was born there, and have lived almoſt all my Time in *Haſtings.*

Mr. *Marſh.* I would aſk you, Within your Time, what have you known to be the Cuſtom with regard to the admitting of Freemen? Whether an eldeſt Son is intituled?

Boykett. I have heard it among the Freemen.

Lord *Hardwicke.* Who have you heard ſay ſo, do you remember?

Boykett. My Lord, I cannot ſpeak poſitively to particular Perſons.

Mr. *Marſh.* Did you know Dr. *Fiat*, the two Mr. *Moore's*, and Mr. *Bartholomew?*——*Boykett.* Yes.

Mr. *Marſh.* Did you ever ſpeak with them about it?

Boykett. I aſked to be made free myſelf, in Court.

Mr. *Marſh.* How came you to aſk it?

Boykett. I aſked it as a Favour, but it was not granted.

Mr. *Marſh.* When was it, and who did you aſk it of?

Boykett. I aſked it of *Thomas Lovell*, about forty Years ago: He was a Freeman and Mayor.

Mr. *Marſh.* Did you go into the Court-Hall to aſk it?—*Boykett.* Yes.

Mr. *Marſh.* Was any Thing ſaid to you in relation to your being admitted? How long ago was it?—— *Boykett.* Forty Years.

Mr. *Marſh.* What did they ſay to you, upon your aſking to be admitted?——*Boykett.* I aſked to be admitted to the Freedom, as a Favour; and that they would be ſo good as to admit me. Some were for my being made free, particularly Mr. *Clifts*, a Juſtice.

Mr. *Marſh.* Was your Father a Freeman?

Boykett. No. But the Mayor ſaid, I ſhould not be admitted, becauſe I was a Diſſenter: And then *Waller*, the Town-Clerk, aſked the Mayor, whether I was the Son of a Freeman? and the Mayor anſwered, I was not: And then *Waller* ſaid to the Mayor, Then do as you pleaſe; and the Mayor ſaid, he would not admit a Diſſenter for 40*l.*

Lord *Hardwicke.* What did *Waller* ſay upon that?

Boykett. My Lord, the Mayor ſaid, they would not make a Diſſenter free for 40*l.* And then the Town-Clerk aſked the Mayor, Whether he was the Son of a Freeman? To which the Mayor ſaid, He was not. And then *Waller*, the Town-Clerk, ſaid, Then, Mr. Mayor, you may do as you pleaſe.

Lord *Hardwicke.* What did you underſtand by thoſe Words?

Boykett. I underſtood by them Words, that if my Father had been free, I ſhould have had a Freedom.

Mr. Att. Gen. How many Children had your Father?

Boykett. Several.

Mr. Att. Gen. Was you the eldeſt?

Boykett. Yes, and ſerved my Time in *Haſtings.*

Mr. Att. Gen. Did you know *John Medhurſt*, any thing of his having a Son?——*Boykett.* Yes, he had a Son born in his Mayoralty.

Mr. Att. Gen. Was it his firſt Son?——*Boykett.* Yes.

Mr. Att. Gen. Did he deſire to be made free?

Boykett. Yes; he aſked for his Freedom in Court, when I was preſent.

Mr. Att. Gen. Was he made free?

Boykett. Not at that Time; I heard them diſputing about it.

Lord *Hardwicke.* How long ago was that?

Boykett. I cannot tell, my Lord.

Lord *Hardwicke.* Was it ten Years ago?

Boykett. I cannot ſay certainly; but I believe thereabouts.

Mr. *Strange.* You have ſet up this Excluſion for ten Years; Was it twenty Years ago, that his Father was made free?

Boykett. I cannot ſay.

Mr. *Strange.* How long has he been dead?

Boykett. About eight Years.

Mr. *Strange.* How many Years before he was dead was it, that the Son aſked to be made free? Was it ſeven or eight Years?

Boykett. I cannot ſay.

Mr. *Strange.* Is the Son a Freeman now?

Boykett. He has not his Freedom.

Mr. Serj. *Eyre.* How long was it before *Medhurſt*'s Death, according to your beſt Recollection, that he applied to have his Freedom? Was it four or five Years?

Boykett. Medhurſt the Father died about eight Years ago; I cannot ſay how long ſince the Son demanded his Freedom.

Lord *Hardwicke.* Can you recollect about what Time, according to the beſt of your Remembrance?

Boykett. Not a great while, my Lord, before the Father's Death.

Lord *Hardwicke.* Was it two, or three, or five Years?

Boykett. Not five Years, my Lord.

Mr. *Clarke.* You ſay, Mr. *Boykett*, *Medhurſt* was refuſed his Freedom; What was the Reaſon? Was he born within the Liberties, and after his Father was made free?

Boykett. Yes, during the Time he was Mayor.

Mr. *Clarke.* Was he his eldeſt Son?

Boykett. He was his only Son.

Mr. *Clarke.* Who was Mayor when he was refuſed?

Boykett. I cannot ſay.

Lord *Hardwicke.* He does not remember.

Joan White *ſworn.*

Mr. *Clarke.* Do you know *Haſtings?*

White. Yes.

Mr. *Clarke.* How long have you known it?

White. All my Years.

Mr. *Clarke.* What Age are you?

White. I am ſixty-two Years old.

Mr. *Clarke.* Do you know what is the Cuſtom of making Free in *Haſtings*, whether the eldeſt Son has a Right?

White. I heard my Father ſay, that the eldeſt Son had a Right.

Mr. *Clarke.* Was he a Freeman?——*White.* Yes.

Lord *Hardwicke.* Speak out; ſpeak to that Gentleman.

Mr. *Clarke.* Is your Father living or dead?——*White.* Dead.

Mr. *Clarke.* Tell the Court what you have heard him ſay about the Right of Freemen's eldeſt Sons.

White. I heard him ſay, they had a Right.

Sir *T. Abney.* What, that Freemen's eldeſt Sons had a Right?

White. Yes.

Sir *T. Abney.* Have you ever heard any body elſe ſay any Thing about it?——*White.* No.

Sir *T. Abney.* Did you never hear your Mother ſay any Thing about it?

White. No.

Anne Sargent *ſworn.*

Mr. *Clarke.* Do you know the Town of *Haſtings?*

Sargent. Yes.

Mr. *Clarke.* How old are you?

Sargent. I am ſixty-three Years old.

Mr. *Clarke.* How long have you lived in *Haſtings?*

Sargent. I have lived there always, and was born there.

Mr. *Clarke.* Have you heard any Diſcourſe concerning the Right of Freedom in that Town?

Sargent. I have heard Mr. *John Stevens*, who was ſeveral Times Mayor of *Haſtings*, ſay——

Mr. *Clarke.* Is he living or dead?——*Sargent.* He is dead.

Mr. *Clarke.* What did he ſay concerning the Right of Freedom?

Sargent. That it belonged to the eldeſt Sons to be Freemen.

Mr. *Clarke.* Have you heard any body elſe ſay ſo?——*Sargent.* No.

Mr. *Clarke.* Have not you been married?——*Sargent.* Yes.

Mr. *Clarke.* Have not you heard your Huſband ſay, that it belonged to the eldeſt Sons to be made free?

Sargent. Yes, he has ſaid the ſame.

Mr. *Clarke.* Was the common Repute during your Time, that the eldeſt Sons had a Right?——*Sargent.* Yes.

Mr. *Clarke.* Was it ever diſputed, that they had that Right?

Sargent. No.

Mr. *Clarke.* And you heard *Stevens* the Mayor ſay, that the eldeſt Sons had a Right, ſeveral Times?——*Sargent.* Yes.

Suſannah Medhurſt *ſworn.*

Mr. *Filmer.* How old are you, Mrs. *Medhurſt?*

Medhurſt. I am fifty-ſix Years of Age.

Mr. *Filmer.* Have not you been Mrs. Mayoreſs?

Medhurſt. Yes.

Sir *T. Abney.* Who have the Right in *Haſtings* to be Freemen?

Medhurſt. All the Sons of Freemen.

Sir *T. Abney.* Has not the eldeſt Son a Right?

Medhurſt. Yes; I have heard my Huſband ſay, they could not deny him.

Sir *T. Abney.* Have you heard him ſay ſo more than once?

Medhurſt. Yes; I have heard him ſay ſo often.

Sir *T. Abney.* Pray, Mrs. *Medhurſt*, during your Time, was it the common Reputation, that the eldeſt Son of a Freeman had a Right?

Medhurſt. Yes.

Sir *T. Abney.* Where were they to be born?

Medhurſt. In the Town; it was not ſo much denied then; if it was required, they would do it.

Sir *T. Abney.* Have you ever known an eldeſt Son denied?

Medhurſt. Yes.

Sir *T. Abney.* When? Was it within twenty Years?

Medhurſt.

Medhurſt. I cannot ſay when.

Mr. Att. Gen. How many Years is it ſince the firſt eldeſt Son was denied, that you know of? Was it twenty Years ago?

Med. I do not know.

Mr. Att. Gen. Mention the Name of an eldeſt Son that you know has been denied?

Med. The eldeſt Son of Mr. *Medhurſt.*

Mr. Att. Gen. How long ago is that?---*Med.* I cannot tell.

Lord *Hardwicke.* Is your Huſband living, Mrs. *Medhurſt?*

Med. No, my Lord; my Huſband has been dead a great many Years.

Lord *Hardwicke.* Did you ever know any body denied before? Was it in your Huſband's Mayoralty that this Perſon was denied?---*Med.* No.

Lord *Hardwicke.* Was it before or after your Huſband's Death, that Mr. *Medhurſt* was denied?

Med. It was ſince my Huſband's Death, my Lord.

Mr. Serj. *Skinner.* You have a Huſband now, have you not?

Med. I hope ſo, and a good one too.

Mr. Serj. *Skin.* You will be Lady Mayoreſs again then.

Mr. Serj. *Eyre.* Mrs. *Medhurſt*, I would aſk you, whether, when you firſt knew *Haſtings*, they did not admit every body on Payment of a Fine of 6*s.* 8*d.*?---*Med.* I do not know.

Mr. *Strange.* My Lord, we ſhall trouble your Lordſhip with but one Witneſs more. Call *Thomas Colebrand.*

Thomas Colebrand *ſworn.*

Mr. *Strange.* You are not a Freeman of *Haſtings*, are you?

Colebrand. No.

Mr. *Strange.* Have not you been Apprentice there? How old are you?

Cole. I am about eighty Years old, and was Apprentice there about ſixty Years ago.

Mr. *Strange.* Have you been acquainted there ever ſince?

Cole. Yes; I live about ſixteen Miles from *Haſtings*, and go to and fro frequently there.

Mr. *Strange.* Do you know what is the Uſage or Cuſtom, as to the admitting of Freemen?

Cole. Yes; that Freemen's eldeſt Sons were intituled to Freedoms.

Mr. *Strange.* Were they to be born within the Town?

Cole. I never knew nor heard, that being born within the Town, or at a Diſtance, made any Difference.

Mr. *Strange.* Had you any Diſcourſe with any ancient People about this Matter?---*Cole.* Yes.

Mr. *Strange.* What Account did you receive from them?

Cole. That the eldeſt Sons of Freemen, only, had a Right to Freedoms.

Lord *Hardwicke.* Who have you heard ſay ſo?

Cole. Old *Waller*, the Town-Clerk.

Lord *Hardwicke.* Who have you heard ſay ſo beſides?

Cole. One *Thomas Lovell*, and *Thomas Rainolds*; he was a Mayor; and I have heard the Mayor and Jurats ſay ſo ſeveral Times.---I am not able to ſtand.

Mr. *Strange.* My Lord will give you the Liberty to repoſe yourſelf upon that Stool.

Cole. I remember one *Medhurſt* demanded his Freedom.

Lord *Hardwicke.* How long ago was that?---*Cole.* About ſixty Years.

Lord *Hardwicke.* What paſſed upon that?

Mr. *Strange.* Was he the Son of a Freeman?

Cole. Yes. I cannot recollect what the Diſpute was; but they put him by at firſt.

Mr. *Strange.* What was the Reaſon given?

Cole. I do not know; I was not in Court.

Mr. *Clarke.* You ſay, he demanded his Freedom; Do you know upon what Right he demanded it?

Lord *Hardwicke.* How came you to know that *Medhurſt* demanded his Freedom?---*Cole.* My Uncle *Lovell* was then Mayor, and he told me ſo.

Mr. Att. Gen. My Lord, the Witneſs ſpeaks to a particular Cuſtom only; I ſubmit it to your Lordſhip, whether this Evidence of a particular Fact----

Lord *Hardwicke.* I think it is Evidence to a general Right, and not to any particular Cuſtom.---What did your Uncle *Lovell* ſay?

Cole. That it was an ancient Right, that Freemen's eldeſt Sons ſhould be made free.

Lord *Hardwicke.* How came there to be a Diſpute about this Matter? Did your Uncle *Lovell* tell you any Thing about it?

Cole. He ſaid, that *Medhurſt* came and demanded his Freedom.

Lord *Hardwicke.* How did you know afterwards that *Medhurſt* was made free?

Cole. Becauſe I afterwards ſaw him among the Freemen, at the Election of one *Muntz* to be a Member of Parliament. He voted in the Election.

Mr. *Strange.* This *Rainolds* was old *Rainolds* the Town-Clerk, who was admitted the 27th of *May*, 1662. He is the 15th Man we ſpoke to.

Sir *T. Abney.* My Lord, the 13th of *March*, 1674, this *John Medhurſt* was admitted.---Read the Entry of his Admiſſion. Is it a true Copy?

Mr. *Cranſton.* Yes.

Aſſociate reads----

"*Haſtings*, ff. 13 *March*, 22° *Car.* II^di^, 1674. In full Court then and there holden, before the ſaid Mayor and Jurats, came *John Medhurſt*, eldeſt Son of *Nicholas Medhurſt*, late a Freeman of *Haſtings* aforeſaid, and prayed to be made free of the Liberties of this Town; whereunto he is admitted, took his Oath, and kiſſed the Mayor's Cheek, *more ſolito*, and paid 6*s.* 8*d.* to the Chamberlain for his Fine."

Sir *T. Abney.* My Lord, we ſhall not trouble your Lordſhip to give any further Evidence.

Mr. Att. Gen. May it pleaſe your Lordſhip and you Gentlemen of the Jury; I am Counſel in this Caſe with the Defendants: And, notwithſtanding the long Evidence you have heard, we doubt not but the Defendants will make it appear, to your entire Satisfaction, that they have no other View in defending this Suit, but as by their Oaths they are obliged to ſupport the ancient Rights of the Corporation, and prevent Innovations there; of which this pretended Right of the Plaintiff will appear to be one.

And, Gentlemen, the ſingle Queſtion you are now to try is, Whether there be ſuch a Right in the Town and Port of *Haſtings*, as the Plaintiff has ſet forth in the *Mandamus*, as the Foundation of his Claim to be free of this Town and Port, which he inſiſts belongs to him? And, Gentlemen, as the whole depends upon this, Whether he has proved the Right in the Manner he has laid it in the *Mandamus*; it will be proper to ſtate the Cuſtom to you, and then to obſerve, how far the Evidence that has been given by the Plaintiff has ſupported his Right, as it is laid in the *Mandamus?*

And, Gentlemen, as the Plaintiff has laid it, four Things are neceſſary to give a Man a Right to a Freedom in *Haſtings:*

1*ſt*, He muſt be an eldeſt Son. It is, *every Perſon, being the eldeſt Son of a Freeman*—

2dly, He muſt be born in the Town. *And born within the ſaid Town and Port.*

3dly, It muſt be after the Admiſſion and Swearing of his Father. For it is ſaid in the *Mandamus* that the Plaintiff *has a Right in Reſpect thereof; and alſo,*

4thly, *Upon paying a reaſonable Fine, to be admitted and ſworn into the Place and Office of one of the Freemen of the ſaid Town and Port.*

So that, Gentlemen, theſe four Things are ſet forth in the *Mandamus*, and, as they alledge, muſt concur, and are neceſſary to give a Man a Right to a Freedom in *Haſtings:* For it is, *in Reſpect thereof, and alſo upon paying a reaſonable Fine*, that he is to be admitted and ſworn into the Place and Office of one of the Freemen of the ſaid Town and Port.

If therefore, Gentlemen, any of theſe four Things, which they have laid as neceſſary, or if one of theſe Things laid as neceſſary, they have failed in the Proof of; for the Right they lay is *in Reſpect thereof*; my Lord, I ſay, if every one of theſe Things are neceſſary----They are,

1ſt, That he be the eldeſt Son of a Freeman.

2dly, That he be born after his Father's Freedom.

3dly, That he be born within this Town.

And the next Qualification is, upon paying a reaſonable Fine.

Theſe, Gentlemen, are the four Things they have thought proper to ſay as neceſſary, in order to be admitted a Freeman of this Town and Port.

And, my Lord, I humbly apprehend, they have given no Proof at all of three of them; of one of them they have given but a very ſlight Proof; and of one of the Facts every Evidence they have produced has given a direct Proof to the contrary.

And, my Lord, there is one Thing more, which is abſolutely neceſſary in order to be free of this Borough, that they have not taken in at all; and that is, that he muſt be reſident within this Town; and as they have not made *that* Part of their Cuſtom, they muſt undoubtedly fail. I ſaid before, that they had not made Reſidence a Part of their Cuſtom; and we ſhall fully prove Reſidence and Inhabiting within the Town to be abſolutely neceſſary, and ſhew that they have laid a Foundation, by their own Evidence, that this is neceſſary.

My Lord, I would beg Leave now to conſider their Evidence which has been brought to ſupport this Right of the Plaintiff.

And the firſt Thing they have offered to your Lordſhip and the Jury, is a Writing, which they are pleaſed to call the Cuſtomal; of which I admit it may be a Copy, as they have ſet it out. And, my Lord, your Lordſhip hinted, that Books of this Nature ſhould be read in Evidence, becauſe the Court could not ſee whether it was proper to be read or no, till they had heard it; which ſuppoſes (as I humbly apprehend) that we are at Liberty to object to it.

And, my Lord, I would ſubmit it to your Lordſhip, that, conſidering how it comes before the Court, and the Part they rely on; what bad Company it keeps, and what it is ſaid to be, only an Entry of a Cuſtomal; that it is no Evidence at all, or, if it be any, not of the Thing they bring it to prove. They open it as only an Entry of ſome old Cuſtomal; and the ancienter it is, the better, provided it had been the old Cuſtomal; but this is not the Thing itſelf, but only an Entry in the Books they produce; and it is very improper to have a Cuſtomal of the *Cinque Ports* entered amongſt other Things. It would have had great Weight and Honour, had it been kept in ſome proper Place. It does not appear, but this may have been ſewed in, by the Fraud of an Officer of the Corporation. It is not the ancient Inſtrument, but only a Copy; and it does not appear how it might come there. I would therefore ſubmit it to your Lordſhip, whether, without they give an Account that they have made Search for the Original, this is any Evidence at all of what they bring it to prove?

But, Gentlemen, if it be Evidence at all, I ſubmit it to your Conſideration, that as it is but an Entry, and conſidering what Company it is found in, that it can have no Weight. If it had been found in an ancient Corporation-Book, amongſt old Entries and authentic Records of the Corporation, it would have come before the Court and you with ſome Authority. But, as it is found amongſt a hundred miſcellaneous Things no way relating to the Corporation, Copies of Leaſes, the Reſolution of the Judges upon the Statute of Queen *Elizabeth* relating to the Poor, amongſt many miſcellaneous Things; and very probably this might be ſewed in the Middle of the Book, for it begins in the 200th Page; I ſay, conſidering the Company it keeps, and the trifling Things it is found amongſt, it can have no Weight; I ſubmit, it is a Book that can have no Authority at all.

But, Gentlemen, if it be any Evidence at all; I ſubmit it to you, that it can be no Evidence of the Matters in Diſpute. It is not ſaid to be the Cuſtomal of *Haſtings:* That, Gentlemen, we ſhall read to you: And though there may be ſome concurring Cuſtoms which relate to all the *Cinque Ports* in general; yet, unleſs they can ſhew the ſame Cuſtom to be in all the Ports, a Cuſtom that relates to the Right of all can have no Weight in this particular Borough. To have made this Evidence, they ſhould have proved by ancient Charters and Records, that there is a concurring Right in all the *Cinque Ports* to the Election of Freemen.

But, Gentlemen, we ſhall lay Evidence before you quite to the contrary. We ſhall ſhew you a Cuſtom relating to eldeſt Sons in other Ports, quite different from this; whereby it will appear, there are diſtinct Rights in all the Ports, and that it was never pretended there

there was one uniform Right amongſt them; though if this Cuſtomal be Evidence, there muſt be a general Right of all the *Cinque Ports*. But, Gentlemen, taking it as Evidence of the Matters in Diſpute, even then it is far from proving moſt of the Things they have laid, and but a very ſlight Proof of what they rely on.

Firſt, Here is a Negative implied: "*Poſſunt Majores et Ballivi, &c.*" After having ſet forth the particular Perſons having a Right, it goes on and ſays, the eldeſt Son of a Freeman may be admitted, and that there are three Ways of admitting him:

"*Poſſunt Majores et Jurati, Ballivi et Jurati, &c. recipere et facere*
"*liberes tribus modis:*
"*Uno modo, per Nativitatem.*"

They are Qualifications rather than Rights: *Poſſunt, &c.* They may admit, and there is no Diſtinction made between the eldeſt Son and the other Sons.

"*Alio modo, per Liberum Tenementum perquiſit':*
"*Tertio, per Emptionem.*"

Such a Man has no Right; and yet the ſame Words are uſed to thoſe who come in by a Freehold, or by Purchaſe, as to thoſe who are to be made free as eldeſt Sons; and therefore it is no Evidence of the Right of an eldeſt Son. Does it ſay, the eldeſt Sons of Freemen, born after their Fathers Freedom, or within this Liberty, that they ſhall be free?——

Lord *Hardwicke*. "*Uno modo, per Nativitatem infra libertatem ſuam, ſi*
"*pater ſuus, tempore nativitatis ſuæ, fuit liber.*"

Mr. Att. Gen. My Lord, I aſk Pardon; it turns the other Way; but I ſubmit that it is no Evidence of the eldeſt Son. It does not ſay, *per Nativitatem* of the eldeſt Son; if he had any Son born after his being admitted into the Freedom, he had a like Right with the eldeſt Son.

Lord *Hardwicke*. "*Per Nativitatem infra libertatem ſuam.*"

Mr. *Strange*. Within his Franchiſe.

Lord *Hardwicke*. I was thinking, whether it related to the Freedom of the Father.

Mr. Att. Gen. My Lord, it is the *Libertatem* of the Five Towns, and not of this particular Town. Talking of the general Privileges of the *Cinque Ports* is an uncertain Evidence of what they contend for. My Lord, it goes on, and, ſo far as it is an Authority eſtabliſhed in all the Ports, it ſays, He is to take an Oath to maintain the Liberties of the Five Ports, and eſpecially of that Port *ubi commoratur*. It lays down, as the Foundation of being free, that Reſidence is abſolutely neceſſary: He cannot be admitted, unleſs he be commorant. This, my Lord, is the Foundation we go upon, and I humbly apprehend we ſhall eſtabliſh it by a very ſtrong Evidence.

My Lord, I reckon that the 35th Article they have read entirely deſtroys the Credit of this Book. The Words are, "*Et quilibet gaudere*
"*intendens libertatem Quinque Portuum per Emptionem, inveniet quatuor*
"*manucaptores reſident' de omnibus et ſingulis præmiſſ' perimplend'.*" They have not ſhewn that this Article has ever been complied with: They have never produced a Time that ſuch *Manucaptores* have been given, or that they were ever required of any Perſon: And therefore it appears, that this pretended Cuſtomal has been always conſidered as a Ballad, as I would conſider it; for they would have obſerved it, if it had been the ancient Law: And as they begin with this Point, I ſubmit it to your Lordſhip, that it ſhould not be left out of the Caſe; beſides, it is neceſſary that they be reſident within the Borough.

My Lord, and Gentlemen of the Jury, as to the Evidence that has been given from the Entries read; in conſidering this Corporation, one general Obſervation may be made, That they are a very weak Argument, if any, of what they are brought to prove.

My Lord, the *Mandamus* admits a Preſcription; and in making out a Cuſtom in the Caſe of a Borough, they ſhould give in Evidence more ancient Entries than any of theſe that have been read. They have gone no further back than 1608, although in the Books there are much older Entries. It may be ſaid by the Gentlemen of the other Side, that going back a hundred Years is a great Way back; and if there are no Entries before, it is ſufficient: But it happens unfortunately for them, that in this Corporation there are regular Entries, from the Year 1389, down to this Time where they have thought proper to begin; and there is no Inſtance or Footſtep of one claiming, or any Entry taking Notice of the Right of an eldeſt Son; and we ſhall read Entries back for two hundred Years before they begin; which, I humbly apprehend, will be a ſtrong Objection to every Entry they have read. A Proof from 1608 is but a ſlight Evidence of an ancient Cuſtom: And as they have proved another different Cuſtom, and there has been an Intermiſſion for ſo many Years, this Application of the Plaintiff's can proceed from nothing elſe but the ſame litigious Spirit that now prevails in the Corporation. From 1691 to 1716, they have produced no Footſteps of this Right, for twenty-five Years together. Can it be believed there was any Right, when for twenty-five Years no eldeſt Son ever claimed a Right; I ſay, when it appears Nobody ever claimed it during that Time, or, if they did, that they were refuſed? And, my Lord, if they were refuſed, it is a ſtronger Evidence.

Mr. *Strange*. You are miſtaken, Mr. Attorney; there was *John Geery* admitted the 25th of *October*, 1707, and *John Huſſey* the 5th of *January*, 1694; and we have ſeveral others.

Mr. Att. Gen. My Lord, they have divided their Evidence into three Parts. In the firſt Clauſe they have given no Evidence-----

Lord *Hardwicke*. That this, Time out of Mind, has been the Cuſtom.

Mr. Att. Gen. My Lord, I would conſider, how far their Evidence ſupports the Right the Plaintiff has laid in the *Mandamus*, and what they have proved.

And, with great Submiſſion to your Lordſhip, I muſt inſiſt, that they have proved no more, than that eldeſt Sons of Freemen have been admitted for a Fine of 6*s.* 8*d.* for the Entries all are, on their praying to be admitted. And, my Lord, it is no Wonder; for we ſhall ſhew your Lordſhip ſeveral hundred Inſtances of Perſons who were admitted during the Time theſe Freemen were admitted, who were younger Sons, for their Fines of 6*s.* 8*d.* and they have produced but fourteen Inſtances of eldeſt Sons; they have ſhewn they were admitted, and proved the Fine paid by them to be 6*s.* 8*d.* We have other Inſtances of Sons who paid 13*s.* 4*d.* And therefore they might as well ſay, ſince there is Proof, that every body paying 13*s.* 4*d.* has as good a Right to be admitted as the eldeſt Son of a Freeman; for it is upon paying 13*s.* 4*d.* and the eldeſt Son's Admiſſion is upon paying 6*s.* 8*d.* and if it be an Argument of a Right, it is a Right by paying 6*s.* 8*d.* and every body, from their own Account of the Matter, has the ſame Right for 13*s.* 4*d.*

My Lord, in any of the Entries, there is no Diſtinction made in the Admiſſion between the Sons and others; they all come and pray to be admitted; ſometimes it is upon making it their humble Requeſt, ſometimes upon their earneſtly beſeeching, that they are to be made free. They all aſk in the ſame Manner, whether they are Sons or no, and are made free; and therefore, on their own Entries, it appears to be a Favour granted to eldeſt Sons as well as others, upon their aſking that they might have it; and therefore they are indulged with a leſſer Fine. They rely much on the Fine of 6*s.* 8*d.* but, if it proves any thing, it is (as I humbly apprehend) an Argument againſt them.

My Lord, in the next Place, they have laid the Cuſtom to be, That this eldeſt Son be born within the Town, after the Admiſſion and Swearing of his Father; then it is that the Son is to be admitted. But I do not remember that any one of their Witneſſes has confined it to this (I aſk Pardon if I have forgot); but they ſaid, ſome of them expreſly, that the being born after the Father's Admiſſion, or within the Town of *Haſtings*, or out, made no Difference. But they have endeavoured to ſupply this from their Entries, by ſaying, that they are mentioned in the Entries as eldeſt Sons, and therefore they were admitted for 6*s.* 8*d.* But this infers nothing.

Gentlemen, we ſhall ſhew you, both by Entries and living Witneſſes, that there has been no Diſtinction made between the eldeſt Sons and other Sons. It was no Indulgence therefore to them; but the ſame to the other Sons of Freemen as well as the eldeſt.

And, my Lord, we have many Entries in the Books, where only the Sons of Freemen are mentioned, without taking any Notice of the eldeſt; which fully proves, that, if the Point reſted upon their being eldeſt Sons, and born within the Borough, after the Admiſſion and Swearing of the Fathers, they would have been particularly entered ſo in the Books, and is a ſtrong preſumptive Evidence againſt this pretended Right of the Plaintiff.

My Lord, we have ſome Inſtances where they are called the youngeſt Sons, and were admitted for their Fines of 6*s.* 8*d.* upon their coming and humbly praying that they might be admitted into the Franchiſe of this Town. That therefore being added, ſtrongly ſhews, that they had no Regard at all to what the Gentlemen of the other Side principally contend for, the Right of eldeſt Sons.

Beſides this, Gentlemen, we ſhall produce to you many living Witneſſes, very old ones, who will prove to you, that the Mayor and Jurats (the Charter being ſilent in this Matter) have Time out of Mind admitted Perſons at their Pleaſure, and this has been the ancient Cuſtom.

And, Gentlemen, as their Entries go no further back than 1608, ſo their living Witneſſes do not make it a Jot the better. They do not ſay there is a Right in this Borough, in one Inſtance, of their own Knowledge; they do not ſay a Word of any Diſtinction, whether they are born after the Admiſſion and Swearing of the Father, or within the Borough; and one of them expreſly contradicts it. The Evidence they have given is nothing but a tittle-tattle Diſcourſe of what they have heard, that the eldeſt Sons of Freemen had a Right.

Therefore, Gentlemen, as to the Point in Queſtion, as they have entirely failed in their Entries, and as the living Witneſſes they have brought to ſupport it ſay little or nothing to the Purpoſe---One of them ſays, when he deſired his Freedom himſelf, the Town-Clerk anſwered the Mayor, *Sir, you may do as you pleaſe*. He did not aſk him, whether he was born within the Town, or after his Father became free, and mentions a Fact ſtrong to the contrary. And, as ſome of their Evidence comes down ſo low as 1722, one of them tells you, that when one was made a Juſtice of Peace, the eldeſt Son of a Freeman came to the Court, and demanded his Freedom, and was abſolutely refuſed; and that he did it nine Years ago, ſome of them ſay about twelve. So that, Gentlemen, their living Witneſſes give but a ſlight Evidence of one Part of their Cuſtom; and as to the other Part, they have given no Evidence at all. But we have many old Witneſſes, who will give your Lordſhip and the Jury no wrong Views of the Manner of admitting Freemen.

My Lord, we ſhall begin with the Cuſtomal, which is ſaid in the Title to be the Cuſtomal of this Town; where the fulleſt Directions are given as to the Manner of electing Freemen, and yet there is not a Word ſaid of the Right of the eldeſt Son.

We ſhall then, by reading many Entries out of the Corporation-Books, ſhew, that no Notice at all has been taken of eldeſt Sons, in Diſtinction to other Sons; but that they have all been admitted promiſcuouſly.

And then I ſhall trouble your Lordſhip to ſay no more; but call our living Witneſſes, who will fully prove to your Lordſhip and the Jury, that the Mayor and Jurats have, Time out of Mind, admitted Freemen at their Pleaſure; and that, beſides being the eldeſt Son of a Freeman, and born within the Town after the Admiſſion and Swearing of the Father, he has a Right in Reſpect thereof, but it muſt be on another Condition, as neceſſary as any of the former, upon paying a certain Fine. The *Mandamus* goes on and ſays, *And alſo upon paying a reaſonable Fine*; and the Writ commands the Mayor and Jurats to admit him upon paying a reaſonable Fine. So that, my Lord, I take it, by the Writ, that Fine is made to be as neceſſary in order to the Perſon's being admitted, as any of the other Qualifications mentioned in the *Mandamus*: And, my Lord, I humbly apprehend, they have proved it a certain Fine, inſtead of a reaſonable Fine.

My Lord, a Copyholder lays a Cuſtom, to be admitted to Copyhold Lands upon paying a reaſonable Fine: If, upon the Proof, it comes out to be a certain Fine, he muſt undoubtedly fail; for in Copyholds there is a known Diſtinction between a reaſonable Fine and a Fine certain.

And, my Lord, I humbly apprehend, that, in Point of Law, Caſes of Copyholders are parallel with the preſent.

There is as much a Diſtinction between a Fine certain and a reaſonable Fine in the preſent Caſe, as in the Caſe of a Copyhold.

My Lord, they have fully proved 6*s.* 8*d.* to be conſtantly paid, which is a certain Fine, upon every Admiſſion of an eldeſt Son. The Mayor cannot contend; if they offer that Fine, they have a right to be admitted. They therefore have failed in this Point; it is not a reaſonable, but a certain Fine.

My Lord, in the next Place, we ſhall call Evidence to prove, that, without Reſidence within the Borough, no one can ever be admitted a Freeman of this Town and Port: And I take this, my Lord, to be a general Rule in moſt Corporations; it being unreaſonable that any Man, who does not reſide in the Borough of which he is free, ſhould have a Share in conducting the Affairs of that Borough. And although the Charter is ſilent in this Affair, yet, my Lord, beſides the general Reaſon of the Thing, we ſhall ſhew your Lordſhip and the Jury a By-Law made above two hundred Years ago, by which it is declared, That if any one who was a Freeman removed out of the Borough, and ſhould dwell out of the Town, ſuch Freeman loſt all his Right. And we ſhall prove by ſeveral ancient living Witneſſes, that Reſidence within the Borough was always neceſſary, and that this has been the conſtant Uſage.

My Lord, upon the whole Circumſtances of this Caſe, we beg Leave to inſiſt, that they have not proved three Parts of the Cuſtom, as they have laid it in the *Mandamus*; and that, as to the fourth Part, they have proved directly the contrary: And therefore, Gentlemen, we hope you will find a Verdict for the Defendants.

Mr. Serj. *Skinner.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury; I am alſo of Counſel with the Defendants: And Mr. Attorney-General has been ſo very particular in anſwering the Evidence, which has been offered to you by the Gentlemen of the other Side, as well as in ſtating the Evidence we are to lay before you, that I need ſay little.—

Lord *Hardwicke.* You are not going to ſtay, Mr. *Strange*, I hope: We are now coming to a material Part.

Mr. Serj. *Skinner.* My Lord, the Right the Plaintiff has laid in the *Mandamus* is, That every Perſon, being the eldeſt Son of a Freeman, born within the Town, after the Admiſſion and Swearing of his Father into the Office of Freeman, has a Right, in Reſpect thereof, and alſo upon paying a Reaſonable Fine, to be made free: And they have endeavoured to prove this Right, Firſt, by producing an old Book, called the Cuſtomal, as an Evidence of this Right: But it is a ſuſpicious Authority; it has no Date; and that, they ſay, is an Evidence of its Antiquity, but without any Foundation from the Book: There are ſeveral Entries entered prior to it; it is not paged regularly; it is in the Middle of the Book, and yet it is marked *Fol.* 1. And if we look into the Thing itſelf, it tells us there are three Ways of making free, *viz.* by Birth, if born within the Town, and after the Swearing and Admiſſion of the Father; by the Purchaſe of a Freehold; and by Redemption.

My Lord, they have ſhewn ſome Inſtances of the firſt; but as to the ſecond, they have ſhewn no Purchaſer of a Freehold that ever was made free; and we ſhall prove many Perſons living in the Town that have Freeholds, that never were made free.

The next Evidence they have given is from the Entries of Sons, who have been made free as Sons of Freemen; and this they would have us take as a Proof of the Cuſtom, of a Right in the eldeſt Son, born after the Freedom of the Father, to be made free: For they ſay, it is in Reſpect thereof; that he muſt be the Son of a Freeman, and born after his Father was made free. And all the Inſtances they have produced of this amount to no more, than that ſuch a one was admitted, being the eldeſt Son of a Freeman, not becauſe he was an eldeſt Son, and born after his Father was made free.

My Lord, they have produced Copies taken out of the Regiſter-Books in *Haſtings*, by which it appears, when theſe Sons were baptized: But it is not given as a Reaſon in any of theſe Entries, that he was admitted into the Freedom, becauſe he was born there; though, in Fact, it might be ſo, and that is the Right they contend for.

My Lord, I ſubmit it to your Lordſhip, that, as to the Fine, nothing concluſive can be drawn from thence, that there is any Right in the Eldeſt Son of a Freeman. The Fine paid by him is 6*s.* 8*d.* *quia pater ſuus liber eſt*; that is the Reaſon. No; he is not admitted into the Freedom becauſe his Father was a Freeman; but he is admitted for 6*s.* 8*d.* not becauſe his Father was a Freeman. This therefore does not ſhew that he had a better Right than any body elſe: And none but the ſecond Inſtance they read, *James Laſher*, among all the Entries, was admitted upon any other Terms than his humble Petition and Prayer to be made free. He, indeed, inſtantly required the Freedom, and by the Conſent of all he was admitted. In all the other Inſtances it is ſaid, At his humble Requeſt and Deſire he is admitted: Nobody inſiſted on, or demanded this Right.

My Lord, as they have laid the Right, there is a further Qualification neceſſary, *viz.* on Payment of a reaſonable Fine: And I ſubmit it to your Lordſhip, that they have proved it a Fine certain; and that therefore nothing is left to the Mayor and Jurats in this Affair, but to admit the Perſon upon paying 6*s.* 8*d.* and claiming his Freedom.

But, my Lord, we ſay, a further Qualification is abſolutely neceſſary, and that is Reſidence: And this appears from an Entry in this very Cuſtomal they have produced. And, my Lord, Nobody is ever admitted, but on taking an Oath to obſerve the Statutes, Orders, and By-Laws of the Borough *ubi commoratur*; and therefore the Perſon admitted into the Freedom muſt be commorant in the Place of which he is free. And, my Lord, by a By-Law of the 12th of *April*, the 15th of Queen *Elizabeth*, they were not only to be commorant, but to continue to live there; and if any one admitted went and lived out of the Town a Year and a Day, he was to be excluded from any Privilege or Freedom within that Borough: And this By-Law has been conſtantly obſerved; and yet, my Lord, the Plaintiff *Moore*, they do not ſo much as pretend that he is reſident within this Borough. We contend not, whether the Sons of Freemen are intituled to Freedoms; but we ſay, that Freemen's Sons and Foreigners are in the ſame Right; they pray alike, if it ſeems fit, and ſo pleaſes the Mayor and Jurats: And the Mayor and Jurats have rejected the Sons of Freemen: And it is only a Compliment to the Sons of Freemen to pay 6*s.* 8*d.* and 13*s.* 4*d.* is paid if a Foreigner is admitted.

Gentlemen of the Jury, we ſhall lay our Evidence before you; and then we doubt not but you will be convinced, that the Right is the ſame to a Foreigner as to the Son of a Freeman, and therefore that you will find for the Defendants.

Lord *Hardwicke.* I own there are Difficulties upon the Point of a reaſonable Fine, and that of Commorancy. I have taken Reſidence in all the Ports to be eſſential.

Sir *T. Abney.* My Lord, we apprehend 6*s.* 8*d.* to be a reaſonable Fine, from the Reaſonableneſs of the Sum.

Lord *Hardwicke.* The Notion of Law is, Sir *Thomas Abney*, that there is an eſſential Difference between a Fine certain and a reaſonable Fine.

Sir *T. Abney.* My Lord, we can prove that different Sums have been paid upon the Admiſſion of Sons.

Mr. *Strange.* We have one Inſtance of a Son who paid twenty Shillings for a Fine.

Lord *Hardwicke.* Then as to the Point of Commorancy.

Mr. *Marſh.* My Lord, the Ports in general preclude no Member for Non-reſidence. I have known them vote for Mayor, that have not been reſiant.

Lord *Hardwicke.* In ſome of the Ports a Diſtinction is made between voting for Mayor and Members of Parliament.

Mr. Serj. *Eyre.* My Lord, they cannot ſhew, within ten Years, an Inſtance of one Son's paying more than 6*s.* 8*d.*

Lord *Hardwicke.* Go firſt to that Point of the Fine.

Mr. Att. Gen. We ſhall begin with our By-Law, where the Words *ubi commoratur* are.

Lord *Hardwicke.* One By-Law has been mentioned, that a Freeman of one of the Ports ſhall have a Right to be admitted in another; that is never uſed.

Henry Carlton *ſworn.*

Sir *T. Abney.* Was not you a Freeman? Are you not diſfranchiſed?

Carlton. Yes.

Sir *T. Abney.* Are you not promiſed to be reſtored?

Mr. Att. Gen. What Book is that?

Carlton. One of the Corporation Books of *Haſtings.*

Mr. Att. Gen. Where had you it?

Carlton. It came from the Town-Clerk's Office.

Mr. Att. Gen. Read the By-Law of the 15th of Queen *Elizabeth.*

Aſſociate reads—

" *Haſtings*, ſſ. *Electio Ballivi tent' die Dominica prox' poſt*, &c. 12° *die*
" *menſis Aprilis, anno regni Reginæ Elizæ* 15°, *Elect' Major' pro hoc*
" *anno.*

" It is decreed, That, if any Freeman, now or at any Time hereafter
" an Inhabitant of this Town, ſhall depart or dwell out of the Town, by
" one Year and one Day, he or they, ſo dwelling out of the Town, ſhall
" loſe his or their Freedom."

Mr. Att. Gen. How old are you, Mr. *Carlton?*

Carlton. I am eighty Years old.

Mr. Att. Gen. Where have you lived? Where was you born?

Carlton. I was born within a Mile of *Haſtings.* My Father came to live at *Haſtings* when I was about fifteen Years old; and ſince I have lived greateſt Part of my Time in *Haſtings.*

Mr. Att. Gen. Do you know what the Cuſtom is in *Haſtings*, as to the Admiſſion of Freemen?

Carlton. Yes; I was a Freeman myſelf, and have been at ſeveral Meetings of the Mayor and Jurats.

Mr. Att. Gen. Pray now, during your whole Time, did you ever know any one made free that was not reſident?

Carlton. No, never, except Honorary Freemen.

Mr. Att. Gen. Have they any Right to vote in your Borough at Elections?—*Carlton.* No.

Mr. Att Gen. But as to thoſe that are really free, did you ever know any, that were not Inhabitants, vote at Elections?—*Carlton.* No.

Mr. Att. Gen. Did you ever know any, that were not Inhabitants, demand it?—*Carlton.* No, nor I never knew it demanded.

Mr. Att. Gen. Is it not neceſſary, in order to be free, that they ſhould inhabit within the Town?

Carlton. I always thought ſo.

Mr. Att. Gen. Did you ever hear any thing to the contrary?

Carlton. No.

Mr. Serj. *Skinner.* You know no Inſtance, in your Time, of any Perſons made free, who were not reſident?

Carlton. No, none but Honorary Freemen, ſuch as Members of Parliament and Captains of Ships.

Mr. Att. Gen. Did they own that the eldeſt Sons had a Right?

Lord *Hardwicke.* Whether they had a Right to demand a Freedom, although they were not reſident?

Mr. Att. Gen. Have they a Right to demand it?

Carlton. No, Nobody that don't live there.

Mr. *Lacy.* Is there not a Roll of the Freemen, by which they call over their Names upon Elections?---*Carlton.* Yes.

Mr. *Lacy.* Are the Honorary Freemen called over with the others upon ſuch Occaſions?---*Carlton.* No.

Mr. *Lacy.* Does not a Freeman by Non-reſidence loſe his Freedom?

Carlton. Yes.

Mr. *Lacy.* Do you know any Inſtance?

Carlton. Yes, *Jonathan Stevens.*

Mr. *Lacy.* Was he a Freeman?---*Carlton.* Yes.

Mr. *Lacy.* Was he out of the Freedom a Year and a Day?

Carlton. Yes, and loſt his Freedom.

Mr. *Lacy.* Did you know one *Milward?*

Carlton. Yes, he was a Jurat.

Sir *T. Abney* I would aſk you, Sir, as to the eldeſt Son of a Freeman; has not he a Right?

Carlton. No, no Right, without the Favour of the Mayor and Jurats.

Lord

Lord *Hardwicke.* Examine him to the Point we are upon.

Mr. Attorney General. Can the Mayor and Jurats elect an eldest Son, if he is not resident?---*Carlton.* No.

Lord *Hardw.* You said, Mr. *Carlton*, you had known Persons not resident admitted?

Carlton. Yes, my Lord, Honorary Freemen.

Lord *Hardw.* Could not they as well admit the Son of a Freeman not resident?

Carlton. No, I never knew it in my Life.

Mr. Att. Gen. Could not a Son of a Freeman be made free, though not resident, as well as another?

Lord *Hardw.* Mr. Attorney, to support the Qualification of Residence, some Right must be set up.

Mr. Att. Gen. Honorary Freemen have no Right in Point of Law. The Universities give Degrees to Persons who are not Members; it is a Compliment, and they do not vote.

Mr. *Strange.* It is not worth their while to come down to vote.

Lord *Hardw.* Honorary Freemen vote at Elections.

Mr. Serj. *Eyre.* I submit it to your Lordship, that we are upon the Right, and therefore ought to examine to that.—I would ask you, Mr. *Carlton*, has any body non-resident a Right to be elected a Freeman?

Carlton. Nobody has any Right.

Mr. *Strange.* Did you ever know the eldest Son of a Freeman refused, because he was not resident?

Carlton. I never knew it asked.

Mr. Serj. *Eyre.* A Man who is free forfeits his Freedom by being out of the Borough; and yet you would have it that Persons non-resident have a Right.

Mr. *Strange.* That, Mr. Serjeant, is by your By-Law, not by a Custom.

Mr. *Clarke.* Do you know no Person, though non-resident, that voted?

Carlton. No.

Mr. *Clarke.* Do you know one *Thomas Hatcher*? Do not you remember his coming to vote, though he lived out of the Corporation?

Carlton. No.

Lord *Hardw.* That By-Law, will it take away a Right?

Mr. Serj. *Eyre.* We do not rely upon that, my Lord.

Robert Bartholomew *sworn.*

Mr. Serj. *Skinner.* How old are you, Mr. *Bartholomew*?

Bartholomew. I am eighty-two Years old.

Mr. Serj. *Skinner.* Where have you lived?

Barth. In *Hastings*, almost all my Time.

Mr. Serj. *Skinner.* Have you been there at their Meetings?

Barth. Yes.

Mr. Serj. *Skinner.* Did you ever know one admitted, not living in the Borough?———*Barth.* No.

Mr. Serj. *Skinner.* Has any Person a Right to be admitted a Freeman, that does not live there?

Barth. He that lives there, to be sure, has a Right.

Lord *Hardw.* Examine him to the Fact, what he has known.

Mr. Serj. *Skinner.* What Right has any body to be made free?

Barth. They are made free by the Mayor and Jurats.

Mr. Serj. *Skinner.* Did they live in the Town when they were made free?

Barth. I never knew any body made free, that lived out of the Town, in my Life except Honorary Freemen, and them we used to call *Ablocates.*

Mr. Serj. *Skinner.* Have you known no Persons non-resident, made free, to vote, or do a Corporate Act?---*Barth.* No, none.

Sir *T. Abney.* Who has a Right to be made free of your Town?

Barth. Any body the Mayor and Jurats please.

Mr. *Strange.* Have not you sometimes taken it into your Head to fancy the eldest Son of a Freeman has a Right?

Barth. No, I never had such Thoughts.

Mr. *Strange.* Did not you say so?———*Barth.* No.

Mr. *Strange.* Have not you said so to *Robert Evernden*?---*Barth.* No.

Mr. *Strange.* Nor to Mr. *Broadway*?———*Barth.* No.

Mr. *Strange.* Did you never say so in their Hearing?—*Barth.* No.

Mr. *Strange.* Nor to Mr. *Dodson*?———*Barth.* No.

Mr. *Strange.* They are in Town.

Barth. I know they are; I see them.

Mr. *Strange.* Have not you declared to them, that the eldest Son of a Freeman has a Right?

Barth. Never since I was born.—I have heard my Father say, a Man could not be made free, that would not swear himself worth 100 *l.*

Mr. *Strange.* Why do you take more Money of other People than of Freemen's Sons?

Lord *Hardw.* It is inconsistent to say there is no such thing as a Right, and yet Commorancy is necessary, and Honorary Freemen are admitted, though no Person of Right can demand his Freedom: But to say they are all at the Pleasure of the Mayor and Jurats, and yet Residence is necessary, is a Contradiction.

Mr. Att. Gen. My Lord, they cannot be admitted if they have a Right, if they have not that of Residence.

Lord *Hardw.* If you put it in that Way, you must go into the Custom. Go on your own Way.

Mr. Serj. *Eyre.* The Gentlemen of the other Side, my Lord, are not able to shew a Freeman's eldest Son admitted for any other Fine than 6 *s.* 8 *d.*

Sir *T. Abney.* Yes, we can produce the Book; it will shew its Antiquity; it is scarce able to be read.—Read the Entry of *John Hall*, admitted for a Fine of twenty Shillings.

Lord *Hardw.* Don't go into the Reply, before they are gone through the Defence.

Mr. Att. Gen. What Book is that?

Mr. *Cranston.* One of the Corporation-Books.

Mr. Att. Gen. You had it from the Town-Clerk, from among the Records of the Town?———Mr. *Cranston.* Yes.

Mr. *Marsh.* What Book is that, Mr. Attorney?

Mr. Att. Gen. It is the Custom of *Hastings*; that is a Translation.

Mr. *Marsh.* What Language is it in?

Mr. Att. Gen. It is in old *French.*

Mr. *Strange.* That bound up with ours is a Translation, and that you say is the Original.

Mr. Att. Gen. I believe so.

Mr. *Strange. (Looks upon it.)* This Custom is false.

Mr. Att. Gen. It is a Translation, and may be wrong translated.

Mr. *Strange.* We'll see that.

Mr. Att. Gen. Read it.

Mr. *Holmes* reads--- *(The Copy in old* French.)

" The Usage of *Hastings* Time out of Mind———

" *Die Maii, anno* 30° *Elizæ* -----

Mr. Att. Gen. Read that relating to the making of a Freeman.

Mr. *Holmes* reads -----

" If a Foreigner resides in *Hastings* for a Year and a Day, he may come " before the Bailiff and Jurats, and be admitted to the Freedom upon " taking an Oath."

Mr. Att. Gen. In order to be admitted a Freeman, he is to stay a Year and a Day.

Mr. Serj. *Eyre.* Have you looked over that Book, Mr. *Holmes?*

Mr. *Holmes.* Yes.

Mr. Serj. *Eyre.* In order to be a Freeman, he is to come and reside a Year and Day; and if he be of a good Conversation, then he is to be admitted.

Mr. Serj. *Eyre.* Is there any other Custom in that Book relating to making of Freemen?---Mr. *Holmes.* No.

Mr. Serj. *Eyre.* Read the Entry of the 36th *Edw.* III:

Associate reads ----

" *Memorandum, quod in pleno hundredo tent' apud Hastings, viz. die Do-* " *minica prox' ante festum Annunt' beatæ Mariæ, anno regni Regis Edwardi* " III^tii *à Conq'* 36^to, *coram Ball' et tot' Communitat', Willielmus de Beurn, et* " *Johannes fil' ejus, recep' sunt ad libertat' de Hastings, et dederunt commu-* " *nitat' unam pipam vini, de quo satisfec'.*"

Lord *Hardw.* That is the Admission of particular Persons. Is there any Fine in that Admission?

Mr. Serj. *Eyre.* A Pipe of Wine, my Lord.

Mr. Att. Gen. We shall shew, my Lord, a concurrent Proof of 6*s.* 8*d.* paid as a Fine certain.

Lord *Hardw.* Can you shew any Admissions of Persons who were eldest Sons, without paying any Fine at all?

Mr. Att. Gen. My Lord, it is improper to call such an one an eldest Son, if the Father had no other Son.

Lord *Hardw.* There two Persons were admitted; but in that Entry neither is mentioned to be the Son of a Freeman.

Mr. Att. Gen. It is for a Pipe of Wine; that, my Lord, is one of the Rights they admit upon.---Read the Admission of *William Cobden, fol.* 147. He was admitted the 7th of *May*, the 7th of *James* the First.

Associate reads -----

" *Hastings*, ff. *Ad assemblat' tent' ibidem* 7° *die Maii*, 7° *Jacobi Regis* " *primi, Gulielmus Cobden admissus est ad libertatem hujus villæ, et sacramen-* " *tum suum more solito præstitit, et osculatus est malam dextram Majoris se-* " *cundum usum, pro fine suo; quia filius liberi hominis.*"

Lord *Hardw.* The Custom of the Five Ports does not fix what the Fine shall be.

Mr. *Strange.* My Lord, proving that all the Sons are admitted, is proving that the eldest Son is admitted.

Lord *Hardw.* You have laid it *in Respect thereof*, which you need not have done. I cannot imagine why it was laid so, *in Respect thereof.*

Mr. Serj. *Eyre.* Turn to *fol.* 147. Read the Admission of *John Sand*, the 14th of *July*, the 8th of *James* the First.

Associate reads -----

" *Hastings*, ff. 14° *Julii*, 8° *Jac.* I^mi, *in plena Curia venit Johannes* " *Sand, et petit libertatem hujus villæ, et admissus est ad libertatem, quia* " *pater suus liber erat, et sol' 6 s. 8 d. et fecit inde sacramentum, et osculavit* " *malam dextram Majoris more solito.*"

Mr. *Strange.* We may admit many of these Entries, Mr. Attorney, if you will tell us for what Purpose you read your Entries over again.

Mr. Att. Gen. These were admitted as Sons of Freemen. We read them, to shew a different Custom from what you have laid.———Read *Nathaniel Lasher* the Son. He was admitted, *quia filius liberi hominis.* Turn to *fol.* 175.

Associate reads ----

" *Hastings*, ff. 1613, 11° *Jac.* I^mi, 26 *Martii, hoc anno*, came *Nathaniel* " *Lasher*, Son of *James Lasher*, Jurat, before Mr. Mayor and his Bre- " thren, and prayed to be admitted to the Liberty and Freedom of " this Town; and was admitted, sworn, kissed the right Cheek of Mr. " Mayor, *more solito, pro fine* 6 *s.* 8 *d. quia filius liberi hominis, &c.*"

Mr. Att. Gen. Turn to *fol.* 179. Read *John Isted.*

Associate reads ——

" *Hastings*, ff. 1614. *Decimo quarto die hoc anno*, came *John Isted*, " and craved to be admitted to the Liberty and Freedom of this Town; " And by Mr. Mayor and his Brethren was admitted, and sworn, and " kissed the right Cheek of Mr. Mayor, *more solito, pro fine* 6 *s.* 8 *d.* " *duntaxat, quia filius est liberi hominis hujus villæ.*"

Lord *Hardw.* What Men do you admit there?

Mr. Att. Gen. My Lord, we admit Men as the Sons of Freemen, and that pay 6 *s.* 8 *d.*——Now read the Entry of the 31st of *March*, 1638, of the Admission of *James Batcher*, jun.

Mr. Serj. *Eyre. James Batcher*, jun. Son of his Father.

Mr. *Strange.* That is just the same as you read before.

Mr. Serj. *Skinner.* Read *William Lovell.*

Sir *T. Abney.* We read that.

Associate reads ——

" *Hastings*, ff. 31 *March*, 1638, 14 *Car.* I^mi. At this Court, *James* " *Batcher*, jun. Son of his Father, a Freeman, is now made also free, " for his Fine of 6 *s.* 8 *d.* took his Oath, and kissed the Mayor's right " Cheek, *more solito, &c.*"

Mr. Serj. *Skinner.* I believe we must trouble the Doctor once more.

Mr. Att. Gen. Mr. *Carlton*, you told me you had lived all your Time in *Haſtings*, except about fourteen Years; you ſay you have been at their Elections; Pray, who has the Right to be elected a Freeman of this Borough during your Time?

Carlton. Thoſe whom the Mayor and Jurats pleaſe.

Mr. Att. Gen. Has not the eldeſt Son of a Freeman a Right to be admitted?——*Carlton.* No; if there had been ſuch a Cuſtom, it would never have been denied.

Mr. Att. Gen. Did you ever know any body, that was an eldeſt Son, inſiſt on this Right?

Carlton. Yes; one *Evernden* inſiſted on it, and was refuſed.

Mr. Att. Gen. How long is that ago?

Carlton. It was before I was a Freeman, about thirty-five Years ago.

Mr. Att. Gen. So you ſay *Evernden* demanded his Freedom, and was denied; Do you know this of your own Knowledge?

Carlton. I have heard it, but do not know it.

Mr. Att. Gen. Who have you heard it ſpoke by? Are the Perſons dead or living?

Carlton. I have heard it by ſome Perſons living.

Mr. Att. Gen. Was it the general Reputation in the Town, that this *Evernden* had no Right?——*Carlton.* Yes; he was looked on as an impudent Fellow, for coming and demanding it.

Mr. Att. Gen. Did you ever know any body admitted upon this Right?

Carlton. No.

Mr. Att. Gen. How long have you been a Jurat?

Carlton. Ever ſince the Year 1701.

Mr. Att. Gen. That is thirty-five Years ago. Did ever any body before this *Evernden* come and demand to be admitted as an eldeſt Son?

Carlton. I do not know any one.

Mr. Serj. *Parker.* Suppoſe the eldeſt Son of a Freeman apply to the Mayor and Jurats to be admitted, and they think fit to admit him; How do the Corporation proceed on that Occaſion?

Carlton. They apply to the Mayor and Jurats ſeparately at their Houſes, and aſk that Favour of them; and if they conſent, then they come to the Court-Hall, and aſk it of them again.

Mr. Serj. *Parker.* What follows upon that?

Carlton. Then the Mayor aſks the Gentlemen, if they conſent, and are ſatisfied, and whether they are willing the Perſon ſhould be made free; and then they put it to the Vote.

Mr. Serj. *Parker.* Do they make any Diſtinction between the eldeſt and youngeſt Sons?

Carlton. No; the Majority determines whether the Man ſhall be made free or no.

Mr. Serj. *Eyre.* If any other Perſon applies to be made free who is not a Son, what Steps do they take then?——*Carlton.* Juſt the ſame.

Mr. Serj. *Eyre.* You are the eldeſt Son of a Freeman, are you?

Carlton. Yes; but not born within the Town.

Sir *T. Abney.* Mr. *Carlton*, did you know *John Geery?*

Carlton. Yes.

Sir *T. Abney.* Was not he admitted to the Freedom in your Time?

Carlton. Yes.

Sir *T. Abney.* Was not he the eldeſt Son of a Freeman?

Carlton. Yes.

Sir *T. Abney.* Did you know *John Oliver*, *John Chambers*, *Benjamin Stevens*, *Philip Stevenſon*, *William Shorter*, and *Jacob Fantley?*

Carlton. Yes.

Sir *T. Abney.* Have not all theſe Perſons been admitted in your Time, as eldeſt Sons?

Carlton. Not becauſe they were eldeſt Sons, but becauſe the Mayor and Jurats thought fit to admit them.

Sir *T. Abney.* You ſaid you did not know, but you believed *Evernden* was refuſed; Pray, do you believe or fancy any other Perſon, who was an eldeſt Son, was ever refuſed?

Mr. *Strange.* Do you remember *Boykett* the Diſſenter, that applied to be admitted to his Freedom?——*Carlton.* No.

Mr. *Strange.* Do you know no Inquiry made by the Town-Clerk, whether he was the Son of a Freeman, or not?——*Carlton.* No.

Mr. *Strange.* And upon admitting Freemen, you ſay, that is the only Queſtion put by the Mayor, *Gentlemen, are you ſatisfied?* and if any objects, he puts it to the Vote?——*Carlton.* Yes.

Mr. *Marſh.* Do you remember *Thomas Lovell?*

Carlton. Yes; he was Mayor ſeveral Times.

Mr. *Marſh.* Do you remember Mr. *Waller*, the Town-Clerk?

Carlton. Yes.

Mr. *Marſh.* How long is it ſince he was Town-Clerk?

Carlton. Since I was upon the Bench.

Mr. *Clarke.* Do you remember nothing of *Boykett?*—*Carlton.* No.

Mr. *Clarke.* Nothing of his being refuſed?——*Carlton.* No.

Mr. *Clarke.* Call *Robert Bartholomew* again.—(*He not appearing,*)

Mark Bayley *ſworn.*

Mr. *Marſh.* Are you a Freeman?

Bayley. I was one, and am diſfranchiſed.

Mr. Serj. *Skinner.* How long have you known *Haſtings?*

Bayley. Ever ſince I was born.

Mr. Serj. *Parker.* How old are you?

Bayley. I am ſeventy-ſix Years old.

Mr. Att. Gen. How long have you lived there?

Bayley. I have lived there all my Time.

Mr. Serj. *Skinner.* You have been a Jurat there, have not you?

Bayley. Yes, ſix or ſeven Years.

Mr. Att. Gen. How do you make Freemen?

Bayley. You muſt apply to the Mayor and Jurats, and deſire that they would pleaſe to let you be made free.

Mr. Serj. *Skinner.* Suppoſe I was the eldeſt Son of a Freeman, might I come and demand to be free?

Bayley. No; there is no ſuch Thing as demanding it without the Conſent of the Mayor and Jurats.

Mr. Serj. *Parker.* When you come before the Mayor and Jurats, does the Mayor put the Queſtion, whether the Perſon ſhall be admitted, or no?——*Bayley.* He ſays, that ſuch a Man deſires to be made free, if you think fit of it.

Mr. Serj. *Parker.* The eldeſt Son can demand it if he thinks fit, cannot he?——*Bayley.* No, no; we have nothing at all of an eldeſt Son.

Sir *T. Abney.* Are not you the eldeſt Son of a Freeman?—*Bayley.* No.

Sir *T. Abney.* How long have you been a Jurat?

Bayley. Six or ſeven Years.

Sir *T. Abney.* How long have you been a Freeman?

Bayley. Forty-eight Years clear.

Sir *T. Abney.* What Profeſſion are you of?—*Bayley.* I am a Seaman.

Sir *T. Abney.* Pray, Mr. *Bayley*, was you always reſident in the Borough? Did you live there all your Life?——*Bayley.* Yes.

Sir *T. Abney.* What, when you was at Sea?

Bayley. No, but at all Times when I was not at Sea.

Thomas Caſwell *ſworn.*

Mr. Serj. *Eyre.* How long have you known *Haſtings?*

Caſwell. I was born there, and have lived there almoſt all my Time.

Mr. Serj. *Eyre.* Have not you been a Freeman and a Jurat?

Caſwell. Yes.

Mr. Serj. *Eyre.* Are not you diſfranchiſed?

Caſwell. Yes, I am now diſfranchiſed.

Mr. Serj. *Eyre.* When was you made a Freeman?—*Caſwell.* In 1717.

Mr. Serj. *Eyre.* When a Jurat?——*Caſwell.* In 1726.

Mr. Serj. *Eyre.* Pray, Mr. *Caſwell*, how do they make free?

Caſwell. When I was made free, I aſked the Mayor and Jurats, altho' I was the eldeſt Son of a Freeman.

Mr. Serj. *Eyre.* Acquaint my Lord and the Jury, what happened on your applying to be made free.

Caſwell. I applied in 1717 to the Mayor and Jurats for their Good-will to make me free.

Mr. Serj. *Eyre.* Is there any Difference between an eldeſt Son and another in making free?

Caſwell. No Difference at all, but that one pays half the Fine, and the other the whole; but the Conſent of the Mayor and Jurats is the ſame.

Mr. Serj. *Eyre.* As to Non-Reſidence, do they ever make any Perſons free, who are not reſident within the Borough?

Caſwell. They never make any Free, but ſuch as are reſident.

Mr. Serj. *Eyre.* Has any Perſon a Right to be made free, or is it in the Pleaſure of the Corporation?

Caſwell. It is entirely in the Pleaſure of the Mayor and Jurats.

Mr. Serj. *Eyre.* A Man, by purchaſing a Freehold, has he any Right?

Caſwell. No.

Mr. Att. Gen. Is he free of the other four *Cinque Ports?*—*Caſwell.* No.

Mr. *Strange.* Where was you born?

Caſwell. At *Haſtings.* My Father was a Freeman when I was born, and many Years before. That is my Father's Copy. (*Producing it.*)

Mr. *Strange.* Did you take up your Freedom by that Copy?

Caſwell. I wiſh I could; I ſhould have had it ſooner.

Mr. *Strange.* How old was you when you was made free?

Caſwell. I was twenty-ſix Years old.

Mr. *Strange.* Did you ever know an eldeſt Son of a Freeman denied?

Caſwell. No; but it is in the Breaſts of the Mayor and Jurats, whether he ſhall be free or no.

Mr. *Strange.* Was your Father the Son of a Freeman?

Caſwell. I cannot tell.

Mr. *Strange.* How comes it upon your Father's Admiſſion to be marked the Day he was born?

Caſwell. It is the Time I was born.

Mr. *Strange.* How came it there?

Caſwell. I wrote it from a Bible where my Father had entered it.

Mr. *Strange.* For what Purpoſe?——*Caſwell.* I wrote it down now, upon this Summons, to ſhew how old I was.

Mr. *Clarke.* What is the Difference between the Fine paid by Freemen's Sons, when you was admitted, and now?

Caſwell. When I was admitted it was 6 *s.* 8 *d.* and now it is 20 *s.*

Mr. *Clarke.* How long has it been 20 *s.*?

Caſwell. Twelve or fourteen Years.

Mr. *Strange.* If the Mayor inſiſts upon 10 *s.* you pay it?

Caſwell. The Uſage is 6 *s.* 8 *d.*

Mr. *Strange.* But he might refuſe it now?

Caſwell. I do not know.

Mr. *Strange.* Suppoſe he had aſked ten Guineas?

Caſwell. You aſk fooliſh Queſtions.

Mr. *Strange.* It is not your Buſineſs to tell me ſo.

Caſwell. You do it to aggravate your Cauſe.

Mr. *Strange.* I aſk you, Is it not a Cuſtom for the eldeſt Son to be admitted, upon paying ſuch reaſonable Fine as the Mayor ſhall think fit?

Caſwell. No; all the Cuſtom is, that 6 *s.* 8 *d.* is paid by Sons, and 13 *s.* 4 *d.* by others; and now the Diſtinction is 20 *s.*

Mr. *Strange.* Do you know any Inſtance of Perſons admitted for a Fine of 20 *s.*?

Caſwell. I know but of one Inſtance.

Mr. *Strange.* So you take it, no Perſon has a Right to be made free?

Caſwell. Not without the Conſent of the Mayor and Jurats.

William Bourne *ſworn.*

Mr. Serj. *Parker.* Do you know *Haſtings?*

Bourne. Yes.

Mr. Serj. *Parker.* How long have you known it?

Bourne. Fifty-eight Years.

Mr. Serj. *Parker.* What Method muſt a Man take to be admitted a Freeman of *Haſtings?*

Bourne. The Way is to get the Good-will and Liberty of the Mayor and Jurats.

Mr. Serj. *Parker.* Suppoſing an eldeſt Son applies to be made free, does he apply to the Mayor and Jurats in the ſame Manner as another?

Bourne.

Bourne. Yes, he must make the same Application.

Mr. Attorney General. Has he any Right, without the Leave of the Mayor and Jurats?

Bourne. None that I know of.

Mr. Att. Gen. Was you the eldest Son of a Freeman?

Bourne. Yes, I was.

Mr. Att. Gen. Did you demand it as a Right?

Bourne. I demanded it as a Favour.

Mr. Att. Gen. Had you any Right, in case the Mayor and Jurats had refused you?——*Bourne.* No.

Mr. Serj. *Eyre.* Are the Freeholders within the Borough made free?

Bourne. No.

Lord *Hardwicke.* Suppose a Man has an Estate, and lives in the Town.

Bourne. It is all one, my Lord.

Lord *Hardw.* Did you ever know one of them admitted?

Bourne. No.

Mr. Att. Gen. Did they admit you immediately on your Application? or was there any Dispute, whether you should be admitted or no?

Bourne. Yes; it was two or three Court-Days before they admitted me; I believe, in all, about six Weeks.

Lord *Hardw.* When was you admitted?

Bourne. In 1701, my Lord.

Mr. Serj. *Skinner.* So it was six Weeks you was asking this Favour?

Bourne. Thereabouts.

Mr. Serj. *Skinner.* You went to their Houses, to ask leave that you might be free?——*Bourne.* Yes.

Mr. Serj. *Skinner.* Is it the Custom for any Persons that are non-resident to be made free?——*Bourne.* No.

Mr. Serj. *Skinner.* Did you ever know the eldest Son of a Freeman refused?

Bourne. No.

Mr. Serj. *Skinner.* Nor any others?——*Bourne.* Yes, some.

Mr. Serj. *Skinner.* Did you ever know any demand it as eldest Sons?

Bourne. I cannot say.

Mr. *Strange.* Do not you expect to be made free again?

Mr. Att. Gen. He expects to be a Freeman before your Client.

Lord *Hardw.* Was you ever a Jurat?——*Bourne.* No.

Lord *Hardw.* Or a Common-Council-Man?——*Bourne.* No.

Mr. Att. Gen. My Lord, we rest it here.

Sir *T. Abney.* My Lord, I beg Leave to trouble your Lordship with a Word by way of Reply: And, notwithstanding what has been offered by the Gentlemen of the other Side, I agree, that, upon the *Mandamus*, we have laid down four Things as necessary Qualifications for claiming a Freedom in this Borough:

1st, That he must be an eldest Son.

2dly, That he be born within the Borough.

3dly, It must be after the Admission and Swearing of his Father. And,

4thly, It must be upon paying a reasonable Fine.

And, my Lord, I humbly apprehend, that if they have proved that any other of the Sons, or that all the Sons, are intituled as well as an eldest Son, it will not at all affect our Custom: Or, if we prove our Custom larger than we have laid it, that it will not at all impeach our Custom or Claim as an eldest Son.

My Lord, a Man lays a Custom, that he has a Right of Common for Sheep, and proves the Right to be for Horses, Cows, and Sheep too; ... shall not impeach his Custom.

And therefore, if any Evidence has been given to your Lordship and the Jury, that all the Sons of a Freeman are intituled to their Freedoms, then, my Lord, *à fortiori*, the eldest Son is intituled.

Lord *Hardw.* It is laid *in Respect thereof*, Sir *Thomas Abney*.

Sir *T. Abney.* My Lord, I humbly apprehend, those Words relate to the Act of the Father. It is, "Every Person, being the eldest Son of a "Freeman, and born within the said Town and Port, after the Admission "and Swearing of his Father into the Place and Office of one of the "Freemen of the said Town and Port, has a Right, *in Respect thereof.*"

My Lord, that, in common Understanding, cannot be in Respect of his being born an eldest Son, but in Respect of his Father's being sworn and admitted a Freeman at the Time of his Birth.

Lord *Hardw.* Has a Right in Respect of his being born after his Father's Admission and Swearing.

Sir *T. Abney.* And, my Lord, the Customal, to make out that Fact, says, "*Uno modo, per Nativitatem infra libertatem suam, si pater suus,* "*tempore nativitatis suæ, fuit liber:*" If the Father was a Freeman at the Time of the Son's Birth, then he is to be made free.

My Lord, we have supported this Custom in the strongest Manner, by forty Entries, by a great Number of living Witnesses, and by their own Witnesses, Customal, and Entries too; insomuch that one *Robert Evernden* is the only Person they have been able to shew that was ever refused.

My Lord, we have gone so far back as the Year 1588 with our Entries, which, we humbly apprehend, is a very strong Proof of an ancient Custom; we have brought it down to within twenty Years of the present Time; and, in all that Space, they have not been able to shew one Instance of an eldest Son that was ever refused; and the Entries are equally full, and have shewn in the clearest Manner, that the eldest Son of a Freeman, born within the Borough, and after the Swearing and Admission of his Father, was always admitted.

My Lord, as to what Mr. Attorney says, that the Rules laid down in the Customal as to the making of Freemen, that these are Qualifications rather than Rights, and that we have not stated our Custom properly, and are gone on account of the Commorancy; my Lord, I do admit, that if the Witnesses had come up to that Point of Commorancy, we must have given it up.

But, my Lord, I must beg Leave to insist, that, although Mr. Attorney has bestowed so much Learning and Time upon the Words *ubi commoratur*, to shew that Residence arises from the Customal, and from this Article, which we have laid down as the Foundation of our Right; and that the Person admitted is to take an Oath to be true and faithful to the Borough where he dwells; yet, my Lord, the Words *Possunt Majores et Jurati*, &c. not only imply a Right, but they bespeak a Qualification: And, my Lord, we have fully shewn them to be Rights that were never contested.

My Lord, another Objection that has been made by the Gentlemen of the other Side, is, that, as we have laid it, it is necessary a reasonable Fine should be paid upon the Admission of every eldest Son; and that we have given Evidence only of a Fine of 6*s.* 8*d.* and that we should have given Evidence of different Fines paid, in order to take in the Custom as we have laid it. But, my Lord, I submit it to your Lordship and the Jury, whether the Sum required is unreasonable or no? Is this so? Can it be thought so? If on a Special Verdict it were to be found, that every Man had a Right upon paying 6*s.* 8*d.* I humbly apprehend, the Quantity of the Sum must shew that it is a reasonable Fine.

My Lord, as to the By-Law they have read, That, if any Freeman depart out of the Town for a Year and a Day, he loses his Freedom; with great Submission to your Lordship, I apprehend it is not at all applicable to the present Case. It does not say one Word of what is necessary in order to a Man's being elected a Freeman. We say, that in order to be admitted a Freeman, a Man must be an eldest Son, born within the Borough after his Father's Freedom: But they do not read one Word out of this By-Law, that no Man shall be elected a Freeman, unless he be resident; but it says, that, if any Freeman go and dwell out of the Town for a Year and a Day, he shall for ever lose his Freedom.

And as to their living Witnesses, they, I humbly apprehend, will have little Weight with your Lordship and the Jury. They are not so free as ours; they are Men disfranchised to serve a particular Purpose. It is true, they are legal Witnesses; but it will go to their Credit, and the Jury will think they are under a Bias, and that they are to be made free again, and therefore are prejudiced, and are determined to keep the Borough in the same narrow Hands they now have it. They have all said, that none but the Mayor and Jurats can give a Right; and that, if I was to be let into the Freedom To-morrow, (as Mr. Attorney told you) there is no Right but at the Will and Pleasure of the Mayor and Jurats only. With respect to one of the Jurats, and his own Right, *Robert Bartholomew*, it will have Weight with the Jury, that he is disfranchised; but much greater, to prove him perjured, which we shall do by three Witnesses of undoubted Credit, whom we shall call to contradict all this Talk that he tells you, that there is no such Thing as a Right but at the Will and Pleasure of the Mayor and Jurats.

Gentlemen, we have no other Evidence to trouble you with, but to contradict *Bartholomew*; and then, Gentlemen, we shall leave it upon the Strength of the Case; and we make no Doubt, but you will be of Opinion, that the Plaintiff has an undoubted Right, and therefore will find a Verdict for him.

Mr. Broadway *sworn.*

Mr. *Strange.* Pray, Mr. *Broadway*, do you know *Robert Bartholomew?*

Mr. *Broadway.* Yes.

Mr. *Strange.* Had you any Discourse with him about the Right of Freemen's eldest Sons?

Mr. *Broadway.* Yes; I was in Company with him about two Years ago, at the Sign of the *Blue Anchor* in *Hastings*; he then told me, that the eldest Sons of Freemen had a Right to be admitted to their Freedoms.

Mr. *Strange.* Did he say any thing, that they must come cap-in-hand to the Mayor and Jurats, and beg the Favour that they would please to admit them?

Mr. *Broadway.* No, nothing at all of that.

Mr. *Strange.* Did he say any thing further about the Right of eldest Sons?

Mr. *Broadway.* He said, he could remember the Time particularly well, when they were admitted without any Dispute.

Mr. Serj. *Parker.* Mr. *Bartholomew*, is that true? Was you at the *Blue Anchor* in *Hastings* with Mr. *Broadway?*

Bartholomew. No, there is no such Sign in *Hastings*.

Sir *T. Abney.* You must call *John Sargent*.

Mr. Att. Gen. Mr. *Broadway* says, you told him, that you remembered the Time particularly well, when the eldest Sons were admitted without any Dispute.---*Barth.* I never told him so.

(Here a Person who was upon the Pannel whispered to one of the Jurymen.)

Mr. Serj. *Skinner.* You must not talk to the Jury: Are you a *Hastings* Man?

——— No.

Juryman. He is upon the Pannel.

Mr. Serj. *Skinner.* Did he say any thing to you about this Cause?

Juryman. No.

Mr. Att. Gen. Mr. *Bartholomew*, do you remember that you said so, or no?

Barth. Last Summer I was there with *Dodson*; but I never heard any such Thing mentioned.

Mr. *Marsh.* How came you to tell them, they wanted to pry into the Corporation-Secrets?

Sir *T. Abney.* Did not you tell him you was admitted upon that Right?

Barth. No.

Sir *T. Abney.* Who is that Person?

Barth. The Minister of the Parish.

Mr. Serj. *Skinner.* So he came to pump you?

Mr. *Marsh.* He knows he told them so.

Henry Dodson *sworn.*

Mr. *Marsh.* Mr. *Dodson*, was you at *Sargent's* with *Robert Bartholomew?*---*Dodson.* Yes, about two Years since.

Mr. *Marsh.* Was Mr. *Broadway*, the Minister of the Parish, there?

Dodson. Yes, he was in Company with *Bartholomew* and me.

Mr. *Marsh.* Pray, what was the Conversation in relation to the Right of Freemen?

Dodson. I met with Mr. *Bartholomew* and Mr. *Broadway* at *Sargent's*. I told him, the Reason of our Meeting was to inquire of him what was the Right of Freemen's Sons. He said, That the eldest Sons of Freemen had an undoubted Right to claim their Freedoms; and he said, that formerly he had been requested to take up his Freedom, but that he had refused it, because in War-Time the Freemen were burthened

burthened with Taxes, watching and working Night and Day; but that afterwards he had thought proper to accept of it, and was admitted for a Bottle of Wine. He said, he applied to the Mayor and Jurats, and was admitted.

Mr. *Marsh.* Did you say any Thing more to him?

Dodson. He told me this; but I said nothing to him, but took a Memorandum in Writing of it.

Mr. *Marsh.* Did he tell you any Thing more of the Right?

Dodson. He said, he looked upon the Sons of Freemen to have a Right.

Lord *Hardwicke.* Was this at the Time *Broadway* was with you?

Dodson. Yes.

Mr. *Marsh.* Was *Bartholomew* sober?

Dodson. Yes; it was in the Morning; he had drank nothing but one Glass of Wine.

Mr. Serj. *Skinner.* Did the Parson go with you to find out Evidence? You was the Attorney; Did the Parson go as another Agent to find out more Evidence?

Mark Whales *sworn.*

Mr. *Strange.* Mr. *Whales,* do you know that old Gentleman?

Whales. Yes.

Mr. *Strange.* Have you heard him make any Declaration concerning the Right of an eldest Son to be free?

Whales. About nineteen Years ago, he said that the Sons of Freemen had a Right.

Mr. *Strange.* Did you never hear him talk about an eldest Son?

Whales. I do not remember.

Lord *Hardwicke.* That Variance of the Fine, I wish you would apply yourself to that Point, Mr. *Strange.* The Admission seems to have been upon a certain Fine, 6*s.* 8*d.*

Mr. *Strange.* May it please your Lordship, and you Gentlemen of the Jury; you have heard a very long Evidence; and as the Gentlemen of the other Side have been pretty minute in their Objections, it will be proper for me as shortly as I can to reply to them.

And, my Lord, the chief Thing the Defendants contend for is, that there is no such Thing as a Right to a Freedom in this Borough; and that, though the electing Members to represent them in Parliament be one of the principal Privileges of every Freeman, yet that there is no Person whatsoever has a Right to come and claim the *Consuetudo Regni*; but the Mayor and Jurats may at their Pleasure chuse Members to represent this Borough in Parliament, and confine the Election in their own Hands, and may chuse them when, and in what Manner, and what Persons they please.

But, my Lord, to support this Right, they should have laid their Finger upon something that would have intituled them to this Right; and yet they have shewn no Circumstance upon the Face of the Earth that can possibly intitle them to it.

My Lord, there is no Corporation in *England*, but where if a Man serves an Apprenticeship, he has, by that Apprenticeship, a Right to his Freedom, and the Sons of Freemen have a Right to come and demand their Freedom. But here, my Lord, according to their Account of the Matter, in no Shape or Sort you can ever acquire a Right: A most extraordinary Privilege indeed! And, my Lord, I would beg Leave to make this Observation, that, as they began with attacking what Sir *Thomas Abney* set out with, the ancient Customal; so it appears, they have treated it in a ludicrous Manner, and with no Regard at all. They tell us, it is bound up with a great many miscellaneous Papers of no Use, and therefore it can have no Authority. And, my Lord, this Observation would have been material, if it had come out of our Custody; for then we should have shewn why it kept no better Company. But, as it comes out of their own Custody, can we oblige them to keep their own Book better than they have thought fit to keep it? Besides, my Lord, it goes equally to their own Book which they have produced; it is made up in the same miscellaneous Manner as ours is; and therefore this Objection is as strong against the Authority of their Book as ours.

But, my Lord, I submit it to your Lordship, that there is no Foundation at all to quarrel upon this Account.

Suppose it had been found loose, in no Company at all, and without any Cover; Is it the worse, if it had been loose, for being stitched? It rather argues it to be a Book of great Authority, and that this was done to preserve it; because, whilst it lay about loose, it was liable to Decay; and in order to preserve it, it was thought proper to bind it up.

My Lord, they say further, it would have been material, if it had been bound up with ancient Charters and Records of the Corporation: My Lord, I looked at it, and saw that the very Charters themselves are bound up with it.

My Lord, they tell us, this Customal, produced by them, has not at all left it clear, that the eldest Sons of Freemen have a Right; and they say, that whatever our Customal may prove, that our Entries, which have been read, are no Proof of any Right; they pray to be admitted, and therefore they have no Right.

But, my L[illegible], I beg Leave to observe, that it is not a Phrase that runs through all the Entries: In some of them, they are admitted upon their instantly requiring it; in others, it is *secundum Consuetudinem.*

But, my Lord, suppose it was so in all the Entries, it is the common Form of them, and of the Admission of all the Copyholders in *England*—

Lord *Hardwicke.* You need not labour that, Mr. *Strange.*

Mr. *Strange.* My Lord, they say there is a Circumstance of our Proof, which we have entirely failed in, and which they would prove for us, or that they shall help it out; and that is, that the Party is to be commorant within the Borough: And to prove this, they have read a By-Law, that says not one Word that he is to be commorant; but that, if a Man goes out of the Town for a Year and a Day, he shall lose his Freedom.

But, my Lord, I humbly apprehend, that a new By-Law, that appears before your Lordship and the Jury to have been made but a Year and Half, and contradicts an old Custom, is the strongest Evidence in the World, that it was the Custom till the By-Law was made.

To what Purpose else was the By-Law made? They had better have rested it upon the general Consent, than have introduced a new Bye-Law, which, upon the Face of it, appears to contradict an old Custom.

My Lord, Mr. Attorney, I think, was pleased to admit, that there must be a Customal; and that, taking this for Evidence of the Matters in Dispute, and so far as it is an Authority, it says, that the Comers in *per Emptionem* must have been commorant within the Borough a Year and a Day; and he says, the Reason of this is, that they should have some Knowledge of the Affairs of the Borough before they are made free of it.

But, my Lord, this Commorancy is not confined to the Comers in *per Emptionem.* The Words of the 39th Article are, "*Et nullus fiat liber per* "*Emptionem, quousque in Portu vel Membro, ubi libertatem desiderat, per unum* "*annum et unam diem permansit, et si bene et honeste habuerit, &c.*" To what End should it be put, that a Man who comes into the Fredom *per Emptionem* should be resident a Year and a Day?——

Lord *Hardwicke.* It infers nothing one Way or other.

Mr. *Strange.* But one born out of the Town, and bred out of the Borough, it is not necessary for him to be resident, if the Mayor and Jurats please to admit him; and yet every one born in the Town, though he be the Son of a Freeman, must undergo the same Experiment by being resident.

My Lord, the 34th Article, as to the Words *ubi commoratur,* it is only a Part of the Oath every Freeman is to take upon his Admission, "That "he will be good and faithful to the King of *England* and his Heirs, and "that he will observe the Statutes of the Five Ports, and especially of "that Port where he resides." And it is not to be inferred from thence, that at the Time of his Admission he must be commorant, but that he will observe the Statutes of the Borough, and consult the Good of it.

My Lord, I do not apprehend, that, by the 38th Article, a Man, by being free of one Port, is intituled to his Freedom in all the other Ports. The Words are, "*Et ipsi qui sunt in omnibus et singulis formis prædictis* "*facti liberi in aliquo Portu sive Membro, habeant libertatem consuetam in* "*omnibus aliis Portibus:*" *i. e.* As a Member of one of the Ports, he shall have the general Liberty belonging to them, but not that he shall be a Member of all the Five Ports.

My Lord, as to the Words *in respect thereof,* they insist, that as we have laid it, they exclude all Persons from being intituled to any Freedom, but the eldest Sons of Freemen.

But I submit it to your Lordship, that as in the *Mandamus* other Circumstances are afterwards mentioned, that those Words *in Respect thereof,* are to be referred to the last antecedent Words, to the Freeman's being born withing the Liberty, and after the Admission and Swearing of his Father: And unless something be brought to make it improper to refer it to them, I submit it to your Lordship, whether it would in a Right have the Consequence they contend for.

My Lord, the *Mandamus* says, that the eldest Son is intituled; but this is not an Exclusion of the other Sons: For, if all my Sons are intituled to their Freedoms, then my eldest Son most certainly is.

If it had been a Question, whether all the Sons of a Freeman were intituled? and upon the Face of the Thing, the Man sets out only that he was the eldest Son, he would not enlarge the Custom; because it would have required more Proof: But, if he had been the youngest Son, he must have said that all the Sons are intituled, and there must have been an Averment, to make it square with our Case. They have not read above one Entry of the youngest Sons of Freemen. If we had laid it more confined, we might have failed upon the Proof: But as the Proof has come out, it would have been enough to have said he was *filius* of a Freeman.

My Lord, I have but one Thing more to trouble your Lordship with: The Gentlemen of the other Side insist, that a previous Application to the Mayor and Jurats is necessary in order to a Man's being made free; and they infer from thence, that it is not right, but mere Favour in the Mayor and Jurats. Even where a Man has the most indisputable Right in the World, by Servitude, he must produce and prove his Indentures, and his Master certifies that he has served an Apprenticeship faithfully; yet even in this Case, according to them, the Mayor says to the Jurats, *Gentlemen, are you satisfied?* and if they are, they admit him.

But, my Lord, it does not at all follow, that, because their Opinion is to be taken as to the Admission, that therefore they have a Right to refuse an Apprentice, who has by Servitude acquired a Right to his Freedom; but only whether they shall admit him as he states his Case.

My Lord, having troubled your Lordship so long, I will beg Leave only to say one Word more as to the Fine of 6*s.* 8*d.*

They object to us, That we have laid it as Part of the Custom, that the eldest Son is to be admitted on paying a reasonable Fine, and that it comes out to be a Fine certain. But I submit it to your Lordship, that 6*s.* 8*d.* is a reasonable Fine; the Sum is reasonable; and that the constant Payment of it upon every Admission is an Evidence what is a reasonable Fine: And I rely on those Instances we have read, that *that* is the reasonable Fine; and they are brought only to warrant that there is a reasonable Fine to be taken; and that therefore we are not wrong in saying, we have a Right upon paying a reasonable Fine. If we had laid it to have been upon a Fine certain, they would have objected it to us, and they would have shewn, that at one Time a Pipe of Wine was the Fine; and at another Time 20*s.* was the Fine; and therefore it would have been dangerous to have laid 6*s.* 8*d.* to be a certain Fine.

Lord *Hardwicke.* You have shewed no Evidence, Mr. *Strange,* that it has ever been varied.

Mr. *Strange.* They have taken 6*s.* 8*d.* always upon the Admission of Sons.

Lord *Hardwicke.* One of the Witnesses says, now the Fine as a Freeman's Son is 20*s.*

Mr. *Strange.* That, my Lord, is a reasonable Fine, and no certain Sum. That in a Church-Lease was a reasonable Fine at one Time, which is not so now; and the Corporation think that 20*s.* now, is not more than 6*s.* 8*d.* was formerly.

My Lord, we therefore submit it to your Lordship, upon the Circumstances of this Case, that we have fully proved our Issue; especially as they have not shewn who is intituled to a Freedom within this Borough.

Lord

Lord *Hardwicke.* It will be proper to consider, how much of this ought to be left to the Jury. Thus much is Fact, and that they must inquire of:

First, Whether it appears from the Evidence, that there is any Custom within the Borough, that the eldest Son of a Freeman, born after the Admission and Swearing of his Father, has a Right? I think the Words *in Respect thereof* are answered; the confining it *in Respect thereof* must refer to the two Qualifications, that of being born within the Borough, and after the Father's Freedom. I think it is no Objection, that they have proved the Right for all the Sons: For, as Sir *Thomas Abney* insisted, if a Man has a Right of Common, and lays it for Sheep, and proves he has a Right for Sheep, Cows, and Horses too, he shall prevail; and that I think the same with the present Case; for the Custom's extending to other Persons does not prove this bad, because laid more confined. The Jury therefore must determine, whether there be any Custom within the Borough for an eldest Son to be free.

Secondly, Then they must inquire, whether being born within the Town, after his Father was made free, be necessary Qualifications of the Custom, or not? For you have laid the Right to rise from thence. That was not necessary, but that you have laid it so.

Thirdly, It will be necessary for the Jury next to consider, if they believe Resiance to be another necessary Qualification?

If the Jury be of Opinion, that either of these two Qualifications, of being born within the Town, or after the Father was made free, are necessary; or that that Point *Commorancy* is not necessary; then they must find a Verdict for the Plaintiff.

But, if they should be of Opinion that the two former are not essential Qualifications, and the last is necessary; then they must find for the Defendants; and in that Case that Point must be saved.

The Point of laying a reasonable Fine must be saved, if the Jury find a Verdict for the Plaintiff.

I own, I am not satisfied: What Mr. Attorney-General said, that there is great Difference between a reasonable Fine and a Fine certain, has Weight in it.

A reasonable Fine is such as the Law will judge to be so; the general Usage of the Kingdom is, that it shall not exceed two Years and a Half's Rent. But what a reasonable Fine is, and who shall be the Judge of it, the Law has established no Rule: And if so, the Question will be, Whether the Jury should find that the Reasonableness is to be judged of by the Proportion of the Sum? And that Point to be reserved for the Determination of the Court, Whether there be a Variance from the Fine laid in the Issue?

If the Jury find for the Plaintiff, there must be a Rule for the *Postea* to stay; and that Point to be saved, for the Opinion of the Court.

Mr. *Marsh.* In laying the Evidence before the Court, my Lord, their own Witnesses said, that fourteen Years ago there was a Fine of 20*s.* paid.

Mr. Att. Gen. There is but one Instance, and that was in 1730.

Mr. *Strange.* We take it, Mr. Attorney, upon your own Witnesses Evidence.

Lord *Hardwicke.* He did not say how many Instances.

Mr. Att. Gen. My Lord, he said one Instance, and no more.

Lord *Hardw.* The Books ought to be looked over for this Purpose. I apprehend you would have shewn Instances where there had been a Variance of the Fine. Call that Witness again: It was *Thomas Caswell.*—Mr. *Caswell*, you mentioned the Fine now taken to be 20*s.*

Caswell. Yes, my Lord.

Lord *Hardw.* How many Instances do you know of 20*s.* taken for the Fine?—*Caswell.* But one, my Lord; it is Mr. *Hall.*

Mr. *Strange.* Why did you say, that for about fourteen Years 20*s.* had been taken?

Caswell. I said, for about nine or ten Years 20*s.* had been taken; but it was always 6*s.* 8*d.* besides.

Mr. *Strange.* You are disfranchised, are you not?---*Caswell.* Yes.

Mr. *Strange.* Was you not a little while ago?--- *Caswell.* Yes.

Lord *Hardw.* I will not have another Examination of the Witnesses.

Mr. *Strange.* My Lord, I only asked him, what they asked me.

Mr. Att. Gen. What was that?---Mr. *Strange.* Nothing at all.

Mr. *Marsh.* What do you know of the others who were admitted? What did they pay?

Lord *Hardw.* Gentlemen of the Jury, This is a Writ of *Mandamus*, brought by the Plaintiff *Henry Moore*, to require the Defendants, the Mayor, Jurats and Commonalty of the Town and Port of *Hastings*, to admit him into the Place and Office of one of the Freemen of that Town: And the Writ sets forth, that the Plaintiff is the eldest Son of a Freeman, born within the Town after the Admission and Swearing of his Father; and has a Right, in Respect thereof, and also upon paying a reasonable Fine, to be admitted a Freeman of the Town.

And, Gentlemen, the Matter comes to this Issue, Whether Time out of Mind there has been a Custom, that every Person, being the eldest Son of a Freeman, born within the Town, after the Admission and Swearing of his Father into the Place and Office of one of the Freemen of the said Town and Port, has a Right in Respect thereof, and also upon paying a reasonable Fine, to be admitted into the Place and Office of one of the Freemen of the said Town and Port?

That, Gentlemen, is the Issue you are to try; and you have, no Doubt, observed on what Points this Question turns.

It appears, that *Hastings* is one of the *Cinque Ports*, and it is besides a Corporation.

Gentlemen, the Point insisted on by the Plaintiff's Counsel, and the first Thing produced to be considered by you, is a Book consisting of various Parts: One of the Parts is a Customal of the Town of *Hastings*, translated out of *Latin* into *English*,---in an old Hand,---of what Authority is not certain.

At last it comes to this, that in the Book appears to be an ancient Entry of the Customal of the Five Ports and their Members, the Time whereof the Memory of Man is not to the contrary.

From what Authority it comes, is not certain; but it is an ancient Book of the Town, and kept among the Records of the Corporation; and the Entry is in this Book. There are several other Papers bound up with it; Leases, the Rental of an Estate, a Copy of a Mortgage, and some other Things.

But that does not take off from the Credit of it; if it has any Credit in itself; for the Town-Clerk might bind up what he thought fit with it:

Gentlemen, the Entry relied on for the Plaintiff is this:

Concerning the making of Freemen in the Cinque Ports *and their Members:*

"The Mayor and Jurats, the Bailiffs and Jurats, in every Town and "Port where there is a Mayor and a Bailiff, may receive and make "Freemen three Ways:

1st, "*Per Nativitatem infra libertatem suam, si pater suus, tempore nati-*"*vitatis suæ, fuit liber.*"

By Birth within their Liberty, if his Father; at the Time of his Birth, was a Freeman.

Another Way is by a Freehold Purchase:

And the third Way is by Buying a Freedom.

And it goes on and says, "And it is to be observed, no Man shall "enjoy the Freedom of any of the Ports, unless he take an Oath to be "good and faithful, to the End of his Life, to the King of *England* and "his Heirs; and to maintain the Liberties of the *Cinque Ports*, and "especially of that Port where he is commorant; that he will be obe-"dient to the Mayor and Jurats; that he will pay Scot and Lot, *&c.* "that he will not do any Thing to the Reproach of the Mayor, Bailiff, "and Jurats where he is commorant, but give Notice to them."

And there were other Clauses read; and one of them is, "That they "who are made free in this Form in one of the Ports, shall enjoy the "accustomed Freedom in all the other Ports."

And there is another Clause, "That no Man to be made free by Re-"demption, shall be admitted into the Freedom, till he has dwelt in the "Borough by the Space of one Year and a Day."

These, Gentlemen, are the Entries relied on by the Plaintiff. After reading these Entries, the Counsel for the Defendants objected, that this was not a particular Customal of *Hastings*, and therefore not so conclusive. But *Hastings* in the *Mandamus* is suggested to be one of the Five Ports.

Gentlemen, they have given Evidence of three different Species of Persons admitted under this Right.

The first is, where Persons were admitted as eldest Sons of Freemen, born within the Borough, and after the Swearing and Admission of the Father.

The next is, where the Admission has been of eldest Sons; born within the Borough; but it does not appear whether before or after the Admission of the Father. And,

The third Species, of Persons who were admitted as the Sons of Freemen in general; but they have not shewn that they were born in the Town, or after the Father's Freedom.

As to the first Species of Persons, who were admitted as eldest Sons of Freemen, born within the Town, after the Admission and Swearing of the Father; I think they read in Number eleven Instances: I need not repeat them. The first is *Jeremiah Brysham*, admitted the 12th of *James* the First, *anno* 1614; the last was *Benjamin Medhurst*, the 6th of *May*, 1721.

The next Species is of eldest Sons admitted, and Mention is made in the Entries that they are eldest Sons: But it is not clear, whether they were born before or after the Father's Freedom; but it appears they were born in the Town. They are in Number fourteen. They begin the 7th of *May*, 1608; and the last Instance of them is the 21st of *November*, 1678.

The third Species is of Admissions of Persons, mentioning them generally as the Sons of Freemen, without distinguishing between the eldest and other Sons; but it does not appear, whether they were born in the Town, or after their Fathers became free. They are in Number twenty. So that the Entries they have read are in all forty-five, under the several Species I have mentioned to you.

Gentlemen, after reading these Entries, to shew that such Persons have been admitted, mentioning them as eldest Sons, or Sons, the Fine that has been taken upon their Admissions appears to be 6*s.* 8*d.* in all they have read; and at the same Time other Persons were admitted with them, but in the Entries Notice is not taken of them as Sons of Freemen; and as to them, the Fine is 13*s.* 4*d.*

Gentlemen, besides these Entries, they have called several living Witnesses.

The first is *Robert Evernden.* He says, he is sixty-six Years old, and has lived in *Hastings* fifty Years. He says, he has heard *Thomas Moore*, an old Jurat, say, that the eldest Sons of Freemen had a Right, and that the usual Fine paid upon the Admission of an eldest Son is 6*s.* 8*d.* and that he has also heard *John Moore*, another Jurat, say the same Thing. He says, they are both dead, and that *John* has been dead about ten or twelve Years. He says nothing about the Qualification of Residence, or being born in the Town after the Freedom of the Father.

The next Witness they called is *John Couzens.* He says, he is sixty Years old, and that he always understood, and has heard several ancient People say, that the eldest Son of a Freeman had a Right by his Father's Charter; and takes it, that the Father must be free before the Birth of the Son. He says, he heard both *Thomas* and *John Moore* say the eldest Son had a Right, and never heard of an eldest Son's being refused till the Plaintiff *Moore*; and says, he heard Dr. *Fiat* say, the eldest Son had a Right by his Father's Charter.

Their next Witness is *Drew Shengleton.* He says, he is sixty-nine Years old, has lived fifty Years in *Hastings*, and speaks to the same Purpose with the two former Witnesses; and says, it has been the Discourse twenty Years back, that Freemen's eldest Sons had a Right.

John Boykett is the next: And he says, he is above sixty Years old; that he was born in *Hastings*, and has lived almost all his Time there; that about forty Years ago he went into the Court-Hall, and asked to be made free as a Favour; but the Mayor was against it; and then the Town-Clerk asked, if his Father was a Freeman; the Mayor said, No; and *Waller* replied, *Then you may do as you think fit*; to which the Mayor answers, *I will not give my Consent to make a Dissenter free for* 40*l.* He says, one *Medhurst*, the only Son of a Freeman, demanded his Freedom about fifteen Years ago, and was refused.

Jam

Joan White says, she is sixty-two Years old; has heard her Father say, the eldest Son of a Freeman had a Right.

Anne Sargent says, she is sixty-three Years old; that she has heard *John Stevens*, who was several Times Mayor of *Hastings*, say, that it belonged to the eldest Sons of Freemen to be free.

Susannah Medhurst is the next Witness. She says, she is sixty-six Years old; that her former Husband was Mayor of *Hastings*, and is dead; and that she has heard him often say, the eldest Son had a Right, and that they could not deny him; and says, that at that Time it was generally granted to eldest Sons.

Gentlemen, the last Witness for the Plaintiff is *Thomas Colebrand*. He says, he is eighty Years old; that when he lived there sixty Years ago, it was the Usage; that eldest Sons of Freemen had a Right; that old *Waller* the Town-Clerk, *Thomas Lovell*, and *Thomas Rainolds*, told him so; and that he has heard the Mayor and Jurats say so several Times. He says, that about sixty Years ago, one *Medhurst*, who was the eldest Son of a Freeman, came and demanded his Freedom; and *Lovell* the Mayor told him, it was an ancient Right, that the eldest Son of a Freeman should be made free; and that afterwards he saw *Medhurst* among the Freemen at an Election, and vote for Members of Parliament. Gentlemen, it appears upon the Admission of this *Medhurst*, which they have also read to you, that he paid a Fine of 6*s*. 8*d*. And this, Gentlemen, is the whole of the Plaintiff's Evidence.

For the Defendants, the Gentlemen of the other Side, insist, there is no Right at all to Freedoms in this Borough; but that all Admissions depend upon the Will and Pleasure of the Mayor and Jurats; that they may admit or refuse a Stranger or a Son, just as they please: And they insist, that, if there be such a Right, that it is restrained by these two Qualifications, of being born in the Town, and after the Swearing and Admission of the Father.

And another Qualification insisted on by the Defendants is, That he should be resiant within the Borough.

Gentlemen, the Matter of Law which will arise, if you are of Opinion that there is such a Custom, will be, Whether the Fine be a reasonable Fine, as the Plaintiff has laid it, or whether this is a certain Fine of 6*s*. 8*d*.?

Gentlemen, the first Evidence that has been produced for the Defendants is an old Book, in which there are Entries of an old Customal, and a By-Law dated the 12th of *April*, the 15th of Queen *Elizabeth*; by which it is decreed, "That, if any Freeman, now or at any Time "hereafter an Inhabitant of this Town, shall depart or dwell out of the "Town by the Space of a Year and a Day, he or they, so dwelling out "of the Town, shall lose his or their Freedom for ever."

I own, I do not know so extraordinary a Custom any where: For a Man to have a Right to be admitted a Freeman, who was not resident; and yet the Corporation could disfranchise a Man for Non-residence.

But this By-law will not be of much Weight one Way or other. It only shews the Act of the Corporation to disfranchise any Person that goes out of the Borough.

They have also produced for the Defendants another Book, in which, they say, is contained the Usage of *Hastings* Time out of Mind; and they have read out of it an Entry in old *French*, the Purport of which is, "That if a Foreigner resides in *Hastings* for a Year and a Day, he may "come before the Bailiff and Jurats, and be admitted to the Freedom "upon taking an Oath."

The Witness, who read this, swore there was no other Evidence in the Book relating to the making of Freemen.

They read this, to shew that there is no Right of Freedom at all in this Borough, if a Stranger, who has lived in the Town a Year and a Day, may come before the Bailiff and Jurats, and they may admit him upon taking an Oath.

Gentlemen, the next Evidence the Defendants have produced is from Entries of the Admission of Sons of Freemen, without mentioning that they were either eldest or younger Sons; and the Plaintiff admits many of these Entries; and they only shew, that the Fact is, that other Sons, as well as eldest Sons, have been admitted for a Fine of 6*s*. 8*d*.

The next Evidence is from living Witnesses: And the first Witness they have called is *Henry Carlton*. He says, he is eighty Years of Age, was born within a Mile of *Hastings*, and from fifteen Years old has lived there. He has been at several Meetings of the Mayor and Jurats, and has known several Honorary Freemen made, (Members of Parliament, and Captains of Ships) who did not reside; and yet he says, he never heard of any who do not live there, that had a Right to demand their Freedoms; and Persons who have lived there, and been Sons of Freemen, have been refused, and has known Instances. He says, he never looked upon it that any Person had a Right, unless according to the Pleasure of the Mayor and Jurats. He says, one *Evernden*, who was an eldest Son, applied to the Mayor and Jurats to be made free, and was refused; and that this was about thirty-five Years ago. He says, he has been a Jurat from 1701; and tells you, that the common Way of making free is, for a Man, if he be an eldest Son, to apply to the Mayor and Jurats, and ask the Favour of them to be made free; and if they consent, he comes to the Court, and asks it again; and if any Difference arises, they put it to the Vote; and this, he says, is the Method of proceeding in the Case of admitting Freemen's eldest Sons. He says, he was the eldest Son of a Freeman, not born in the Town; that he was admitted, and paid but 6*s*. 8*d*. Therefore this is not to be applied only to the Right of eldest Sons born within the Borough. He says, that several such have been admitted, but not upon the Foot of Right.

Their next Witness is *Robert Bartholomew*, aged eighty-two. He says, he was made free by the Favour of the Mayor and Jurats; and that, in his Opinion, Nobody but those whom the Mayor and Jurats please have a Right. He was asked, whether he did not tell Mr. *Broadway* and Mr. *Dodson*, that he remembered the Time particularly well, when the eldest Sons of Freemen were admitted without any Dispute? And he says, He never told them so.

Mark Boyley is the next. He is seventy-six Years of Age, and has lived all his Time in *Hastings*, and has been a Jurat six or seven Years. He says, there is no such Thing as demanding a Freedom by Right, and that the eldest Son of a Freeman has no more Right than any body else.

Their next Witness is *Thomas Caswell*. He says, he has been a Freeman ever since the Year 1716; that he is the eldest Son of a Freeman, and applied to the Mayor and Jurats for their Good-will to make him free; and knows no Difference between the Admission of an eldest Son and another, but paying half the Fine. He says, he never knew any Persons made free but who were resident in Town, nor upon a Freehold; and that it is entirely in the Pleasure of the Mayor and Jurats to make free. He says, when he was admitted, the Fine was 6*s*. 8*d*. but since they have taken 20*s*. But being called on to name Instances, he says, he knows but of one Instance.

William Bourne is the next: And he says, he has been a Freeman, but never a Jurat; that he has known the Town fifty-eight Years; and that the Way to be admitted is to get the Good-will of the Mayor and Jurats. He says, he is the eldest Son of a Freeman, but knows of no Right, and that he requested it as a Favour; and before they admitted him, they considered of it two or three Court-Days: And he says, that no Non-resiants can be admitted.

This, Gentlemen, is the whole of the Defendants Evidence.

By way of Reply, the Plaintiff has called two Witnesses to contradict what *Robert Bartholomew* has sworn.

Mr. *Broadway* is the first: And he says, that he was in Company with *Bartholomew* about two Years ago, at the *Blue Anchor* in *Hastings*; when he told him, that the eldest Sons of Freemen had an undoubted Right, and that he was admitted upon that Right, though he had before declined it, by reason of the Taxes.

Mr. *Dodson* was also present, and he says the same.

Upon this *Bartholomew* was confronted with *Dodson* and *Broadway*: And he said that he was not with them at such a Place, and that there is no such Sign as the *Blue Anchor* at *Hastings*. He denied he said the eldest Son had a Right; but owns he said, he thought they came to pry into the Secrets of the Corporation.

Upon this Evidence, Gentlemen, it will be proper for you to consider,

First, Whether you believe there is any positive Right in this Borough for an eldest Son to be free? As to the Right that has been set up for the Defendants, That all is at the Will and Pleasure of the Mayor and Jurats, and that there is no Right at all to be free; it is such an extraordinary Custom as I hardly ever heard of, and know no such Instance any where. Some Right there must be, although the Magistrates may have taken it into their own Hands. Therefore the Question will be, Whether you believe there is a Right in the eldest Sons to be free?

Gentlemen, you have heard the ancient Customal read. This, to be sure, is some Evidence, but not conclusive; and it is the Customal of the Five Ports in general, and there are separate Customs in each Port.

And here is one Method laid down of an Admission of Freemen in Right of a Purchase, and that, they shew you, has never been complied with.

But they have read many Instances of Persons who were admitted upon the first Right; thirty-five they have read who were admitted as eldest Sons, or Sons: Of the first Species, they read eleven in Number; and you must take it together with what the living Witnesses tell you, who all say, that they have taken the Custom to be so, that the eldest Son has a Right.

What *Boykett* swore is very material, that, when he applied to be admitted, *Waller* the Town-Clerk asked, if his Father was a Freeman? The Mayor said, No; to which *Waller* replied, *Then do what you please*.

Gentlemen, for the Defendants, the Witnesses have sworn, that they know of no Right to Freedom in this Borough, but at the Pleasure of the Mayor and Jurats; and that during their Time, and though particular Mention is made in the Entries that they are Sons, in Respect of the Difference of the Fine, and that they are admitted for paying 6*s*. 8*d*. they tell you it is not at all material being the Son of a Freeman.

Gentlemen, in the next Place you will consider, if you believe there is any Right for the eldest Sons of Freemen, then whether it be necessary that he be born in the Town, and after his Father was made free? because the Plaintiff has made it necessary for him to prove that he be born there after the Admission of his Father, by laying it *in Respect thereof*. And as to that, the ancient Customal says, "*Uno modo, per Nativitatem "infra libertatem suam, si pater suus, tempore nativitatis suæ, fuit liber*:" That every body has a Right by Birth within their Liberty, if his Father at the Time of his Birth was a Freeman. This the ancient Customal mentions; but this is not conclusive. Therefore, Gentlemen, you will consider it with the Evidence of the living Witnesses, and none of them have made that a necessary Qualification. One of them said, that the Father must be free before the Birth of his Son; and another said, it made no Difference, whether born before or after: But none of them said positively, that he must be born within the Liberty, after the Admission and Swearing of his Father. Therefore you will consider, whether these two Qualifications are proved essential to the Right to be made free.

In the next Place, it will be proper to consider, that the Customal supposes that no Man has a Right, unless he be resiant; and it tends to enlarge the Freedom of the Borough, to let in Persons not resident: But very little positive Evidence has been given of that.

The Defendants Witnesses have sworn positively, that the Mayor and Jurats can admit none but Resiants; and yet, that they may admit Honorary Freemen who are non-resident: Though the ancient Customal has an express Clause in it, which supposes, that, in order to be free, a Man must be resident. They swear to pay Scot and Lot, and to maintain the Liberties of the Five Ports, and particularly of the Port where they are commorant; which implies, that every Freeman should be commorant. And the Counsel for the Defendants have mentioned, that every Freeman is to take an Oath to maintain the Rights of the Five Ports, and especially of that Port where he is commorant.

You will consider therefore, Gentlemen, whether this imports as a necessary Qualification, that in order to be free, a Man must be resident?

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The Counſel for the Plaintiff did not aſk the Witneſſes as to this Point of Reſidence.

The Witneſſes for the Defendants all ſwore, they took it to be ſo; but yet that Honorary Freemen, who were not reſident, might be made free.

It will be proper for you therefore, Gentlemen, to conſider,

Firſt, If you believe, on this Evidence, that there is no Right in the Son of any Freeman to demand his Freedom of the Mayor and Jurats, but that all depends on their Pleaſure:

But, if you believe that there is a Right in the Son of a Freeman, and that the Mayor and Jurats cannot deny him his Freedom: Then

You will conſider, whether the two Qualifications, of being born in the Borough, after the Freedom of the Father, are neceſſary, or no?

If you believe they are not neceſſary; but that whether he be born in or out of the Borough, or before or after he was made free, makes no Difference; in that Caſe you muſt find for the Defendants.

But if you believe a Right in the Sons of Freemen; and that being born in the Borough, and after the Father's Freedom, are eſſential:

Then you will conſider the Matter of Reſiance:

And if you believe Reſiance not neceſſary, then you muſt find a Verdict for the Plaintiff.

But, on the other Hand, if you believe being born in the Borough, and after the Father's Freedom, are not neceſſary; or, if neceſſary, that it is equally neceſſary that the Perſons ſhould be reſident; then you muſt find a Verdict for the Defendants.

Verdict for the Plaintiff.

Foreman. We find, that the eldeſt Son of a Freeman, born within the Borough, after his Father's Freedom, has a Right.

Lord *Hardwicke.* What do you find as to the Commorancy?

Foreman. My Lord, we find Reſidence not neceſſary; and that the eldeſt Son, born within the Borough, after his Father's Freedom, has a Right upon paying a cuſtomary Fine.

Lord *Hardwicke.* What do you find the Fine?

Foreman. We find the Fine to be 6*s.* 8*d.* and that *that* is reaſonable.

Lord *Hardwicke.* That Point of the reaſonable Fine muſt be ſaved for the Opinion of the Court; and let the *Poſtea* ſtay.

N. B. *The Special Verdict was afterwards ſolemnly argued, and determined by the Court in Favour of the Plaintiff* Moore.

NUMBER XIX.

An Account of the Behaviour of the late Earl of KILMARNOCK, after his Sentence, and on the Day of his Execution, *Auguſt* 18, 1746. By *James Foſter*.

MR. *Foſter* ſays, his firſt Acceſs to Lord *Kilmarnock* was on *Thurſday*, *Auguſt* 7, in the Evening; and after ſome ſerious Diſcourſe with his Lordſhip on Religion, he proceeds thus:

"He deſired me to adminiſter the Sacrament of the Lord's Supper to "him, which at firſt I *declined*, without abſolutely refuſing it. And "my Reaſon was this, That I choſe not to do it till I had Authority from "General *Williamſon* to tell him, *that there remained no Hope of his Life.* "Then I thought I ſhould have clearer Evidence, if he ſtill continued in "the ſame *ingenuous* Temper, that his Confeſſions and Repentance were "*ſincere*; and I conſented at laſt only upon this Condition, that he would "allow Mr. *Fowler*, the Gentleman-Gaoler of the *Tower*, to be preſent, "and renew his Acknowledgments before him. To this he made no "Objection; and the Queſtions which I propoſed to him, together with "his Anſwers, were in Subſtance as follows.

"Do you acknowledge, with deep Penitence and Contrition, the *Guilt* "of the late unprovoked, unnatural and wicked *Rebellion* in which you "engaged; the *Share* you had, by being involved in it, in the Oppreſ- "ſions and Murders of your Fellow-Subjects, and the Deſolation and "Spoil of your native Country; your great Guilt in rebelling againſt "your *juſt* and *lawful* King, and againſt a *mild* and *gracious* Government? "*I do.*

"Are you ready to declare, that it is your ſtedfaſt Reſolution to *perſiſt* "in this humble Confeſſion to the laſt, and to pray for the Proſperity of "King *George*, the Eſtabliſhment of his Royal Houſe, and the Welfare "and Peace of your Country, with your dying Breath? *I readily declare* "*this to be my ſteady Purpoſe.*

"Do you alſo, with Shame and Humiliation before God, acknowledge "the Irregularities and Exceſſes of your *private* Life; and will you en- "deavour to form your Mind to a deeper and deeper Repentance for both "your public and more perſonal Crimes? *This is my Reſolution, which I* "*will adhere to, by the Help of God.*

"Be pleaſed to declare, that you expect *no* Benefit at all from receiving "the Sacrament, if your Remorſe and Penitence be not *ſincere. I do not* "*think, that it will be of any Service to me.*

"I deſire, in the laſt Place, that you will alſo declare, what of your "own Accord you have mentioned to me before—That you conſider "yourſelf, in this Act of receiving the Sacrament under your preſent "critical and melancholy Circumſtances, as making an implicit *Appeal* "to God, that you expect no *Mercy* from him, if your Confeſſions are "feigned and hypocritical; and that you look upon the Death of Chriſt "(which you are now ſolemnly to commemorate as a Ratification of "God's Covenant of Mercy to unfeigned humble Penitents, and *to them* "*alone*) as both a ſtrong Encouragement and Motive to you, to endeavour "to *ſtrengthen* and *perfect* your Repentance. *I conſider the whole of this in* "*the Light in which it has now been repreſented.*

"I ſhall only add under this Head, that *all* the Confeſſions of this un- "fortunate Lord appeared to me to be free and ingenuous: He never "ſcrupled the Queſtions that were aſked him, nor took the leaſt Time to "meditate and prepare an Anſwer. His Confeſſions, likewiſe, were "perfectly conſiſtent and uniform, and never varied as to the general "Subſtance; and in no other Circumſtance than this, which will be "thought perhaps to redound to his Honour, that he continued to the laſt "recollecting and ſearching himſelf, and declaring particular Incidents "as they occurred to him, which tended, upon the whole, not to the "*Extenuation*, but to the *Heightening* of his Crime. And a few Days be- "fore his Death he ſaid, That he thought he ſhould rather prefer the "ſpeedy Execution of the Sentence, which was juſtly paſſed upon him, "than a longer Continuance in Life, if he was ſure that he ſhould be again "entangled by the Snares and Temptations to which he had formerly "yielded: What would really be the *Event*, if he was let looſe among "the Gaieties and Pleaſures of Life, he did not certainly know, and "ſomewhat dreaded; but in the *Declaration* he had made, he thought he "found himſelf *clear.*

"Heavy Charges of *Inhumanity* and *Cruelty*, I told him, were ſpread "among the People concerning him; and by many believed. I deſired "him therefore to be honeſt and free in clearing his Conſcience of ſuch "a Load of moſt unnatural Guilt, by anſwering to the following Inter- "rogatations, which included in them the Subſtance of theſe Charges. "And I here ſubjoin, for the Peruſal of the Publick, the Queſtions as I "propoſed, and have now tranſcribed them from a Paper written before I "went to the *Tower*, and his diſtinct Reply to each.

"Was your Lordſhip preſent in the Pretender's Council at *Inverneſs*, "or any *other* Place, before the Battle of *Culloden*, where it was propoſed "to deſtroy the *Priſoners* taken by the Rebels?

"*I can moſt ſincerely and freely anſwer, No.*

"Was you ever preſent in Council where this was propoſed? *No.*

"Did you ever *move* for ſuch an Order? *No.*

"Did you ever *ſign* ſuch an Order? *No.*

"Did you ever *carry* an Order of this Kind to the *French* General *Sta-* "*pleton?* Did you ever in his Preſence *approve* of ſuch an Order? Did "you at any Time, hearing it had been communicated to him, encou- "rage and excite him to the *Execution* of it? To all which he anſwered "in the ſame Manner, *No.*

"Did you ever know, or hear, that ſuch a Thing, or an Order to "give no Quarter, was debated, or agreed to, or ſigned in the Rebel "Army, till you was taken by the King's Forces, and a Priſoner at *In-* "*verneſs?* Or do you know yourſelf guilty of any Cruelties, by you au- "thorized or committed, againſt the King's Soldiers or Subjects taken "*Priſoners* by the Rebels? The Anſwer to both theſe Queſtions was "the ſame as before.

"As to what paſſed in the Church of *St. Ninians*, he told me, that he "knew nothing at all of it, till, upon the Retreat of the Rebel Army, "he was at ſome Diſtance from *Stirling*, where he had been confined to "his Bed by a Fever; that the firſt Notice he had of it, was the Noiſe "of blowing up the Church, of which he could never get any but an in- "diſtinct and confuſed Account; that it was repreſented by the Rebels "as *accidental*; but concerning this he could certainly ſay nothing; "only *as to himſelf* he ſolemnly declared, that he had no *Knowledge* before- "hand of, nor any *Concurrence* in, a deſigned Act of Cruelty. I told him, "however, that he was charged with an Inſtance of Barbarity to the "Priſoners confined in the Church at *Inverneſs*. And the Account which "he gave of the Fact, is as follows---That there were Orders iſſued by "the Pretender's Son, to ſtrip them of their Cloathing, for the Uſe of "ſome of the Highland Rebels; that the Warrant for executing this "Order was ſent to him; that he did not enter the Church in Perſon, "but committed the Execution of it to an inferior Officer; that the Pri- "ſoners, at firſt, refuſed to ſubmit, upon which there was a ſecond "Order, and their Cloaths were taken from them; but that in the mean "Time, the Perſon ſtiled the *French* Ambaſſador repreſented to him, "that this was an Outrage, which he thought ſcarce juſtifiable by the "Law of Nations, and the Rules of War; he therefore, while the Cloaths "lay in Heaps, with proper Centinels over them, in the Streets of *In-* "*verneſs*, went up to the Pretender's Son, and repreſented the Matter in "the Light in which the *French* Ambaſſador had ſtated it, and according "to what were his own Sentiments likewiſe; upon which, as it was "feared that ſuch Uſage might make an ill Impreſſion upon the Minds of "the People, the Cloaths were again reſtored; and this, he averred to "me, was the whole of the Truth, as far as it ever fell under his Know- "ledge.

"For myſelf, I muſt do this unhappy Criminal the Juſtice to own, "that he *never* appeared, during the Courſe of my Attendance upon "him, to be of any other than a ſoft, benevolent Diſpoſition. His "Behaviour was always remarkably mild and temperate. I could "diſcern no Reſentment, no Diſturbance or Agitation in him. This "indeed I feared, (as Perſons in his melancholy Circumſtances are "generally apt to think, that they ought to have the *Preference* in "Caſes of Reprieve or Pardon) when I was firſt informed of Lord "*Cromartie*'s Reprieve; and therefore in the Morning before I waited "on him, I prepared myſelf to quiet and mollify his Mind. But one "of the firſt Things he ſaid to me was, that he was extremely glad that "the King's Mercy had been ſhewn to Lord *Cromartie. My Lord*, "ſays I, *I hope you do not think you have any Injuſtice done to* you? "His Anſwer was, *Not the leaſt: I have* pleaded *guilty, I entirely* ac-

" quieſce *in the Juſtice of my Sentence, and if Mercy be extended to another, I* " *can have no Reaſon to* complain, *when nothing but* Juſtice *is done to me. I* " *do not believe, that my not being reprieved is owing to any Defect of* Clemen- " cy *in the King, who, by all the Accounts I ever received, is a very* merciful " *Prince; nor that it ſprings from any particular* Reſentment *or* Prejudice " *againſt me, either in his Majeſty or in the Duke; but from ſome* Diſtinction " *that they thought there was in the Circumſtances of Lord* Cromartie's " *Guilt and* mine, *or elſe from the public Demand for Juſtice, which made it* " *unfit that* two *out of three ſhould be reprieved.* From this Way of think- " ing and diſcourſing, he never, to my Knowledge, varied to the laſt.

" I muſt add here another, and I think a great and unqueſtionable In- " ſtance of Lord *Kilmarnock*'s Ingenuity. He had been charged, and he " imagined without a juſt Foundation, with having uttered a Falſhood, " when he ſaid in his Speech at the Bar of the Houſe of Lords, that *it was* " *very eaſy for him to have eſcaped.* This he ſtill thought was true upon " the Rebel Army's *firſt giving Way*, as the greateſt Part of that Body ac- " tually *did* eſcape, with whom he was joined. But after he had *ſeparated* " himſelf from them, and was advanced any conſiderable Way towards " the King's Troops, he believed that his Eſcape was *not* practicable. " But though he hoped that this would clear him from the Imputation of " having wilfully prevaricated in the *Inſtance* already mentioned; yet he " owned, that in *another*, induced by the Love and ſtrong Deſire of Life, " he had groſly falſified. The Caſe, as he repreſented it to me, was " thus:—He had aſſerted in his Speech, That though he could have eſcap- " ed, he did not chuſe it, becauſe the Conſequences, in an Inſtant, ap- " peared to him more terrible, more ſhocking, than the moſt painful or " ignominious Death: And therefore he choſe to ſurrender and commit " himſelf to the King's Mercy, rather than to throw himſelf into the " Hands of a foreign Power, the natural Enemy to his Country; with " whom to have Merit, he muſt perſiſt in continued Acts of Violence to " his Principles, and of Treaſon and Rebellion againſt his King and " Country: But the real Truth was, That he had no Intention at all to " *ſurrender*, and that his only View was to *facilitate* his Eſcape; for that " he thought the Body towards which he advanced, were not the *King*'s, " but *Fitz-James*'s Horſe; and that if he could reach them, by mounting " behind one of the *Dragoons*, his Eſcape would have been more certain, " than, as he was then on Foot, it appeared to him in his preſent Situa- " tion to be; though he did not find his Strength or Spirits in any con- " ſiderable Degree impaired. This, he thought, as it related to his in- " ward Intention only, could not be diſcovered but by his own Confeſ- " ſion, nor known to any but God and his own Conſcience. But he was " willing to unburden his Soul, and purge it of its moſt ſecret Guilt; " and therefore preſſed it upon me in a particular Manner, and eſpeci- " ally on the very Day before he was executed, Not to forget to publiſh " to the World this Circumſtance; becauſe, as he had ſolemnly uttered, " before ſo auguſt an Aſſembly as the Houſe of Lords, a direct and known " Untruth, he thought, if he ſhould die without a Retraction of it, and a " public Acknowledgment of his Offence, he muſt be conſidered as one, " who preſumed to appear before the Tribunal of God with a Lye in his " Mouth. And here I cannot help thinking myſelf bound, in Juſtice to " Lady *Kilmarnock*, to declare (and it is moſt proper to do it in this Place, " becauſe it will probably find more Credit, after ſuch a ſtriking In- " ſtance of the late Lord *Kilmarnock*'s conſcientious Regard to Truth), " that he ſaid to me, though ſhe was bred in different Sentiments, that he " thought her now more inclined to Whiggiſh than Jacobite Principles. " And the Reverend and Honourable Mr. *Home*, and Mr. *Roſs*, his Lord- " ſhip's Solicitor, deſired me to inform the World of another Thing, " which he had expreſly mentioned to them, *viz.* That inſtead of excit- " ing him to, ſhe had diſſuaded him from entering into the late wicked and " horrid Rebellion.

" As the Public will, in all Probability, be curious to know what were " Lord *Kilmarnock*'s Sentiments concerning *Death*, and the *particular Kind* " of Death which he expected, in Purſuance of his Sentence, would be " inflicted on him; I ſhall relate the Subſtance of the Diſcourſes that " paſſed between us, upon theſe great, and, to the Generality of the " World, moſt terrifying Subjects.

" On *Monday*, *Auguſt* 11th, General *Williamſon* deſired me, in the " gentleſt Terms I could uſe, to let him know that he had received the " Order for his and Lord *Balmerino*'s Execution. I at firſt declined this " ungrateful Office, and told him, that I was ſo ſhocked at it, that I " could not think of delivering the Meſſage myſelf, but would endeavour " to prepare the unfortunate Lord, by diveſting him as far as I could of " all Hope of Life, for his informing him of it when he came to diſ- " charge me from my Attendance. And indeed to ſuppreſs all Glimmer- " ings of ſuch Hope was the main Drift and Bent of my Diſcourſe; and " I intended to go no further: But finding him in a reſigned and calm " Temper, I told him, as the General was coming up, That he would " ſee the vaſt Importance, nay, the abſolute Neceſſity, of attending ſeri- " ouſly to what I had been ſaying about his diligent and conſtant Prepa- " ration for Death, by what, as I appehended, he would ſoon hear. He " immediately aſked me, Whether the Warrant for his Execution was " come down? I told him it was, and that the Day fixed was the *Mon-* " *day* following. And as, upon this, the General immediately entered " the Room, I acquainted him, that Lord *Kilmarnock* knew already what " he intended to inform him of; that he was therefore at preſent under " no Neceſſity of ſaying any Thing further about it; becauſe the once " relating ſuch a melancholy Circumſtance was fully ſufficient.

" Lord *Kilmarnock* received this News with the outward Behaviour of " a Man, that knew and felt the Importance of the Scene of Death, but " without any Marks of Diſorder, without any unbecoming Anxiouſneſs " or Terror. And to eſtabliſh and ſupport him in his preſent Quietude " of Mind, I told him, That all Mankind were really under Sentence of " Death, though they knew not the *Manner* or *preciſe Time* when it would " be executed; it might be to any one, as ſoon or ſooner than his own; " that they not expecting it, nor having ſuch timely and certain Notice " of it, might die wholly unguarded and unprepared; while he had " *Warning*, and the moſt *awakening Motives* to fit himſelf in the beſt " Manner poſſible for this grand and deciſive Event. He ſaid, That he " had never been a Libertine in *Principle*, during all the Time that he " was moſt inconſiderate and licentious in his Conduct; that he had al- " ways firmly believed the great Truths of God's Being, and Providence, " and a future State of Rewards and Puniſhments for Virtue and Vice; " and that he had not been involved in the faſhionable Scepticiſm of the " Times with reſpect to Chriſtianity; that he was therefore naturally " concerned, and chiefly concerned, about the Conſequences of Death, " in Compariſon of which he thought the Thing itſelf a Trifle; that as " to the particular Manner of his Death, he thought he had no great " Reaſon to be terrified, for that the Stroke appeared to be ſcarce ſo much " as the Pain of drawing a Tooth, or the firſt Shock of the Cold Bath " upon a weak and fearful Temper. And when General *Williamſon*, upon " the *Saturday* preceding his Execution, gave him a minute Detail of all " the Circumſtances of Solemnity and outward Terror that would ac- " company it, he *heard* it with as much Show of Compoſure, as a Man of " a tender, compaſſionate Spirit would *read* the Account of it, in an In- " ſtance where he was not perſonally concerned. He was told, That on " *Monday*, about Ten in the Morning, the Sheriffs would come to demand " the Priſoners, who would be delivered them at the Gate of the *Tower*; " that from thence, if their Lordſhips thought proper, they ſhould walk " on Foot to the Houſe appointed on *Tower-Hill* for their Reception, " where the Rooms would be hung with Black, to make the more decent " and ſolemn Appearance, and that the Scaffold alſo would be covered " with black Cloth; that his Lordſhip might repoſe and prepare himſelf, " in the Room fitted up for him, as long as he thought it convenient, " remembering only, that the Warrant for the Execution was limited to, " and conſequently expired at One o'Clock; that becauſe of a Com- " plaint made by the Lord *Kenmure*, that the Block was too low, it was " ordered to be raiſed to the Heighth of two Foot; that it might be the " more firmly fixed, Props would be placed directly under it, that the " Certainty or Decency of the Execution might not be obſtructed by any " Concuſſion, or ſudden Jerk of the Body. All this Lord *Kilmarnock*, " without the leaſt viſible Emotion, expreſſed his Satisfaction in: But " when the General told him, that two mourning Hearſes would be pro- " vided, and placed cloſe by the Scaffold, that when the Head was ſtruck " off, the Coffins might ſoon be taken out to receive the Bodies; he ſaid, " That he thought it would be better for the Coffin to be upon the Scaf- " fold, for by that Means the Bodies would be ſtill ſooner removed out of " Sight. And being further informed, that an Executioner was provid- " ed that would perform his Work dexterouſly, and that he was a very " good Sort of a Man; my Lord anſwered, *General, this is one of the moſt* " *Circumſtances that you could have mentioned; I cannot thoroughly like, for* " *ſuch Buſineſs, your good Sort of Men: For one of that Character, I appre-* " *hend, muſt be a tender-hearted and compaſſionate Man, and a rougher and* " *leſs ſenſible Temper might perhaps be fitter to be employed.* After this Lord " *Kilmarnock* deſired, That four Perſons might be appointed to receive the " Head, when it was ſevered from the Body, in a red Cloth, that it " might not, as he had been informed was the Caſe in ſome former Exe- " cutions, roll about the Scaffold, and be thereby mangled and diſfigured: " For that though this was, in Compariſon, but a ſmall Circumſtance, " he was not willing that his Body ſhould appear with any unneceſſary " Indecency, after the juſt Sentence of the Law was ſatisfied. I could " not perceive, but that he talked of all theſe Particulars with Eaſe and " Freedom, though the Relation of them, I remember, made me tremble; " chiefly becauſe I feared that they would produce in him ſome Pertur- " bation and Diſtreſs of Mind. It is proper for me to add, that when he " was told his Head would be held up to the Multitude, and public Pro- " clamation made that this was the Head of a Traitor; he replied, That " this he knew to be uſual on all ſuch Occaſions, and ſpake of it as a " Thing that was of no Significancy in the Affair at all, and did not in " the leaſt affect him: And I never heard, either before or after he was " delivered into the Cuſtody of the Sheriffs, that he intimated the leaſt " Concern to have this Part of the diſmal Ceremony diſpenſed with. All " Lord *Kilmarnock*'s Friends, who attended him in his laſt Moments, are " ready to concur with me in making the ſame Declaration, that we ne- " ver expected it would have been, and wondered it was, omitted.—— " After the Converſation above-mentioned between Lord *Kilmarnock* and " General *Williamſon*, I thought it proper to adviſe him, to think fre- " quently on the outward *Appara'us* and *Formalities* that would attend " his Death; that theſe Circumſtances, ſtriking to Senſe, might impreſs " his Mind with Horror, and diſarm him of Part of his Reſolution, if he " was not by Reflection thoroughly prepared for the Scene; but that if " they were habituated to the Mind, they would in a great Meaſure loſe " their Influence, and be conſidered as no more than the *Appendages* of a " Subject vaſtly more great, and worthy his Contemplation. And he de- " clared, on the Morning of his Execution, That he had taken this Me- " thod with himſelf, and hoped that theſe Things would diſcompoſe him " but little, nor create any Weakneſs or Indecency in his Behaviour. He " allowed, with me, That they were nothing ſo terrible in themſelves, as " the dying after a diſpiriting and lingering Diſtemper, in a ſilent, me- " lancholy, darkened Room, with languid and exhauſted Spirits, and his " Friends ſtanding round him, with lively Marks of Sorrow and Anguiſh " in their Countenances, expecting and deploring his Fate.

" I now come to the Concluſion of this diſmal Scene, his Behaviour " on the Day of his Execution. I attended him in the Morning about " Eight o'Clock, and found him in a moſt calm and happy Temper, " without any Diſturbance or Confuſion in his Mind, and with apparent " Marks of Eaſe and Serenity in his Aſpect. And that the World may " the better judge of the *Propriety* of his Behaviour from that Time to " the Time of his Death, I ſhall firſt declare, what his profeſſed Sen- " timents were concerning himſelf, and the Manner in which he " choſe to die; and then briefly point out what, in my Opinion, was the

" utmoſt

" utmoſt Decency of Conduct in one in his Circumſtances, under the " Impreſſion of ſuch Sentiments and Principles. I had obſerved to him, " that to affect to brave Death, when he juſtly ſuffered for his Crimes, " could have no Show of a true Decorum in it; and that to manifeſt no " Concern at all, where the Conſequence was ſo awful, and the Stake in- " finite, was, in ſome Degree, unbecoming even in the beſt of Men; that " not to fear at all, where there was great Reaſon to fear, was altogether " as abſurd, as to be extremely dejected and puſillanimous where there " was Ground of Hope; and that true Penitence was always humble and " cautious, and not bold and arrogant. He aſſented to all this, and told me " further, That for a Man who had led a diſſolute Life, and yet believed " the Conſequences of Death, to put on ſuch an Air of Daringneſs and " abſolute Intrepidity, muſt argue him either to be very ſtupid or very im- " pious. He alſo told me, That, though he entirely acquieſced in the " Juſtice of his Sentence, and thought it his Duty wholly to reſign him- " ſelf to the wiſe and equal Diſpoſals of Providence, he had ſtill this Clog " upon his Mind, that he could not be ſure his Repentance was ſincere, " becauſe it had never been tried. I anſwered him, That, if he aimed at " *Certainty* in this grand Point, he might unneceſſarily perplex and diſ- " treſs his Mind; becauſe, for the very Reaſon which he had aſſigned, " *i. e.* for Want of proper Opportunities to try and prove the Truth of " their Repentance, ſuch a Certainty was not attainable by any Perſons " in his Condition: I adviſed him therefore to ſearch ſeriouſly and ſtrict- " ly into himſelf, not ſuffering himſelf to be amuſed and impoſed upon " in an Affair of ſuch infinite Importance; and if he found, after mak- " ing this Inquiry, that he had more Ground to *hope* that his Repentance " was ſincere, than he had to *fear* that it was inſincere, the Conſequence " would be, that he muſt, upon the whole, have more Reaſon to hope " than fear: And this, in my Opinion, was the higheſt Pitch to which " I could attempt to raiſe him. Let us ſee now, what Kind of Behaviour " was moſt juſt and decent in a Perſon, who, upon this Foundation, pro- " feſſed himſelf to have a Preponderance of Hope, but mixed with Diffi- " dence and Fear. It muſt ſurely be reſigned, but awful; free from an " Extreme of Dejectedneſs, but not eager and rapid to meet Death. " Such a conſiderate, calm Humility, and Tenderneſs of Spirit, would " be the only fit Behaviour, after having made the Profeſſions above- " mentioned, in one that was but perſonating a feigned Character: The " contrary would be condemned in a mere fictitious Repreſentation, and " therefore cannot be approved in the real Scene of Death.

" And this, which I have ſhewn was the only *decent*, was, in Fact, the " true Deportment of Lord *Kilmarnock*. He continued all the Morning " of his Execution in the ſame uniform Temper, unruffled, and with- " out any ſudden Viciſſitudes and Starts of Paſſion. This remarkably " appeared, when ſoon after I had, at his own Deſire, made a ſhort " Prayer with him, General *Williamſon* came to inform him, that the " Sheriffs waited for the Priſoners: For, at receiving this awful Sum- " mons to go to Death, he was not in the leaſt ſtartled, but ſaid, (calmly " and gracefully) *General, I am ready; I'll follow you.* At the Foot of the " firſt Stairs he met and embraced Lord *Balmerino*, who *greatly* ſaid " to him, *My Lord, I am heartily ſorry to have your Company in* this *Ex- " pedition* *. From thence he walked, with the uſual Formalities, to the " *Tower-Gate*, and, after being delivered into the Cuſtody of the She- " riffs, to the Houſe provided on *Tower-Hill*, with a Serenity, Mild- " neſs, and Dignity, that greatly ſurpriſed and affected the Spectators. " And as one of the Things that paſſed there, moſt worthy the public " Notice, was the ſhort Interview he had with Lord *Balmerino*; I ſhall " relate the *whole* Subſtance of their Converſation, to the beſt of my Re- " membrance, without Addition or Diminution; and, as far as I can " poſſibly recollect, in the very Words themſelves.

" *B.* My Lord, I beg Leave to aſk your Lordſhip one Queſtion.

" *K.* To any Queſtion, my Lord, that you ſhall now think it proper " to aſk, I believe I ſhall ſee no Reaſon to decline giving an Anſwer.

" *B.* Why then, my Lord, did you ever ſee or know of any Order, " ſigned by the Prince, [*meaning the Pretender's Son*] to give no Quarter " at the Battle of *Culloden?*

" *K.* No, my Lord.

" *B.* Nor I neither: And therefore it ſeems to be an Invention to juſ- " tify their own Murder, or murderous Scheme (one of the two Expreſ- " ſions, I am certain was made uſe of).

" *K.* No, my Lord, I do not think that this Inference can be drawn " from it; becauſe, while I was a Priſoner at *Inverneſs*, I was informed " by ſeveral Officers, that there was ſuch an Order, ſigned *George Mur- " ray*; and that it was in the *Duke*'s Cuſtody.

" Lord *George Murray!* replied Lord *Balmerino*, why then they ſhould " not charge it upon the Prince.---After this he took his Leave, embra- " cing Lord *Kilmarnock* with the ſame Kind of noble and generous Com- " pliment as he had uſed before, but in Words ſomewhat different: *My " dear Lord* Kilmarnock, *I am only ſorry, that I cannot pay all this Reckon- " ing alone; once more, farewel for ever!* I have conſulted Mr. *Home*, " Mr. *Roſs*, and Mr. *Jameſon*, who were all preſent at this Confe- " rence; and are ready to atteſt, if required, that this is a true Account " of it.

" I then deſired Lord *Kilmarnock*, that he would allow me to de- " clare in his Name to the Sheriffs, and all Perſons there preſent, the Sub- " ſtance of the Profeſſions and Acknowledgments which he had ſo often " repeated to me; and which were more largely contained in a Paper, that " he had left to be publiſhed after his Death: And my Declaration was " in Words to this Effect: Lord *Kilmarnock* acknowledges King " *George* to be the only rightful and lawful King of theſe Realms; that " he engaged in the late wicked and unnatural *Rebellion* againſt his Con- " ſcience; he confeſſes the great Guilt of it with deep Shame and Contri- " tion; and aſks Pardon, for his Offence, of God, his King, and Coun- " try; and declares it to be his ſincere Reſolution to pray for the Pro- " ſperity of King *George*, the Eſtabliſhment of his Royal Houſe, and the " Peace and Welfare of his Country, with his dying Breath. To this " the unfortunate Lord gave his Aſſent, and ſignified to the Sheriffs, that " the only genuine Paper, that he had left behind him, was lodged with " me, and committed to my Care. The Time being now pretty far ad- " vanced (as I hinted to his Lordſhip by the Sheriffs Deſire), I told him, " that after having taken a few Minutes to compoſe himſelf, I thought it " would be proper to allow me to pray with him, and then proceed to the " Scaffold. After this I addreſſed myſelf to the Spectators of this mourn- " ful Scene, to join with me fervently in this laſt ſolemn Office, and in " recommending the Soul of an unhappy Perſon, who gave ſo many lively " Marks of his ſincere Penitence for the Crime of his *Rebellion*, to the " Mercy of God; with which Requeſt they all readily complied. I need " add nothing more, but that as Lord *Kilmarnock* had often proteſted, that " he would, in his *laſt Moments*, pray for his King and Country, towards the " Concluſion of my Prayer for him, I offered up the following Petitions to " that Purpoſe; which he had before, in the *Tower*, expreſſed his intire " Satisfaction in.---*And we now, from our Hearts, and at the particular De- " ſire of thy Servant, upon whoſe Account eſpecially we preſume at this Time to " addreſs thy Throne, and offer up our united fervent Prayers, that thou wouldſt " preſerve, bleſs, and honour our only rightful Sovereign Lord King* George; " *that thou wouldſt crown him with Glory and Renown; that in his Reign " there may be Abundance of Peace; that his Royal Progeny may long ſit, with " Luſtre and Dignity, upon the Throne of theſe Kingdoms, unaiſturbed by Re- " bellions, and the Tumults of ſeditious and violent Men; and that our holy Re- " ligion, and ineſtimable* Britiſh *Liberties, may be tranſmitted down ſecure " and ſacred to our Poſterity, even to the lateſt Generations.* After Prayer " was ended, Lord *Kilmarnock* took his laſt Farewel of the Gentlemen who " attended him, in a very affectionate Manner; and went out of the Room, " preceded by the Sheriffs, and accompanied by his Friends. And I am " informed of the following Particular by Mr. *Home*, that as he was ſtep- " ping into the Scaffold, notwithſtanding the great Pains he had taken " to *familiariſe* the outward *Apparatus* of Death to his Mind, Nature ſtill " recurred upon him: So that being ſtruck with ſuch a Variety of dread- " ful Objects at once, the Multitude, the Block, his Coffin, the Execu- " tioner, the Inſtrument of Death, he turned about, and ſaid, Home, *this " is terrible.* This Expreſſion, ſo ſuitable to the awful Occaſion, muſt, " to all who know the human Heart, appear to be nothing elſe than the " Language of Nature, and was far from being a Mark of *unmanly* Fear; " being pronounced with a ſteady Countenance and Firmneſs of Voice, " Indications of a Mind unbroken and not diſconcerted. His whole Be- " haviour was ſo humble and reſigned, that not only his Friends, but " every Spectator was deeply moved; even the Executioner burſt into " Tears, and was obliged to uſe artificial Spirits to ſupport and ſtrengthen " him. After having talked with his Lordſhip a conſiderable Time, to " ſupport him in his Penitence and Reſignation, I embraced, and left him " in the ſame calm Diſpoſition, having quitted the Scaffold ſome Minutes " before his Execution. And as to his Behaviour afterwards, I refer to " the following Account, in which, I think, I may thoroughly confide, " which was communicated to me by Mr. *Jameſon*, who attended him to " the laſt.

" Spectators at a Diſtance, not knowing the true Cauſe why the Stroke " was retarded for ſome Minutes longer than they expected, aſcribed it to " Puſillanimity: But, in Reality, that Delay was owing to a few trivial " Circumſtances which might have been omitted, had it not been neceſ- " ſary to mention them, in order to vindicate the Behaviour of that No- " ble Penitent, which was uniformly conducted by the Rules of juſt De- " corum, from all Imputation of unmanly Fear in the critical Moment. " My Lord's Hair having been dreſſed in a Bag, it took ſome Time to un- " do it, and put it up in his Cap. The tucking his Shirt under the Waiſt- " coat, that it might not obſtruct the Blow, was the Occaſion of ſome " further ſmall Delay. But as ſoon as theſe Preliminaries were adjuſted, his " Lordſhip gave the Executioner Notice what ſhould be the Signal, took " out a Paper containing the Heads of his Devotion, went forward to his " laſt Stage, and decently kneeled down at the Block. Whether it was to " ſupport himſelf, or as a more convenient Poſture for Devotion, he hap- " pened to lay his Hands with his Head upon the Block; which the Exe- " cutioner obſerving, prayed his Lordſhip to let his Hands fall down, " leſt they ſhould be mangled, or break the Blow. Then he was told, " that the Neck of his Waiſtcoat was in the Way; upon which he roſe " up, and with the Help of one of his Friends (Mr. *Walkinſhaw* of *Scot- " ſton*) had it taken off. This done, and the Neck made bare to the Shoul- " der, he again kneeled down as before. And what ſufficiently ſhews that " he enjoyed full Preſence of Mind to the laſt, Mr. *Home*'s Servant, who " held the Cloth to receive the Head, heard him direct the Executioner, " that in two Minutes he would give the Signal. That dreadful Interval, " to his Friends, who were then upon the Rack, appeared much longer, " but thoſe who meaſured found it juſt about two Minutes. This Time " he ſpent in moſt fervent Devotion, as appeared by the Motion of his " Hands, and now and then of his Head. Having then fixed his Neck on " the Block, he gave the Signal, his Body remained without the leaſt " Motion, except what was given it by the Stroke of Death, which he " received full, and was thereby happily eaſed at once of all his Pain.

" Thus deſervedly fell, though humble and relenting, the late Lord " *Kilmarnock*, a Sacrifice to the Juſtice of his Country.———

JAMES FOSTER.

" *P. S.* I think myſelf obliged, in Juſtice to General *Williamſon*, " and at his Deſire, to declare, that Lord *Kilmarnock* often teſtified

* " Theſe particular Words I myſelf did not hear, but was informed of them by Mr. *Jameſon*."

"to me, that he had behaved towards him in a very civil and obliging "Manner; that upon the General's having desired, two Days before "his Death, that when he took his Leave of him on *Monday*, he would "do it in such a Manner, as would be an Evidence to all present, "that he was satisfied with his Behaviour; his Lordship answered, "*That I will, General, you may depend upon it, and in such a Way too, as is* "*becoming a Gentleman, and a Man of Honour*; and that Mr. *Williamson* "had, from the first, spoke of Lord *Kilmarnock* to me with great Esteem "and Humanity."

To the KING'S *Most Sacred Majesty.*

The humble Petition of William *late Earl of* Kilmarnock,

Sheweth,

"THE Petitioner having met with the Condemnation justly due "to his Crime, presumes, throwing himself at your Majesty's "Feet, to implore your Majesty's Royal Clemency, and, though very "sensible that nothing can excuse or mitigate his Crime, hopes he may "be considered, in your Majesty's Eye, as an Object of Compassion and "Pity.

"His Family's constant Attachment to the Revolution Interest and "that of your illustrious House, his Father's Zeal and Activity in "Support of both, when attacked by your late Royal Father's Enemies "in 1715, his own appearing in Arms (though then but young) under "his Father, the whole Tenor of his Conduct since that Time, and "the Sentiments of Duty and Loyalty in which he has educated his "eldest Son, who now has the Honour of bearing your Majesty's Com-"mission, though no Diminution of his Guilt, may yet let in a Pre-"sumption, that he has offended more from Rashness and the Designs "of wicked and ill-disposed Persons, than from any Principle of "Disaffection to your Majesty.

"The Petitioner humbly begs Leave to acquaint your Majesty, that "he influenced neither Tenant nor Follower of his to assist or abet the "Rebellion; but, on the contrary, that between the Time of the Battle "of *Preston*, and his unhappy Junction with the Rebels, he went to "the Town of *Kilmarnock*, influenced its Inhabitants, as far as he "could, and by their Means their neighbouring Boroughs, to rise in "Arms for your Majesty's Service; which had so good an Effect, that "two hundred Men of *Kilmarnock* appeared very soon in Arms, and "remained so all the Winter at *Glasgow*, or other Places, as they "were ordered. And even in the Midst of his greatest Delusion, when "in Arms against your Sacred Majesty and your Authority, it was the "Petitioner's constant Care (as far as in his Power) to protect your "faithful Subjects from Injury in their Persons or Estates. He extended "his Care to such of your Majesty's Troops as had the Misfortune "of falling into the Hands of the Rebels, both Officers and private Men "finding better Usage, and their Condition being rendered more sup-"portable through his Means, than it would otherwise have been; as "many of them can, and the Petitioner believes will, testify when "called upon.

"The Petitioner was not taken, but surrendered himself at the Bat-"tle of *Culloden*, having left those he was joined with, when they were "got so far, that most (if not all) of them escaped, except himself, "who from thence turned down to the Ground where the Dragoons "were drawn up at a considerable Distance, and this at a Time when "he might easily have made his Escape, being near Nobody, nor any "in Pursuit of him. He chose Submission, as far preferable to Obstinacy "in Rebellion. His first Principles revived in his Breast. He deter-"mined rather to run the Risque of an ignominious Death, as the "Atonement of his Treason, than to recur to, and become dependent "upon a foreign Power, that Power especially being the natural Enemy "of his Country, and your Majesty the Father of it.

"Under these Circumstances, SIR, it is, that the unhappy Peti-"tioner (more so from Remorse of having violated his Allegiance to "your Majesty, than from the Sentence he lies under) dares to approach "your Throne, and implore your Royal Mercy, and which he hopes "for, as he cannot reproach himself with any Guilt precedent to this "fatal Breach of his Duty."

Petitions to the like Effect were presented to the Prince of *Wales* and the Duke of *Cumberland.*

Extract of the late Earl of Kilmarnock's *Letter to his Son Lord* Boyd.

Dated, *Tower*, 17*th Aug.* 1746.

"*Dear* BOYD,

"——— I must take this Way to bid you farewel, and I pray God "may for ever bless you and guide you in this World, and bring you "to a happy Immortality in the World to come. I must likewise give "you my last Advice. Seek God in your Youth, and when you are "old he will not depart from you. Be at Pains to acquire good Habits "now, that they may grow up and become strong in you. Love Man-"kind, and do Justice to all Men. Do Good to as many as you can, and "neither shut your Ears nor your Purse to those in Distress whom it is "in your Power to relieve. Believe me, you will find more Joy in one "beneficent Action, and in your cool Mornings you will be more happy "with the Reflection of having made any one Person so, who without "your Assistance would have been miserable, than in the Enjoyments "of all the Pleasures of Sense (which pall in the using), and of all the "Pomps and gaudy Show of the World. Live within your Circum-"stances, by which Means you will have it in your Power to do Good "to others. Above all Things, continue in your Loyalty to his pre-"sent Majesty, and the Succession to the Crown as by Law established. "Look on that as the Basis of the civil and religious Liberty and Pro-"perty of every Individual in the Nation. Prefer the public Interest "to your own, wherever they interfere. Love your Family and your "Children, when you have any; but never let your Regard for them "drive you on the Rock I split upon, when on that Account I depart "from my Principles, and brought the Guilt of Rebellion and civil "and particular Desolation on my Head, for which I am now under "the Sentence justly due to my Crime. Use all your Interest to get "your Brother pardoned and brought Home as soon as possible, that his "Circumstances, and bad Influence of those he is among, may not "induce him to accept of foreign Service, and lose him both to his "Country and his Family. If Money can be found to support him, "I wish you would advise him to go to *Geneva*, where his Principles of "Religion and Liberty will be confirmed, and where he may stay till "you see if a Pardon can be procured him. As soon as Commodore "*Barnet* comes Home, inquire for your Brother *Billie*, and take care "of him on my Account. I must again recommend your unhappy "Mother to you. Comfort her, and take all the Care you can of "your Brothers: And may God of his infinite Mercy preserve, guide, "and conduct you and them through all the Vicissitudes of this Life, "and after it bring you to the Habitations of the Just, and make you "happy in the Enjoyment of Himself to all Eternity."

Paper delivered by the late Earl of Kilmarnock *to Mr.* Foster, Sunday 17*th* August, 1746.

"AS it would be a vain Attempt in me to speak distinctly to that "great Concourse of People, who will probably be present at my "Execution, I chuse to leave this behind me, as my last solemn Decla-"ration, appealing, for my Integrity, to God, who knows my Heart.

"I bless God, I have little Fear of temporal Death, though attended "with many outward Circumstances of Terror: The greatest Sting I "feel in Death is, that I have deserved it.

"Lord *Balmerino*, my Fellow-Sufferer, to do him Justice, dies in a "professed Adherence to the mistaken Principles he had imbibed from his "Cradle. But I engaged in the Rebellion in Opposition to my own "Principles, and to those of my Family; in Contradiction to the "whole Tenor of my Conduct, till within these few Months that I "was wickedly induced to renounce my Allegiance, which ever before "I had preserved and held inviolable. I am in little Pain for the Re-"flections which the inconsiderate or prejudiced Part of my Country-"men (if there are any such, whom my suffering the just Sentence of "the Law has not mollified) may cast upon me for this Confession. "The wiser or more ingenuous will, I hope, approve my Conduct, "and allow with me, That, next to doing right, is, to have the Courage "and Integrity to own, that I have done wrong.

"Groundless Accusations of Cruelty have been raised and propagated "concerning me, and Charges spread among the People, of my having "sollicited for, nay actually signed Orders of general savage Destruction, "seldom issued among the most barbarous Nations, and which my Soul "abhors. And, that the general Temper of my Mind was ever averse "from, and shocked at gross Instances of Inhumanity, I appeal to all "my Friends and Acquaintance who have known me most intimately, "and even to those Prisoners of the King's Troops to whom I had "Access, and whom I ever had it in my Power to relieve; I appeal in "particular, for my Justification as to this justly detested and horrid "Crime of Cruelty, to Captain Master of *Ross*, Captain Lieutenant "*Rosen*, and Lieutenant *George Cuming* of *Alter*.

"These Gentlemen will, I am persuaded, as far as relates to them-"selves, and as far as has fallen within their Knowledge or credible "Information, do me Justice; and then, surely, my Countrymen will "not load a Person, already too guilty and unfortunate, with undeserved "Infamy, which may not only fix itself on his own Character, but "reflect Dishonour on his Family.

"I have no more to say, but that I am persuaded, if Reasons of "State, and the Demands of public Justice, had permitted his Ma-"jesty to follow the Dictates of his own Royal Heart, my Sentence "might have been mitigated. Had it pleased God to prolong my Life, "the Remainder of it should have been faithfully employed in the Ser-"vice of my justly offended Sovereign, and in constant Endeavours to "wipe away the very Remembrance of my Crime.

"I now with my dying Breath beseech Almighty God to bless my "only rightful Sovereign King *George*, and preserve him from the At-"tempts of public and private Enemies. May his Majesty, and his "illustrious Descendants, be so guided by the Divine Providence, as "ever to govern with that Wisdom and that Care for the public Good, "as will preserve to them the Love of their Subjects, and secure their "Right to reign over a free and happy People to the latest Posterity."

NUMBER XX.

An Account of the Behaviour of WILLIAM late Earl of KILMARNOCK, and ARTHUR late Lord BALMERINO, from the Time of their being delivered into the Cuſtody of the Sheriffs of *London*, to the Time of their Execution. With every remarkable Incident that happened during that Time, and particularly the Conference between thoſe two Lords. As taken down by a Gentleman then preſent *. By Authority of the Sheriffs.

Monday, Auguſt 18, 1746.

THE *Sheriffs* of *London* and *Middleſex* having received the uſual *Writs* for the *Execution* of the Lords *Kilmarnock* and *Balmerino* this Day, between the Hours of *Nine* and *One*; they, accompanied with the two Under-Sheriffs, and attended by the other proper Officers, at Ten o'Clock went in Proceſſion to the outward Gate of the *Tower*; and having there received of the Deputy-Lieutenant of the *Tower* the Bodies of thoſe Lords, they then proceeded with them on Foot to the late *Tranſport-Office* near the *Scaffold*, Mr. *Foſter* and the Rev. Mr. *Hume* accompanying my Lord *Kilmarnock*, and the *Chaplain* of the *Tower* and *another Miniſter* accompanying my Lord *Balmerino*: Where, upon their Arrival, the two Lords were conducted into ſeparate Apartments, and their Friends admitted to ſee them.

My Lord *Kilmarnock* ſpent his Retirement here in a Manner ſuitable to his unhappy Circumſtances, Mr. *Foſter* frequently comforting his Lordſhip with ſeaſonable Exhortations; his Lordſhip ſeemed truly ſenſible of his Guilt, ſhewed the utmoſt Signs of a ſincere Repentance, and all that were preſent admired the Compoſure of his Lordſhip's Mind. His Lordſhip, in particular, recommended it to the Sheriffs Obſervance, "that he declared himſelf a Proteſtant, and thoroughly ſatisfied with the "Legality of his Majeſty King GEORGE's Title to the Throne of theſe "Realms; that he himſelf was educated in theſe Principles, and had con"ſtantly adhered to them, till after the breaking out of the Rebellion, "which he heartily repented he ever engaged in; and that he prayed for "the Good of his Country, and for the Continuance of the Crown in his "Majeſty and his Deſcendants till the lateſt Poſterity."

His Lordſhip then ſpent a few Moments in converſing with his Friends, and having refreſhed himſelf with a Bit of Bread and a Glaſs of Wine, he declared to the Sheriffs, "that he had within this Week taken the "*Sacrament* twice in Evidence of the Truth of his *Repentance*."

His Lordſhip moreover recommended it to the Sheriffs Notice, "that "what Papers he intended ſhould be communicated to the Public, he had "left in the Hands of Mr. *Foſter* only."

About Eleven o'Clock my Lord received a Meſſage from my Lord *Balmerino*, deſiring an *Interview* with his Lordſhip; which being conſented to, my Lord *Balmerino* was introduced into my Lord *Kilmarnock*'s Apartments; where my Lord *Balmerino*, after addreſſing himſelf to his Lordſhip, and thanking him for the Favour of this Conference, aſked his Lordſhip, "If he knew of any *Order* being made before the *Battle of* "*Culloden*, for *giving no Quarter* to the *Duke's Army*;" at the ſame Time declaring, "that he himſelf knew nothing of any ſuch *Order*." To which my Lord *Kilmarnock* replied, "That he knew nothing of any ſuch *Order*, "but that ſince the *Battle of Culloden* he had been informed that there "was *ſome Order to that Effect*, ſigned *George Murray*, and that it fell "into the Hands of the *Duke* immediately after the Battle." My Lords *Kilmarnock* and *Balmerino* having then ſaluted each other, my Lord *Balmerino* bid my Lord *Kilmarnock* an eternal happy Adieu, and with a chearful Countenance added, "My dear Lord, I wiſh I could alone pay the Reck"oning, and ſuffer for us both;" to which my Lord *Kilmarnock* replied, "It was exceedingly kind and generous in his Lordſhip."

About *Half* an Hour after *Eleven*, my Lord *Kilmarnock* with the whole Company kneeled down to Prayers, Mr. *Foſter* performing the Office; after which my Lord having again ſat down a few Moments to refreſh himſelf with a Bit of Bread and a Glaſs of Wine, he about *Twelve o'Clock* roſe, ſaluted his Friends, and proceeded to the *Scaffold*, his Friends ſtill accompanying him there.

As ſoon as his Lordſhip aſcended the Scaffold, it was eaſily to be obſerved what Impreſſion his graceful Deportment made upon the Minds of the Spectators, to whom his Lordſhip made no Speech, but much better employed his Time with Mr. *Foſter* in his Devotions; upon the Concluſion of which Mr. *Foſter* told his Lordſhip, "He wiſhed he had a "Voice loud enough to inform this large Aſſembly with what Sentiments "his Lordſhip left the World."

My Lord then, with a Countenance perfectly ſerene and compoſed, *embraced his Friends*, and took his *final Leave* of them.

After that, the *Executioner* was introduced to his Lordſhip for his Forgiveneſs for the painful Office allotted to him; which his Lordſhip readily granted, and gave him a Purſe of Gold, deſired him to have Courage, and acquainted him, that "the ſignal for the Stroke ſhould be the dropping "of a Handkerchief."

His Lordſhip then prepared himſelf for the Block, and having with the Aſſiſtance of his Servant taken off his Coat, and the Bag from his Hair, his Lordſhip then put his Cap on, and under it tucked up his Hair; but his Lordſhip afterwards perceiving the Cap was too large to bind up his Hair, and fearing leſt by that Means the Blow might be intercepted, he requeſted a Gentleman, who was near him, to pin it cloſer; during which, that Gentleman having wiſhed his Lordſhip the Continuance of his Reſolution till he ſhould meet with eternal Happineſs, his Lordſhip thanked him, and with great Tranquillity added, "that he found "himſelf perfectly eaſy and reſigned."

His Lordſhip then *kneeled down* at the Block, and having with great Fervency prayed for about ſix Minutes, ſubmitted himſelf, and *dropping the Signal, the Executioner at one Blow ſevered his Head from his Body*; the Head was received into a Piece of ſcarlet Baize, and with the Body depoſited in a Coffin, and delivered to his Lordſhip's Friends; on which Coffin was the following Inſcription, *Willielmus Dominus de Kilmarnock decollatus* 18 *die Auguſti*, 1746. *Ætatis ſuæ* 42.

After the Execution was over, it was remarked by ſeveral Perſons, that the *Head was not held up and expoſed* by the Executioner; it was my Lord's *particular Requeſt* it might not be ſo, and the Law does not require it.——The only Reaſon that can be aſſigned for expoſing the Head (as has been frequently but not always the Caſe) is to ſatisfy the People that the Execution has been done; but in order to give them a greater Satisfaction, the Sheriffs directed that every Body upon the Scaffold ſhould kneel down, that they might ſee the Execution itſelf performed,—a Ceremony never practiſed before.

During this Time the Scaffold was put in Order for the Execution of the Lord *Balmerino*. The Under-Sheriff that attended during the firſt Execution went to my Lord *Balmerino*'s Apartments, as a Notice to his Lordſhip that his Time was come; upon whoſe Entrance his Lordſhip ſaid, "I ſuppoſe my Lord *Kilmarnock* is no more;" and having aſked how the Executioner had performed his Duty, his Lordſhip upon receiving the Account ſaid, "Then it was well done; and now, Gentlemen, (ſaid "his Lordſhip) I will detain you no longer, for I deſire not to protract "my Life:" His Lordſhip then ſaluted the Company in a Manner ſo chearful, as drew Tears from every Eye but his own, and *haſtened* to the Scaffold.

But before we view his Lordſhip upon the Scaffold, it is but juſt to the Memory of that great, but unhappy Man, to acquaint the Public what was his Deportment in his Retirement here: It was graceful without Affectation, chearful but not preſumptuous; he converſed freely with his Friends, twice refreſhed himſelf with a Bit of Bread and a Glaſs of Wine, and deſired the Company to drink to him *ain degrae ta Haiven*; but, above all, he called frequently upon God, and ſeemed both willing and prepared to die.

When his Lordſhip mounted the Scaffold, he did it with ſo undaunted a Step as ſurprized every Spectator that was unacquainted with the Greatneſs of his Soul: His Lordſhip appeared there in the very *ſame Regimentals* he wore at the *Battle of Culloden*; and ſo far was he from having the leaſt Concern himſelf at the Fear of Death, that he frequently reproved his Friends that were about him for ſhewing any: His Lordſhip walked round the Scaffold, bowed to the People, read the following Inſcription upon his Coffin; *Arthurus Dominus de Balmerino decollatus* 18 *die Auguſti*, 1746, *Ætatis ſuæ* 58; ſaid it was right, and with ſeeming Pleaſure looked at the Block, which he called his *Pillow of Reſt*.

His Lordſhip then took a Paper out of his Pocket, which he read to the few about him, and delivered to the Sheriff to do with it as he ſhould think proper.

Whatever may be offered in Excuſe for his Lordſhip's making that Speech in his laſt Moments, nothing but the *higheſt Authority* can juſtify the publiſhing it.

His Lordſhip to the laſt profeſſed his entire Ignorance as to the Order for giving no Quarter to the *Duke*'s Army; and added, "that he would "not (knowingly) have acted under ſuch Order, becauſe he looked upon "it as unmilitary, and beneath the Character of a Soldier."

Nor is it to be here omitted, that though his Lordſhip, from his unhappy political Principles, diſowned any Allegiance to his Majeſty; yet he, from his moral ones, acknowledged him to be a Prince of the "greateſt Magnanimity and Mercy."

His Lordſhip then called for the Executioner, who being introduced to him, was about to aſk his Lordſhip's Forgiveneſs; but my Lord ſtopped him, and ſaid, "Friend, you need not aſk me Forgiveneſs; the "Execution of your Duty is commendable." His Lordſhip then preſenting the Executioner with three Guineas, ſaid, "Friend, I never had "much Money, this is all I have, I wiſh it was more for your Sake, "and am ſorry I can add nothing elſe to it, but my Coat and Waiſt"coat;" which his Lordſhip inſtantly took off, and placed on his Coffin for the Executioner.

His Lordſhip then prepared himſelf for the Block by putting on a *Flannel Waiſtcoat* that had been made for the Occaſion, and a *Plaid Cap* upon his Head; after which his Lordſhip went to the Block, in order to ſhew the Executioner the *Signal for the Blow*, which was the *dropping down of his Arms*.

* *To the* PUBLIC. As I officiated for one of the Under-Sheriffs the Day of the Execution of the Lords *Kilmarnock* and *Balmerino*, I had an Opportunity of *minuting* down every thing that paſſed, worthy of Obſervation, upon that melancholy Occaſion.—This I did at that Time for my own Curioſity only, and the following is a faithful Relation as taken from thoſe *Minutes*; and which, at the Importunities of many Gentlemen, I have conſented to the Publication of, in order to ſilence the many erroneous Accounts that have been publiſhed, and to take off ſeveral cruel Aſperſions that have been thrown out touching the Behaviour of thoſe unhappy Lords.——I have made little or no Obſervations in the Narration, much leſs ſhall I do it here; being ſatisfied that thoſe whom the one will not, the other cannot convince.

Aldermanbury, Auguſt 22, 1746. T. FORD.

His Lordſhip then returning to his Friends, took his laſt Farewel of them; and having once more taken a View of the great Number of Spectators, his Lordſhip ſaid, *I am afraid there are ſome who may think my Behaviour bold*; and ſpeaking to a Gentleman near him, added, *Remember, Sir, what I tell you, it ariſes from a Confidence in God, and a clear Conſcience.*

His Lordſhip then obſerving the Executioner with the *Axe* in his Hand, *took it from him*, and having *felt the Edge*, returned it him again, at the ſame Time *ſhewing* him where to ſtrike the Blow, and *animating* him to do it with Reſolution: *For in that, Friend*, (ſaid his Lordſhip) *will conſiſt your Mercy.*

His Lordſhip then, with the ſame ſurprizing Countenance, *kneeled down at the Block*, and having with his Arms extended ſaid this ſhort Prayer, *O Lord, reward my Friends, forgive my Enemies*, ********** *and receive my Soul*, ſubmitted, *and gave the Signal* to the Executioner; and I wiſh I could conclude, that his Head had been taken off at one Blow: But the *Executioner* was ſo *terrified* at his Lordſhip's Intrepidity, and the Suddenneſs of the *Signal*, that notwithſtanding he ſtruck his Lordſhip in the Part directed, yet the Force of the Blow was not ſufficient to ſever the Head from the Body, though (happily) ſufficient to deprive him of all Senſation.---After the firſt Blow, his Lordſhip's Head fell back upon his Shoulders, but being afterwards ſevered at two more gentle Blows, was then received into a Piece of red Baize, and with his Body depoſited in his Coffin, and delivered to his Friends.

There were ſeveral Pamphlets publiſhed at this Time, relating to the different Behaviour of theſe two Lords, and ſome Advertiſements againſt Mr. *Ford*'s Account; but as there was no Name put to them, they did not gain much Credit.---But one of theſe Pamphlets, intituled, *Seaſonable Reflections on the dying Words and Deportment of that great but unhappy Man*, Arthur *Lord* Balmerino, *in a Letter to Mr.* Ford, concludes thus in an Appendix: "There is a Gentleman of undoubted Veracity, who "attended the Execution of Lord *Balmerino*, poſitively affirms, and is "ready to corroborate his Affirmation by the moſt ſolemn Proof, that "when his Lordſhip kneeled down at the Block, and ſubmitted to the "Stroke of Juſtice, he made no Prayer whatever; but this will be bet-"ter expreſſed in the Gentleman's own Words in Writing, to the "Original whereof (now in the Hands of the Publiſher) his Name is "ſubſcribed, *viz.*

"*I attended the Execution of the late Lord* Balmerino, *and was one of thoſe* "*who held the Cloth to receive Lord* Balmerino's *Head, and am ready to* "*make Oath, if required, that I heard* No Prayer *made by Lord* Balmerino, "*as is inſerted in Mr.* Ford's *Account; and that if there had been any Prayer,* "*I muſt have heard it, as well as any other Perſon preſent*, &c.

"It is to be obſerved, this Gentleman avers that he himſelf kneeled "down ſo near the Block, when he held the Cloth, that if any Thing "had been ſpoken by his Lordſhip, it was impoſſible but he muſt have "heard it; that it was he who, after the ſecond Blow, took the Lord "by the Arm, and drew up his Body, to ſet the Head in a Poſition for "the Executioner's completing his Work. He adds further, (in mani-"feſt Contradiction to Mr. *Ford*) that his Lordſhip came upon the "Scaffold, in *a Flannel Waiſtcoat and Shirt*, and did not put either on "after he was there; but pulled off *the Waiſtcoat*, and had *only the Shirt* "*on*, when he laid his Head on the Block."

On theſe Publications, Mr. *Ford* advertiſed in the Public Papers, as followeth:

To the PUBLIC.

THE *Account* I publiſhed of the Behaviour of the *Rebel Lords* at their Execution, was for your Satisfaction only, beyond which I neither had or expected any Advantage; yet from that bare Relation with Truth and Impartiality, ſeveral nameleſs *Pamphleteers* and *Advertiſers* have, through Faction, or worſe Motives, preſumed to draw ſeveral unwarrantable Inferences as to my *political* Principles.

The Authors being *concealed*, are unworthy of other Notice, ſince nothing is eaſier to an ingenuous and unprejudiced Mind, than to diſtinguiſh between the *Subject* and the *Man*: My Lord *Kilmarnock* was happily educated in RIGHT *Principles*, which he *deviated from and repented*; whereas the great, though unhappy, Lord *Balmerino*, was UNFORTUNATE in HIS;------but as he *lived*,---he *died*.

Aldermanbury. T. FORD.

Copy of the Paper which was read by Arthur, *Lord* Balmerino, *upon the Scaffold at* Tower-Hill, *and delivered by him to the Sheriffs of* London, *juſt before his Execution, on* Monday, Aug. 18, 1746.*

I WAS brought up in True, Loyal, and Anti-Revolution Principles, and I hope the World is convinced that they ſtick to me.

I muſt acknowledge I did a very inconſiderate Thing, for which I am heartily ſorry, in accepting of a Company of Foot from the Princeſs *Anne*, who I know had no more Right to the Crown than her Predeceſſor, the Prince of *Orange* ***************.

To make Amends for what I had done, I joined the ********** *(Pretender)* when he was in *Scotland* in 1715; and when all was over, I made my Eſcape, and lived abroad till the Year 1734.

In the Beginning of that Year, I got a Letter from my Father, which very much ſurprized me. It was to let me know, he had a Promiſe of a Remiſſion for me: I did not know what to do; I was then (I think) in the Canton of *Berne*, and had Nobody to adviſe with: But next Morning I wrote a Letter to the ********** *(Pretender)* who was then at *Rome*, to acquaint the ********** *(Pretender)* that this was done without my Aſking or Knowledge, and that I would not accept of it without his Conſent.

I had, in Anſwer to mine, a Letter written with ********** (*the Pretender's*) own Hand, allowing me to go Home; and he told me his Banker would give me Money for my travelling Charges, when I came to *Paris*, which accordingly I got.

When ********** (*the Pretender's Son*) came to *Edinburgh*, I joined him, though I might eaſily have excuſed myſelf from taking Arms on Account of my Age; but I never could have had Peace of Conſcience if I had ſtayed at Home, **************\

made for a Company for his Son the Lord *M'Leod*; and as he had Reaſon to hope for Succeſs, he directed the Gentlemen whom he intended to be Subalterns in the Company, to levy the Men; and the Levies went on accordingly; and the Earl's Zeal for the preſent Government continued unſhaken until this Period: And for this he appeals to Sir *John Cope*, Mr. *Forbes*, and to the Atteſtations of eight *Preſbyterian* Miniſters, in the Hands of his Grace the Duke of *Newcaſtle*.

But when it was known that the Subalterns in Lord *M'Leod*'s Company were to be named by the Lord *Fortroſe*, and the Subalterns that the Earl had in View were diſappointed, he was immediately beſet by deſigning Men, and they uſed all their Art and Cunning upon the Earl to ſeduce him from his Duty; but no Reaſon whatſoever could have had this Effect, if he had not been intoxicated with Liquor; and he no ſooner recovered his Underſtanding, but he reflected with Horror upon what he had done; and for this he appeals to Mr. *Brodie*, Lord *Lyon*'s Declaration, in the Hands of the Duke of *Newcaſtle*, and to the Knowledge of the other Members of both Houſes of Parliament in the Earl's Neighbourhood.

This unhappy Lord, ſoon after engaging in this Rebellion, went to *Perth*, and continued there a Month, intirely in a private Capacity; for he aſſiſted at none of the Reviews of the Rebels, mounted none of their Guards, bore no Arms, iſſued no Orders, but employed his Time chiefly in the Company of his Majeſty's Officers, who were Priſoners there, and laboured Night and Day to procure them all Manner of Indulgences; and the only Uſe he made of his Credit in the Rebel Army, was to make their Captivity eaſy, in which he was fortunate enough to ſucceed in moſt Caſes; and he appeals to thoſe Gentlemen in this Reſpect.

He did, indeed, afterwards, accept of a Command to levy the Ceſs, Exciſe, and other Contributions in the Shires of *Fife* and *Kinroſs*, to the Amount of 13000 *l.* but he preſerved ſuch Diſcipline among the Soldiers under his Command, that though he intimated his Orders, upon Pain of Military Execution, agreeable to the Terms in which they were delivered to him, yet he avoided all Methods of enforcing them, and returned without levying one Shilling, which, in a great Meaſure, ſaved his Majeſty's faithful Subjects from thoſe Exactions; and during his Stay in thoſe Countries, the Inhabitants were uninjured in their Perſons, and protected in their Properties; and he gave up that Command, that he might not be an Actor in, or a Witneſs to the Severities which he then thought to be unavoidable; and for this he appeals to Certificates from Peers and Commoners of *Fife* and *Kinroſs*, in the Duke of *Newcaſtle*'s Hands.

Upon his Return from this Command, he went, attended only by his own Domeſtics, to a Gentleman's Houſe, where he reſided for ſome Time in a private Way, without Command or Commiſſion, and without taking upon him any Concern, but the Continuance of all the good Offices he could exert for the Eaſe and Protection of his Majeſty's Subjects.

The Action of *Falkirk* gave him a freſh, but melancholy Opportunity, of doing all the Acts of Humanity in his Power to his Majeſty's Troops, that were either taken or wounded in that Conflict; and he extended his Cares even to many of the unfortunate Perſons who loſt their Lives in his Majeſty's Service.

When the Name of his Royal Highneſs the Duke obliged the Rebel Army to march North, he continued without any Command.

When he arrived at *Inverneſs*, a Command was again impoſed upon him, to repair to the Counties of *Roſs* and *Sutherland*, and there to raiſe all the Men in that Country in Arms, levy large Sums of Money by Contribution, and large Quantities of Meal; and with ſtrict Orders, that in caſe thoſe Demands were not complied with, to uſe all Manner of Military Execution, by burning Houſes, deſtroying Cattle, and other Severities: But ſo averſe was he to theſe Methods of Violence, that he levied no Men in thoſe Parts, and even his own Tenants in that Neighbourhood continued peaceable at Home; and he alſo granted Protections to all who aſked them, and he ſupported his Protections by Parties, and he preſerved the Houſe of Sir *Robert Munro*, and of his Brother *Cullcairn*, which were particularly doomed for Deſtruction by the Rebels; nor would he truſt this Protection to others, but went himſelf, and took the proper Meaſures for their Preſervation; and he uſed the ſame Tenderneſs and Care towards the Houſe and Family of the Earl of *Sutherland*, for which he appeals to that Noble Lord. And upon the whole of this Article, though the unfortunate Earl notified the Orders he had from the Pretender, with all the ſevere Injunctions they contained, yet he executed none of thoſe Severities; and his Delays were in ſome Meaſure ſalutary, as they prevented the full Execution of them, by thoſe who were ſent in his Place.

At the ſame Time his Houſe was a Sanctuary to the Effects of his Majeſty's loyal Subjects, and particularly of thoſe employed in his Majeſty's Service under Lord *Loudoun*.

He received His Majeſty's moſt gracious Pardon.

NUMBER XXII.

Relating to Lord LOVAT.

IN Lord *Lovat*'s Trial, *St. Tr. Vol.* IX. *p.* *668. after the Confeſſion of the Attorney-General, read thus:

" Mr. *Murray* being brought to the Bar of the Court of *King's-Bench*, " by *Habeas Corpus* directed to the Lieutenant of the *Tower*, the fore- " going Record (*p.* *664, &c.) was read to him by the Secondary on the " Crown Side: And the Attorney-General prayed that Execution might " be awarded. The Secondary then demanded of him, what he had to " ſay why Execution ſhould not be awarded?

" The Priſoner *Ore tenus* pleaded, that he did ſurrender himſelf to the " Lord Juſtice Clerk of *Scotland* (who is a Juſtice of the Peace) at *Edin- " burgh*, the 28th Day of *June* laſt; whereupon the Attorney-General " declared, that he had Authority from his Majeſty to confeſs the Truth " of the Priſoner's Plea, and did accordingly confeſs it. And the Court " ordered the Priſoner's Plea, and the Attorney-General's Confeſſion, to " be recorded; and that the Attorney take nothing by his Motion, and " that the Priſoner be remanded." *Foſter's Reports*, p. 50.

And *Page* *678. in that Trial, after Mr. *Murray*'s ſaying, " I did not " ntend at that particular Time to ſurrender myſelf; and I preſume it is " not neceſſary for me to ſay now, whether I ever did intend it, or not: " But at the Time that the Party of Dragoons came to the Houſe where " I then was, the Doors were ſhut, and I was in ſuch a Poſition, as that " I could have killed two of them myſelf; but I rather choſe to ſubmit " myſelf, and throw down my Arms," read as followeth:

The *London Gazette*, publiſhed by Authority, *July* 5, 1746, relates it thus:

" *Edinburgh*, *June* 29. Upon Information that *John Murray*, of " *Broughton*, late Secretary to the Pretender's Son, had on *Friday* Night " dined at *Kilbucco*, and had that Night gone to the Houſe of Mr. *Hunter* " of *Polmood*, who married Mr. *Murray*'s Siſter; *John Smith*, Serjeant in " St. *George*'s Dragoons, with ſeven private Men then under his Com- " mand at *Broughton*, was ordered thither with a Guide; and Yeſterday, " at Three o'Clock in the Morning, he ſeized Mr. *Murray* at the Houſe " of *Polmood*, and the ſame Day he was brought before the Lord Juſtice " Clerk, and was committed cloſe Priſoner to the Caſtle of *Edinburgh*. " Upon his Examination he declared, That the Pretender's Son, with " *Sullivan* and *O'Neal*, both *Iriſh*, and no other Perſon in Company, did, " about four Days after the Battle of *Culloden*, go off from *Moidart* in an " open Boat, in order to get on board a Ship: But that he (*Murray*) " being at that Time indiſpoſed, was not able to go with him. The " ſaid *Murray* had been moſtly with *Lochiel*, and his Uncle Major " *Kennedy*, and his Brother, in a ſtarving Way, lying on the Sides of " Hills all Day, and travelling or wandering all Night, with Scouts at a " Mile or half a Mile's Diſtance, never daring to ſtay two Nights in a " Place. *Lochiel* was very ill, wounded in the Heel, and obliged to uſe " a Horſe; and he (*Murray*), unable to bear Fatigue and Want any " longer, croſſed the Hill without a Servant, and came by *Monteith* to " the Place where he was taken."

Mr. Juſtice *Foſter*, in his *Crown Caſes*, p. 50. makes this Obſervation: " *Note*, This Gentleman was made Uſe of as an Evidence againſt Lord " *Lovat* on his Impeachment. And it was ſuggeſted on that Occaſion, " that the Attorney-General's confeſſing the Truth of the Plea by War- " rant from his Majeſty, was a Strain of Prerogative, calculated to elude " the Force of the Act of Attainder, and to ſerve the Turn of making " Mr. *Murray* an Evidence. But whoever conſidereth that he was " actually brought before the Lord Juſtice Clerk on the 28th Day of " *June*, (fourteen Days before the Time limited by the Act for his ſur- " rendering was expired) and was the ſame Day by him committed to the " Caſtle of *Edinburgh*, where he was kept cloſe Priſoner till he was re- " moved to the *Tower*; whoever conſidereth this, muſt admit, that, " with whatever View he might be brought up at this Time, he had " merely that Juſtice done him now by his Majeſty's Order, which at " one Time or other, whenever he ſhould have been brought up, on the " Foot of the Act of Attainder, could not be denied him.

" The Intent of the Act was anſwered by his being made *ameſnable* to " Juſtice before the Time limited for his Surrender. And he being kept " cloſe Priſoner till the Day for Surrendering was paſt, it was put out of " his Power to comply ſtrictly with the Letter of it; and therefore his " Non-compliance ought not to be fatal to him."---See *Roger Johnſon*'s Caſe, *Foſter*, p. 46. *Strange*, Vol. II. p. 824.

The Judge ſays further, (in a Note) " I have been informed that " Mr. *Murray* was now brought up, to obviate an Objection that might " have been made to his Evidence upon the Authority of Lord *Duffus*'s " Caſe, reported in *Com.* 440. but that Caſe differeth from this. Lord " *Duffus* was *not ameſnable* to Juſtice before the Expiration of the Time " given by the Act; nor, *merely through his own Default*, could be: But " I doubt Lord *Duffus*'s Caſe favoured too much of the *Summum Jus*.

In *Page* *697. of Lord *Lovat*'s Trial, Mention is made of the Lord Preſident's Letter to Lord *Lovat*, and his Anſwer to it: we here inſert the Letter, as it is an excellent one, and a Perſuaſive againſt his Lordſhip's ruining

ruining himself and Family by running into the Rebellion, with Lord *Lovat*'s Answer to it, from the *Memoirs of the Life of Lord* Lovat, *p.* 101.

Lord President's Letter to Lord Lovat, *dated at* Inverness, *the* 28*th* October, 1745.

" *My Lord,*

" AS I have now the Honour of being charged with the publick Affairs in this Part of the Kingdom, I can no longer remain a Spectator of your Lordship's Conduct, and see the double Game you have played for some Time past, without betraying the Trust reposed in me, and at once risquing my Reputation, and the Fidelity that I owe to his Majesty as a good Subject. Your Lordship's Actions now discover evidently your Inclinations, and leave us no further in the Dark about what Side you are to choose in the present unhappy Insurrection: You have now so far pulled off the Mask, that we can see the Mark you aim at, though, on former Occasions, you have had the Skill and Address to disguise your Intentions in Matters of far less Importance. And indeed, methinks, a little more of your Lordship's wonted Artifice would not have been amiss, whatever had been your private Sentiments with respect to this unnatural Rebellion. You should, my Lord, have duly considered and estimated the Advantages that would arise to your Lordship from its Success, and balanced them with the Risques you run if it should happen to miscarry; and above all Things, you ought to have considered your own Safety, and allowed *that* the chief Place in your System of Politicks; which, I persuade myself, would have induced your Lordship to have played the Game after a quite different Manner, and with a much greater Degree of Caution and Policy. But so far has your Lordship been from acting with your ordinary *Finesse* and Circumspection on this Occasion, that you sent away your Son and the best Part of your *Clan* to join the Pretender, with as little Concern as if no Danger had attended such a Step: I say, sent them away; for we are not to imagine they went of themselves, or would have ventured to take Arms without your Lordship's Concurrence and Approbation: This, however, you are pretty sure cannot be easily proved, which I believe indeed may be true: But I cannot think it will be a difficult Matter to make it appear, that the whole Strain of your Lordship's Conversation in every Company where you have appeared, since the Pretender's Arrival, has tended to pervert the Minds of his Majesty's Subjects, and seduce them from their Allegiance: And give me Leave to tell you, my Lord, even this falls under the *Construction of Treason*, and is no less liable to Punishment than open Rebellion; as I am afraid your Lordship will find when once this Insurrection is crushed, and the Government at Leisure to examine into the Affair. And I am sorry to tell you, my Lord, that I could sooner undertake to plead the Cause of any of those unhappy Gentlemen, who are just now actually in Arms against his Majesty, and I could say more in Defence of their Conduct, than I can in Defence of your Lordship's. The Duke of *Perth* and Lord *Ogilvy* never qualified, nor did they ever receive the smallest Favour from the present Government; but, on the contrary, were both stripped of their Titles and Honours, and from Men of the first Quality, reduced to the State of private Gentlemen, since the Revolution, and may both be supposed to act from a Principle of Resentment, and only take up Arms to recover what they thought themselves unjustly deprived of. Lord *George Murray* never had any Place or Pension from the Public, and was, no Doubt, drawn in by the Influence of the Marquis of *Tullibardin*, perhaps, touched with Pity and Commiseration for his eldest Brother, who has spent the best Part of his Life in Exile, and undoubtedly upon an Allowance much inferior to his Dignity. These and such-like Apologies may be offered in Defence of most of the leading Men in the present Rebellion: But what shall I say in Favour of you, my Lord? You, who have flourished under the present happy Establishment; you, who, in the Beginning of your Days, forfeited both your Life and Fortune, and yet, by the Benignity of the Government, was not only indulged in the Liberty of living at Home, but even restored to all you could lay Claim to! Nay, his Majesty's Goodness went so far as to employ your Lordship in his Service, and was pleased to honour you with the Command of one of the Independent Companies that were raised some Years ago in the Highlands, which you enjoyed for a very long Time: So that both Duty and Gratitude ought to have influenced your Lordship's Conduct at this critical Juncture, and disposed you to have acted a Part quite different from what you have done. But there are some Men whom no Duty can bind, nor no Favour can oblige; and, I am afraid, if a timely Repentance do not prevent it, your Lordship will, not unjustly, be ranked among that Number. You now see, my Lord, how unanimous the People of *England* are against the Pretender; and what Forces they are mustering up to oppose him. The King has ordered Home his Troops; several Noblemen have raised Regiments at their own Expences; and every County and Corporation throughout the Kingdom are entering into Associations in Defence of the present Establishment: So that these few unhappy Gentlemen, who are engaged in this Rebellion, will have Armies after Armies to encounter, and if your Lordship entertains any Hopes of their Success, you will find your Mistake, when it is too late to amend it. What I would therefore propose to your Lordship, as the only Expedient left to rescue you from the Hazard of a rigorous Prosecution, is to recall your Son and his Men immediately. This Step, I am persuaded, would produce several good Consequences; for, on the one Hand, it would prevent Numbers from joining the Rebels who now hang in Suspence; and, on the other, occasion a great many of those aleady engaged to desert and retire to their respective Habitations, and, perhaps, may be the Means of crushing the Rebellion, without further Bloodshed; which would do your Lordship a great deal of Honour, and such a remarkable Piece of Service would be amply rewarded by the Government. If you shall judge it proper, my Lord, to follow this Advice, it will give me a great deal of Pleasure, as it will contribute to stop the Progress of an unhappy Civil War, that threatens us with endless Calamities; but if your Lordship continues obstinate, and will not order your Men to disband and return Home, I shall be obliged to take you into Custody, be the Event what it will: And then your Lordship will run the Risque of having your Family extirpate as well as others of the Highland Chiefs. Now, my Lord, I have told your Lordship my Sentiments pretty freely, and no less out of Friendship to your Lordship than Duty to the Public. I might have advanced many other Arguments, to induce your Lordship to follow my Advice; but, methinks, what I have already said is sufficient; and so I shall only further add, that I am,

" *Yours*, &c.

Lord Lovat's *Letter in Answer to the above, dated at* Beaufort, 29*th* October, 1745.

" *My dear Lord,*

" I Received the Honour of your Lordship's Letter late last Night, of Yesterday's Date; and I own I never received one like it since I was born; and I give your Lordship ten thousand Thanks for the kind Freedom you make with me in it: For I see by it, that for my Misfortune, in having an obstinate, stubborn Son, and an ungrateful Kindred, my Family must go to Destruction, and I must lose my Life in my old Age. Such Usage looks rather like a *Turkish* or *Persian* Government, than like a *British*. Am I, my Lord, the first Father that has had an undutiful and unnatural Son? Or am I the first Man that has made a good Estate, and saw it destroyed in his own Time, by the mad, foolish Actions of an unnatural Son, who prefers his own extravagant Fancies to the solid Advice of an affectionate old Father? I have seen Instances of this in my own Time, but never heard till now, that the Foolishness of a Son would take away the Life and Liberty of a Father that lived peaceably, and was an honest Man, and well inclined to the rest of Mankind. But I find, the longer a Man lives, the more Wonders and extraordinary Things he sees. Now, my dear Lord, I beg Leave to tell you my Mind freely in my Turn. I thank God, I was born with very little Fear in the greatest Difficulties and Dangers by Sea and Land, and by God's Assistance, I have often saved my Life by the Firmness and Steadiness of my Resolutions; and though I have now but a little Remains of a Life that is clogged with Infirmities and Pain, yet, by God's Assistance, I am resolved to preserve it as long as I can. And though my Son should give way with the young People of his Clan, yet I will have six hundred brave *Frasers* at Home, many of them about my own Age, that will lose the last Drop of their Blood to preserve my Person; and I do assure your Lordship, if I am attacked, that I will sell my Life as dear as I can. For since I am as peaceable a Subject as any in the Kingdom, and as ready to pay the King's Taxes, and to do every thing that a faithful Subject ought to do, I know no Law or Reason that my Person should not be in Safety. I did use, and will use, the strongest Arguments that my Reason can suggest to me, by my Cousin *Gertulegge*, that he may repeat them to my Son; and if they should not prevail, is it any ways just or equitable that I should be punished for the Faults of my Son? Now, my dear Lord, as to the uncivil War that occasions my Misfortunes, and in which almost the whole Kingdom is involved, on one Side or the other, I humbly think, that Men should be moderate on both Sides, since it is morally impossible to know the Event; for thousands, ten thousands, on both Sides, are positive that their own Party will carry. And suppose that this venturous Prince should be utterly defeat, and that the Government should carry all in Triumph; no Man can think that any King upon the Throne would destroy so many ancient good Families, for engaging in a Cause that was always their Principle, and what they thought their Duty to support. King *William* was as great a King, as to his Knowledge of Government and Politics, as sate for many hundred Years upon the Throne of *England*; and when his General, who was one of the best in *Europe*, was defeat, and forced to run to save his Life, and all his Army routed at *Killicranky* by a Handful of Highlanders, not full two thousand in Number, King *William* was so far from desiring to extirpate them, that he sent the Earl of *Breadalbane* with twenty-five thousand Pounds Sterling, and sought no other Conditions from them, than that they should live peaceably at Home. So, my Lord, we cannot imagine, that though the Highlanders should be defeated at this Time, and most of them killed, and the Government full Masters of the Kingdom, that any Administration would be so cruel, as to endeavour to extirpate the whole Remains of the Highlanders. Besides, it would be a dangerous Enterprize, which we nor our Children would see at an End.

" I pray God we may never see such a Scene in our Country, as Subjects killing and destroying their Fellow-Subjects. For my Part, my Lord, I am resolved to live a peaceable Subject in my own House, and do nothing against the King or Government. And if I am attacked by the King's Guards, and his Captain-General at their Head, I will defend myself as long as I have Breath in me: And if I am killed here, it is not far to my Burial-place; and I will have, after I am dead, what I always wished, the Coronach of all the Women in my Country, to convey my Body to my Grave; and that was my Ambition, when I was in my happiest Situation in the World.

" *I am, my Lord,*

" *Your Lordship's*, &c."

An Account of the Behaviour of Simon *Lord* Lovat, *from the Time his Death-Warrant was delivered, to the Day of his Execution. By a Gentleman who attended his Lordship in his last Moments.*

THOUGH I was an Eye-witness of the extraordinary Behaviour of this Nobleman during his Trial, I little thought to find that uncommon Gaiety accompany him in his last Moments. I was indeed

indeed too well acquainted with his Lordſhip to imagine he would ſhudder much at the Sight of *Death*; but yet I expected, that it would abate ſomewhat of his natural Vivacity, and reduce him to a more ſerious Turn of Mind: however, neither the Apprehenſion of Pain and Agony, or the Thoughts of his ſpeedy Diſſolution, ſeemed to give him any Uneaſineſs.

On *Friday* the 3d of *April*, when the Warrant came down for his Execution, and the Gentleman told him he was ſorry to be the Meſſenger of ſuch bad News; his Lordſhip replied very chearfully, *God's Will be done!* And then taking him by the Hand, drank his Health, thanked him kindly for the Favour (as he called it), and aſſured him he was ſo well ſatisfied with his Doom, that he would not change Stations with any Prince in *Europe*. His Lordſhip then ſat down with the Gentleman, drank Part of a Bottle of * Wine with Water, and ſeemed very compoſed.

In the Evening he ſmoked his Pipe, mentioned ſome Circumſtances relating to his Trial, and was very chearful. About Ten o'Clock he called for the *Warders* of the *Tower* to undreſs him, and while they were taking off his Shoes, told them, he ſhould not give them that Trouble much longer, for that he was to take his Leave of this World the next *Thurſday*.

The next Morning, his Lordſhip being informed of the Report that was raiſed, of an Engine to be erected to take off his Head, ſaid, "It "was a fine Contrivance; for, as his Neck was very ſhort, the Execu-"tioner would be puzzled to find it out with his Axe; and if ſuch a "Machine was made, they might call it *Lord Lovat's Maiden*."

He was very chearful all this Day, talked a good deal of his own Affairs, and, among other Things, ſaid, "That he was concerned in all "the Schemes that had been formed for reſtoring the Royal Family, "ſince he was fifteen Years old; but that he never betrayed a private "Man or a public Cauſe in his Life: That he never ſhed a Drop of Blood "with his own Hand, nor ever ſtruck a Man, except one young Noble-"man, whom he caned publickly for his Impertinence and Impiety."

Sunday. This Morning he roſe pretty early, and behaved as uſual; talked for ſome Time about his Family, and ſhewed us the Copy of a Letter he had ſent to his Son, which I ſhall here inſert, becauſe it contains his Lordſhip's Sentiments of Religion and a future State; and the Perſon who wrote it for him, aſſures me, it is an exact Copy of the Original.

A Copy of Lord Lovat's *Letter to his Son* Simon, *now Priſoner in* Edinburgh Caſtle.

"*My dear* Simon,

"NOtwithſtanding my great Diſtreſs and Affliction, you are always "preſent with me, and I offer my Prayers to Heaven for you.--- "You ſee now by Experience, that this World is but Vanity of Vani-"ties, and that there is no Truſt to be put in the Arm of Fleſh; you "ſee that God's Providence rules the World, and that no Man or "Family but muſt yield to it, whether he will or not. Happy is the "Man, that, in all the croſs Accidents of this Life, ſubmits himſelf to "the Will and Providence of God, with ſincere Humility and Patience. "It is the bleſſed Trinity, Father, Son, and Holy Spirit, that can de-"liver you and me from our preſent melancholy Situation: We have "provoked God by our Sins, which moſt certainly have brought theſe "Troubles upon us: I do ſincerely thank God for theſe Troubles, be-"cauſe they have brought me from the Way of Sin that I lived many "Years in, to a Way of Repentance and Humiliation, and inſtructed "me to follow my dear Saviour the Lord Jeſus Chriſt, as I ought to do. "I therefore, my dear Child, earneſtly beg of you, with the ſincere "Heart of a tender and affectionate Father, to repent of all your Sins "and Tranſgreſſions, and to throw yourſelf at the Foot of the Croſs of "Chriſt, begging for his Sufferings Sake, which you know were great, "to give you true Repentance, to forgive your Sins, and be reconciled "to you for the Sake of his Blood, that he ſhed upon the Croſs for Sin-"ners, and beg of him to preſerve you from the Snares of the Devil, "the World, and the Fleſh; which will be too many for you without "his divine Aſſiſtance; and if you have a true Contrition for your Sins, "and are reconciled with Zeal and Affection to your Saviour, you will "find Comforts that cannot be expreſſed. If you put your ſole Confi-"dence in Jeſus Chriſt, he will certainly bring you out of all your "Troubles, and make you the happieſt *Lord Lovat* that ever was. So, "my dear Child, I beg of you for God's Sake, for your own Sake, for "my Sake, and for the Sake of your Brothers and Siſters, to throw your-"ſelf upon God's Mercies, which have been ever of old; repent of your "Sins, and live a ſincere, Chriſtian, and righteous Life, and you will "certainly bring God's Bleſſing upon yourſelf, your Family, and "Kindred; and if you neglect this my paternal Advice, which by the "Laws of God and Nature I am obliged to give you, you may aſſure "yourſelf of being miſerable in this World, and eternally miſerable in "the next. I know not yet what my Fate may be; but bleſs God, I am "prepared to go to the Scaffold and Block To-morrow, if God in his "divine Will and Providence hath ordered it ſo. So, my dear Child, "do not be in the leaſt concerned for me; for I bleſs God I have ſtrong "Reaſons to hope, that when it is God's Will to call me out of this "World, it will be by his Mercy, and the Suffering of my Saviour Jeſus "Chriſt, to enjoy everlaſting Happineſs in the other World. I wiſh this "may be yours, and am,

"*My dear Child*,

"*Your affectionate Father*, &c."

Monday. His Lordſhip aroſe about Seven, and, according to his uſual Cuſtom called for a Glaſs of Wine and Water: Upon which the *Warder* aſked his Lordſhip, What Wine he would pleaſe to have? "Not white "Wine (ſays he), unleſs you would have me go with the Skitter to the "Block." For it ſeems white Wine generally gave him the Flux. Some Time after this, the *Major* came to ſee him, and aſked how he did. "Do! (ſays his Lordſhip) why, I am about doing very well, for I am "preparing myſelf, Sir, for a Place, where hardly any *Majors*, and very "few Lieutenant-Generals go."

A certain Nobleman came to ſee his Lordſhip this Day, and aſked him ſome Queſtions concerning his Religion. To whom he anſwered, "That he "was a Roman Catholick, and would die in that Faith: That he adhered "to the Rock upon which Chriſt built his Church; to Saint *Peter*, and "the Succeſſion of Paſtors from him down to the preſent Time; and "that he rejected and renounced all Sects and Communities that were "rejected by the Church." The Declaration of his being a *Janſeniſt* was occaſioned by the ſame Nobleman's aſking him, "Of what parti-"cular Sort of Catholicks? Are you a Jeſuit?" "A Jeſuit! No, "no, my Lord (anſwered he), I am a Janſeniſt." (The *Janſeniſts* are great Enemies to the *Jeſuits*.) And then owned that he was acquainted with ſeveral in *France* that were *Janſeniſts*, and was more intimate with them, than any other learned and religious Men in that Kingdom; and upon this Occaſion aſſured his Lordſhip, that, in his Senſe of a *Roman Catholick*, he was as far from being one as his Lordſhip, or any other Lord in the Houſe.

Having Occaſion this Afternoon to ſpeak of the late King *George* I: he gave his Majeſty a great Character, and added, "He was my Friend, "and I dearly loved him."---But we do not think proper to inſert the whole Converſation.

Tueſday. This Morning he roſe as uſual about Seven, and after drinking a Glaſs of Wine and Water, deſired one of the *Warders* to lay a Pillow at the Feet of the Bed, that he might try whether he could kneel down properly, and fix his Head low enough for the Block; which being done, he made the Eſſay, and told the *Warder*, "He believed, by this "ſhort Practice, he ſhould be able to act his Part in the Tragedy well "enough." He then aſked the ſaid *Warder*, if he thought the Executioner would be able to take off his Head without hacking him? "For (ſays he) "I have reſerved ten Guineas in a Purſe, which he ſhall have if he does "his Buſineſs well."

"My Lord (ſaid a Gentleman that came to wait upon him), I am "ſorry you ſhould have Occaſion for him at all." To this his Lordſhip replied, "So I believe are many of thoſe who were the Cauſe of my "coming hither, and for aught I know, all of them will by and bye. "The taking off my Head, I believe, will do them no Service; but if "it will, *God bleſs them with it*; though I cannot but think myſelf hardly "dealt by: In the firſt Place, I was ſtripped of every Thing, and might have "wanted even the common Neceſſaries of Life, had not my Couſin, "Mr. *William Fraſer*, advanced a conſiderable Sum of Money to General "*Williamſon*, and promiſed on certain Conditions to pay for my farther "Subſiſtence. And then, to be convicted by my own Servants, by the "Men that had been nurtured in my own Boſom, and I had been ſo "kind to, is ſhocking to human Nature; but I believe each of them has "a Sting of Conſcience on this Account, that will bear him Company "to the Grave; though I am very far from wiſhing either of them any "Evil. 'Tis a ſad Thing, Sir, for a Man's own Servants to take off "the Head of their Maſter and Chief." His Lordſhip then aſked the Gentleman, How he liked the Letter he had ſent to his Son? He anſwered, "I like it very well, it is a very good Letter." "I think "(ſays his Lordſhip) it is a Chriſtian Letter."

After this the Gentleman informed his Lordſhip, that one Mr. *Painter*, of St. *John's* College, *Oxon*, had ſent three Letters, *viz.* one to the King, one to the Earl of *Cheſterfield*, and the other to Mr. *Pelham*, deſiring that he might ſuffer in his Lordſhip's Stead: And that *that* to his Majeſty concluded in the following Manner: "In one Word, let *Lovat* "live! Puniſh the vile Traitor with his Life, but let me die; let me "bow down my Head to the Block, and receive, without Fear, that "friendly Blow, which, I verily believe, will only ſeparate the Soul "from its Body and Miſeries together." At which his Lordſhip expreſſed his Surprize. "This (ſays he) is an extraordinary Man indeed! "I ſhould be glad to know what Countryman he is, and whether the "Thing is Fact. Perhaps it may only be a *Fineſſe* in Politics, to caſt "an Odium on ſome particular Place or Perſon: But if there be ſuch "a Perſon, he is a Miracle in the preſent Age, and will be in the future, "for he even exceeds that Text of Scripture, which ſays, *Greater Love "than this hath no Man, that a Man lay down his Life for his Friend.* "However, this Man offers to ſuffer for a Stranger, nay, for one that "he ſtigmatizes with the Name of a *vile Traitor*. In ſhort, Sir, I am "afraid the poor Gentleman *is weary of living in this wicked World*, and, "if that be the Caſe, *the Obligation is altered*, becauſe *a Part of the Bene-"fit is intended for himſelf*."

Wedneſday. This Morning, about Two o'Clock, his Lordſhip prayed very devoutly for a conſiderable Time, and called upon the Lord for Mercy, which he often did before, with great Fervency. After this he fell aſleep, and we heard no more of him till *Six*, about which Time he called for the *Warder* to dreſs him, and ſeemed as gay as uſual. About Ten o'Clock he ſang Part of a Song, at which the *Warder* expreſſed his Surprize, and aſked his Lordſhip, How he could be ſo merry, when he was to die To-morrow? To which my Lord replied, that "he was as fit "for an Entertainment as ever he was in his Life." He then ſent for Mr. *P*——, the Barber, whoſe Father, they tell me, is a *Muggletonian*: While his Lordſhip was ſhaving, he talked a good deal about his Father's Principles; and when he was ſhaved, "Well (ſays he), pray give my "Service to your Father, and tell him I ſhall go to Heaven before him; "for I find he does not expect to go till the Day of Reſurrection, but I "hope to be there in a few Hours."

After this, he talked to a Gentleman who came to ſee him about ſome private Affairs, and then calling for a Baſon of Water to waſh himſelf, "Now, Gentlemen, I will ſhew you a Wonder (ſays he)! You ſhall ſee "a Man drown himſelf who was ſentenced to be beheaded, and by that "Means change the Law; and, Sir, I heartily wiſh it was in my Power "to change all Things; if it was, I would make a thorough Change "indeed."

About this Time another of his Lordſhip's Friends came to wait upon him, with whom he had ſome Talk concerning the Bill depending

* As his Lordſhip has been often branded with the Name of a Drunkard in the public Papers, I muſt do ſo much Juſtice to his Memory, as to aſſure the Public, that he never drank more than two Pints of Wine a Day during his whole Confinement, and never any without Water; and I have often heard his Lordſhip ſay, he was never drunk in his Life. 'Tis true, a conſiderable Quantity of Brandy and Rum was uſed every Night and Morning to bathe his Legs, which might probably give Birth to this Report; for he never drank a Dram himſelf, unleſs he was indiſpoſed, and then he generally took a little burnt Brandy with Bitters.

in Parliament with relation to the *Scotch* Affairs. His Lordſhip ſeemed very uneaſy about it, and wiſhed all thoſe Gentlemen who voted for it had the *S——r*.

He then told them he would have his Body carried to *Scotland*, to be interred in his own Tomb in the Church of * *Kirk-Hill*; and ſaid, that he had once made a Codicil to his Will, where all the Pipers from *Johnie Groat's Houſe* to *Edinburgh* were invited to play before his Corpſe, for which they were to have a handſome Allowance; and though that might not be thought proper now, yet he was ſure ſome of the good old Women in his Country would ſing a CORONACH (a Ceremony uſed at Funerals, much like the *Iriſh* Howl) before him. "And then," ſays he, "there will be "old crying and clapping of Hands, for I am one of the greateſt Chiefs "in the Highlands."

About this Time Sir *H. M.* and Sir *L. G.* came to take their Leaves of my Lord; he ſaluted them on their firſt coming in; but ſoon after told them, "If he had his Broad-ſword by him, he ſhould not ſcruple to chop off their "Heads, if he thought they were in the leaſt concerned in bringing in or "voting for the Bill now depending, for deſtroying the ancient Juriſdic-"tion and Privileges of the Highland Chiefs." And then added, "For "my Part, I die a Martyr for my Country."

After eating a hearty Dinner, he called one of the *Warders* to him: "Now, *Willy*," ſays he, "give me a Pipe of Tobacco, and that will be the "laſt I ſhall ever ſmoak, unleſs People ſmoak Tobacco in the other World."

Soon after this, the Governor of the *Tower* came to pay him a Viſit, when his Lordſhip aroſe, and offered him his eaſy Chair; which the Governor refuſing, and ſaying he was ſorry his Lordſhip ſhould give himſelf the Trouble to riſe out of his Seat on his Account, he anſwered, "What, "Sir, I hope you would not have me be unmannerly the laſt Day of my "Life."

Upon the Governor's coming in, his Lordſhip deferred ſmoaking his Pipe ſome Time longer, and talked about indifferent Matters. Mr. *William Fraſer*, his Lordſhip's Agent, and Mr. *James Fraſer*, came to wait on him at the ſame Time, with whom he talked a good while concerning his Family Affairs, and the Management of his Funeral.

After this he called again for his Pipe, and, while he was ſmoaking, aſked one of the *Warders*, if his Meſſage was carried to my Lord *Traquair*, and what Anſwer he brought? "His Lodſhip," replied the *Warder*, "bids "you an eternal Farewel, wiſhes you happy, and is offering up his Pray-"ers for you." "'Tis very kind of him," ſays my Lord, "and I thank "him for it. Come, Mr. *Southbey*," ſays he to the *Warder*, "give me "ſome Water, and put a little Wine upon it." And then taking up his Tobacco-ſtopper, "My *Pipe* is almoſt out," ſays he, "as well as my "*Glaſs*." He then aſked about General *Williamſon*'s Family, ſpoke very kindly of the General; and being informed, that Miſs *Williamſon* was ſo affected that ſhe could not take her Leave of his Lordſhip, "God bleſs "the dear Child," ſays he, "and make her eternally happy, for ſhe is "a kind-hearted good Laſs." After this, his Lordſhip ſent a Meſſage to the Cook, deſiring her to roaſt a Piece of Veal, that it might be ready to mince for his Breakfaſt in the Morning. He then deſired the *Warders* to ſit down and ſmoak with him, which they did, and drank a Glaſs of Wine, and wiſhed his Lordſhip a good Journey. "Amen," quoth my Lord; and then knocking the Aſhes out of his Pipe, "Now, Gentlemen," ſays he, "the End of all human Grandeur is like this *Snuff* of Tobacco." His Lordſhip ſeemed to have a great Regard for his two *Warders*. After his Pipe was out, he thanked them kindly for taking ſo much Care of him; "And now, Gentlemen," ſays he, "I have but one Favour more to aſk "of you; and that is, to go upon the Scaffold with me, and not leave me "till you ſee this Head cut off this Body." They both promiſed his Lordſhip; and afterwards one of them told him, that if ever he lived to ſee his Son the *Maſter of Lovat*, he would let him know with what Tenderneſs his Lordſhip parted with him. "Do," ſays my Lord, "and he "will take Notice of you: If he don't, he won't do well. But pray," ſays he, "have you got any Wine for me in the Morning, and ſome Bit-"ters, if I ſhould want to carry any to the Scaffold?" Upon Inquiry, there was no Bitters left in the Bottle, and therefore his Lordſhip gave the *Warder* a Shilling to ſend for a Bottle of *Stoughton's Elixir*. When the Man was gone, the *Warder* recollected that there was ſome burnt Brandy and Bitters left in a Bottle, which his Lordſhip had with him to *Weſtminſter-Hall*, when on his Trial, and informed him of it. "'Tis very well, "very well, Sir," ſays he; "pray take it in your Pocket, and give me a "Sup if I ſhould want it." After this, a Circumſtance happened which ſurprized me prodigiouſly. His Lordſhip, who was eighty Years of Age, took up a Book with a ſmall Print. (I think it was the Size that the *Printers* call *Long-Primer*) and read by Candle-light near two Hours without Spectacles. Upon Inquiry, I was informed that his Lordſhip never uſed any. I knew he did not in the Day-time, but I thought he could not be able to ſee without their Aſſiſtance by Candle-light. This, I ſuppoſe, might be owing to his Lordſhip's Manner of Living, as alſo was that Circumſtance of his never having the Head-ach. I have obſerved already, that his Lordſhip was never drunk in his Life; and he has often declared, that he thought eating of Suppers was doing Violence to Nature, and committing a Sin againſt the Body. He ſeldom took any Breakfaſt; always made a very hearty Dinner, but never eat a Morſel for Supper. As his Lordſhip had a great Share of Learning, and ſpoke the *Latin*, *French*, and *Engliſh* fluently, and ſome other modern Languages indifferently, we aſked his Lordſhip concerning his Education. He ſaid, he ſtudied ſome Years at *Aberdeen*, and diſputed his Philoſophy in *Greek*. From this Topic he went to Religion again, and aſſured us, that he was bred a Proteſtant; but going abroad, and having ſome Diſputes with Father ******, he found himſelf very much ſtaggered in his Principles, and prayed to God to direct him in the right Way: That after this, he ſtudied *Divinity* and *Controverſy* three Years, and then turned *Roman Catholick*. "This is my "Faith," ſays he, "but I have Charity for all Mankind, and I believe "every ſincere honeſt Man bids fair for Heaven, let his Perſuaſion be "what it will; *for the Mercies of the Almighty are great, and his Ways paſt "finding out.*"

After this, he pulled out a Silver *Crucifix*, and either kiſſed it, or rubbed his Mouth with it, I do not know which. Then handing it about, "Here's a *Crucifix*," ſays he, "did you ever ſee a better? Obſerve how "ſtrong the Expreſſion is, and how finely the Paſſions are delineated. We "keep Pictures of our beſt Friends, of our Fathers, Mothers, *&c.* and "pray why ſhould not we keep a Picture of Him who has done more than "all the World for us?"

His Lordſhip then aſked ſome Queſtion about Mr. *Secretary Murray*, which I cannot recollect, for indeed I did not very well underſtand it, and then ſaid, "We had a better Secretary when the *Aſſociation* was ſigned." After this, he mentioned Mr. *Sollicitor Murray*, and ſaid, he was a great Man, and he believed would meet with ſome Promotion, if he was not too far North.

About Nine o'Clock he deſired the *Warders* to undreſs him; and his Breeches, Shoes, and Stockings being pulled off, he ſtood before the Fire to warm him as uſual. The *Warder* aſked his Lordſhip, if he would pleaſe to go to Bed? "Not yet," ſays he, "I will warm my Feet a little more "firſt." "I think we have a very bad Fire," ſays the *Warder*. "That's "not my Fault," quoth his Lordſhip, joking; "you may e'en make a "better an you like it." Which he did, and then ſtanding up by his Lordſhip, told him, He was ſorry that the Morrow was to be ſuch a bad Day with him. "Bad! for what?" ſays my Lord; "Do you think I am "afraid of an Axe? 'Tis a Debt we all owe, and what we muſt all pay; "and do not you think it better to go off in this Manner, than to linger with "a Conſumption, Gout, Dropſy, Fever, *&c.* though I muſt needs own, "my Conſtitution is ſo good, that I could have lived twenty Years longer, "I believe, if I had not been called hither." Here my Lord offered to put off his Coat and Waiſtcoat; and as it was his Cuſtom to pull them off by the Bed-ſide, the *Warder* reminded him of it. "Good now," ſays my Lord, "I had forgot that I was ſo far from the Bed; but perhaps you "might have forgot too, had your Head been to be cut off To-morrow."

Thurſday. On this fatal Day his Lordſhip awaked about Three o'Clock in the Morning, and prayed moſt devoutly. At Five he got up, called for a Glaſs of Wine and Water, according to his uſual Cuſtom, and ſeemed ſtill as chearful as ever; then, being placed in his Chair, ſat and read till Seven, when he called for another Glaſs of Wine and Water. About Eight o'Clock he deſired Mr. *Sherrington*, one of the *Warders*, to ſend his Wig, that the Barber might have Time to comb it out. He then called for a Purſe to put his Money in for the Executioner, and deſired it might be a good one, *leſt the Gentleman ſhould refuſe it.* Mr. *Southbey*, one of his Lordſhip's *Warders*, I remember, brought him two Purſes, the one a green Silk knit, and the other a yellow Canvaſs, but which his Lordſhip made Choice of I really forget; *However, it was a Purſe*, as he obſerved, *that no Man would diſlike with Ten Guineas in it.*

As his Lordſhip was now within a few Hours of Death, and had behaved with ſuch ſurprizing Intrepidity during his whole Confinement, I was the more particular in obſerving every little Incident that happened. But though he had a great Share of Memory and Underſtanding, and an awful Idea of Religion and a future State, I could never obſerve, in his Geſture or Speech, the leaſt Shadow of Fear, or indeed any Symptoms of Uneaſineſs. His Behaviour was all of a Piece, and he was the ſame facetious Companion now, as he was before Sentence was paſſed againſt him. About half an Hour after Eight the Barber brought his Lordſhip's Wig, which not being powdered ſo much as uſual, on account of its being a rainy Day, he ſeemed angry, and ſaid, "That he went to the Block with "Pleaſure, and if he had a Suit of Velvet embroidered, he would wear it "on that Occaſion." After this, he ſpoke to the Barber again about his Principles, and told him his Notions were extremely ſingular: "For the "Soul," ſaid he, "is a ſpiritual Subſtance, and can no more be diſſolved "for a Time, or buried with the Body, than it can be annihilated en-"tirely;" and at the ſame Time ſmiled. "My Lord," ſaid the Barber, "you will ſee that." "Yes," anſwered his Lordſhip, "I hope to be in "Heaven by One o'Clock, or I ſhould not be ſo merry now." His Lordſhip then ſaluted the Barber, and bid him Farewell; and the Barber returned the Compliment, and wiſhed my Lord *a good Paſſage*; for theſe were his Words.

At half an Hour after Nine his Lordſhip called for a Plate of minced Veal, eat very heartily, and deſired the other Gentlemen that were with him to drink ſome Coffee or Chocolate, or both, which were brought for them; he then called for ſome Wine and Water, and drank the Healths of ſeveral of his Friends.

At Ten a terrible Accident happened upon the Hill, by the Fall of a Scaffold, which put all the People in great Confuſion; ſeveral

* In the Year 1736, Lord *Lovat* erected a ſtately Monument in the Church of *Kirk-Hill*, within a few Miles of *Caſtle-Downey*, with a pompous Inſcription. The brave Sir *Robert Munro*, (who was killed at the Battle of *Falkirk*) being on a Viſit to Lord *Lovat*, they went together to view the Monument. Sir *Robert*, upon reading the Inſcription, in a free Manner, ſaid, Simon, *How the Devil came you to have the aſſurance to put up ſuch a bouſting romantic Inſcription?* To which his Lordſhip anſwered, *The Monument and Inſcription are chiefly calculated for the Frazers, who muſt believe whatever I their Chief require of them, and their Poſterity will think it as true as the Goſpel.* The Inſcription is as followeth:

To the MEMORY of THOMAS Lord FRASER of LOVAT,
Who choſe rather to undergo the greateſt Hardſhips of Fortune, than to part with the ancient Honours of his Houſe,
and bore theſe Hardſhips with undaunted Fortitude of Mind:
This MONUMENT was erected by
SIMON Lord FRASER of LOVAT, his Son,
Who likewiſe having undergone many and great Viciſſitudes of good and bad Fortune, through the Malice of his Enemies,
He, in the End, at the Head of his Clan, forced his Way to his paternal Inheritance, with his Sword
in his Hand, and relieved his Kindred and Followers from Oppreſſion and Slavery:
And both at Home and in Foreign Countries, by his eminent Actions, in the War and the State,
He has acquired great Honours and Reputation.

Hic tegit oſſa lapis SIMONIS *fortis in armis,*
Reſtituit preſſum nam genus ille ſuum;
Hoc marmor poſuit cari Genitoris honori,
In genus afflictum par erat ejus amor.

Perſons

Perſons were killed, and Numbers maimed and bruiſed. At Eleven the Sheriffs of *London* ſent a Meſſage to demand his Body, which being communicated to his Lordſhip, he deſired the Curtains might be drawn, and that the Gentlemen would retire for a few Minutes while he ſaid a Prayer, which Requeſt was immediately complied with; but in a little Time he called for them again, ſaying, "I am ready."

When his Lordſhip had come down the firſt Pair of Stairs, General *Williamſon* invited him into his Room to reſt himſelf. On his firſt Entrance he paid his Reſpects to the Ladies with great Politeneſs, then to the Gentlemen, and talked very freely. He aſked the General in the *French* Language, "Whether he might have the Honour to ſee his "Lady, to return her his laſt Thanks for the Favours and Civilities he had "received?" To which the General anſwered in the ſame Tongue, "My "Spouſe is ſo greatly affected with your Lordſhip's Misfortunes, that ſhe "cannot bear the Shock of ſeeing you at this Time, and begs to be ex-"cuſed." He then made his Addreſſes to all the Company, and ſet out; but going down Stairs, he complained of them, (the Stairs) and ſaid, they were very troubleſome to him. When he came to the Door, he bowed to the People, and was then put into the Governor's Coach, and carried to the outer Gate, where he was taken out of the Governor's Coach, and delivered to the Sheriffs of the City of *London* and County of *Middleſex*, who conducted him in another Coach to a Houſe near the Scaffold which had been lined with black Cloth for his Lordſhip's Reception: Here he was taken into their immediate Cuſtody, and all his Friends and Relations denied Entrance. Upon which his Lordſhip inſtantly applied to the Sheriffs for the Time being, and deſired that his Friends and Relations, who accompanied him from the *Tower*, might be permitted to ſee him. Mr. Alderman *Aſſop* came to the Bottom of the Steps himſelf, and deſired his Lordſhip's Friends to walk up. After we entered, my Lord thanked the Sheriffs for this Favour, and ſaid, "It was a conſider-"able Conſolation to him, that his Body fell into the Hands of Gentle-"men of ſo much Honour;" and added, "I will give you, Gentlemen, "and the Government no farther Trouble, for I ſhall make no Speech; "though I have a Paper to leave, with which you may do as you think "proper." Here my Lord put his Hand in his Pocket, and delivered a Paper to one of the Sheriffs, and then told them, they might give the Word of Command when they pleaſed, and added, that he was accuſtomed to obey Command, *for he had been an Officer in the Army many Years.* After this a Gentleman preſent began to read a Prayer to his Lordſhip while he was ſitting; but my Lord called one of the Warders who attended him to help him up, that he might kneel. He then ſaid a Prayer by himſelf, which Nobody could hear; and turning about, was again ſet down in his Chair, and ſeemed very chearful. Mr. Sheriff then aſked his Lordſhip, "If he would refreſh himſelf with a Glaſs of Wine?" My Lord thanked him, but ſaid, "He could not drink any without warm "Water with it;" and that not being to be had in that Place, his Lordſhip took a little burnt Brandy and Bitters, which, as I obſerved before, he had ordered one of the Warders to take in his Pocket; and, turning to Mr. Sheriff, told him, "He was ready to go whenever he pleaſed." "My Lord," replied the Sheriff, "I would not hurry your Lordſhip;" and taking out his Watch, ſaid, "There is Half an Hour good, if your "Lordſhip don't tarry too long upon the Scaffold." My Lord then deſired that his Cloaths might be delivered to his Friends with his Corpſe, and not given to the Executioner, and ſaid, "For that Reaſon he ſhould "give him (the Executioner) ten Guineas."

He then aſked, if he might have the *Axe* brought him to feel if it was ſharp, and deſired that his Head, when taken off, might be received in a Cloth, and put into the Coffin. At this Mr. Sheriff ſtepped aſide, and obſerved to ſome Gentlemen preſent, "That he had received a Warrant "in the uſual Form for the Execution of his Lordſhip, and as it had not "been cuſtomary of late Years to expoſe the Head at the four Corners of "the Scaffold, he really thought he might indulge his Lordſhip with a "Promiſe as to that Point, for he did not think he could expoſe the "Head (though it was deſired, and indeed ordered by a Meſſage) without "being liable to Cenſure;" adding withal, "That he was truly ſenſible "of the Duty he owed his *Majeſty*, and ſhould always pay a great Regard "to the Orders he received from his Grace the Duke of *Newcaſtle*, or any "of the Miniſtry." And then turning to his Lordſhip, told him, "That "what he had deſired ſhould be punctually obſerved." My Lord thanked Mr. Sheriff very kindly, and then ſaluted his Friends, and told them, "He hoped his Blood would be the laſt ſpilled on that Occaſion."

When his Lordſhip came into the Paſſage leading to the Scaffold, he called to a Gentleman, and aſked his Name, who replied, it was *North*. "Well," ſays he, "let it be *North* and *Gray*." And added, with a Smile, "Come, my Lord *North* and *Gray*, conduct me to the Block." When his Lordſhip was going up the Steps to the Scaffold, he looked round, and ſeeing ſo many People, "God ſave us!" ſays he, "why ſhould there be "ſuch a Buſtle about taking off an *old grey Head*, that cannot get up three "Steps without two Men to ſupport it?"

Here turning about, and obſerving one of his Friends very much dejected, his Lordſhip clapped him upon the Shoulder, and ſaid, "Chear "up thy Heart, Man; I am not afraid, why ſhould you?"

The firſt Perſon he ſought when he came upon the Scaffold was the Executioner, who was immediately preſented to him; and after he had made his Obeiſance, my Lord put his Hand into his Pocket, and pulled out a Purſe with ten Guineas, ſaying, "Here, Sir, is ten Guineas for "you, pray do your Work well; for if you ſhould cut and hack my "Shoulders, and I ſhould be able to riſe again, I ſhall be very angry "with you." After this, he deſired the Executioner to ſhew him the Axe, which he refuſed to do without Leave from the Sheriff; but upon Application, this Requeſt was immediately granted; and when it was brought to him, he took Hold of it, and feeling upon the Edge, ſaid, "he believed it would do." Then he roſe from the Chair which was placed upon the Scaffold for him, and looked at his Coffin, on which was wrote, *Simon Dominus Fraſer de Lovat, decollat. April* 9, 1747, *Ætat. ſuæ*, 80.

He then ſat down again, and repeated the following Line out of *Horace*:

Dulce et decorum eſt pro Patriâ mori.

In *Engliſh*,

'Tis a glorious and pleaſant Thing to die for our Country.

And after that a Line out of *Ovid*:

Nam genus et proavos, et quæ non fecimus ipſi,
Vix ea noſtra voco.

In *Engliſh*,

For thoſe Things which were done either by our Fathers, or Anceſtors, and in which we ourſelves had no Share, I can ſcarcely call our own.

He then deſired all the People to withdraw from him, except his two *Warders*, who ſupported his Lordſhip, while he ſaid a Prayer. After this he called for Mr. *William Fraſer*, his Lordſhip's Sollicitor and Agent in *Scotland*; and holding up his Gold-headed Cane, ſaid, "I deliver you this "Cane in token of my Senſe of your faithful Services, and of my com-"mitting to you all the Power I have upon Earth." And then again embraced him. His Lordſhip now called for Mr. *James Fraſer*, and embracing him alſo, ſaid, "My dear *James*, I am going to Heaven, but "you muſt continue to crawl a little longer in this evil World." And taking his leave of both, he delivered his Hat to Mr. *William Fraſer*, and deſired him to take Care that the Executioner did not touch any of his Cloaths. He then took off his Wig, ordered his Cap to be put on, and putting off his Cloaths, delivered them with his Wig to Mr. *Fraſer*; and having unlooſed his Cravat and the Neck of his Shirt, he kneeled down to the Block, took Hold of the Cloth which was placed to receive his Head, and pulled it cloſe to him: But being placed too near the Block, the Executioner deſired his Lordſhip would remove a little farther back, which he did; and having placed his Neck in a proper Manner, he told the Executioner he would ſay a ſhort Prayer, and then drop his Handkerchief as a Signal. In this Poſture he remained about half a Minute, and then threw his Handkerchief upon the Floor, when the Executioner at one Blow ſevered his Head from the Body, which being received in a ſcarlet Cloth, was wrapped up, and, together with his Body, put into the Coffin, and carried in a Hearſe back to the *Tower*, where it remained till four o'Clock, and was then taken away by an Undertaker.

A Copy of the Paper delivered to the Sheriffs by Lord Lovat.

AS it may be reaſonably expected I ſhould ſay ſomething of myſelf in this Place, I declare that I die a true, but unworthy Member of the Holy, Catholic, Apoſtolick Church.

As to my Death, I cannot but look upon it as glorious, * * *

Reſolved, nemine contradicente, That the ſaid Pamphlet is an impudent, malicious, ſcandalous, and ſeditious Libel, falſely and moſt injuriouſly reflecting upon, and aſperſing the Proceedings of this Houſe, and tending to create Miſapprehenſions of the ſame in the Minds of the People, to the Diſhonour of this Houſe, and in Violation of the Privilege thereof.

Reſolved, nemine contradicente, That an humble Addreſs be preſented to his Majeſty, humbly to deſire his Majeſty, that he will be graciouſly pleaſed to give Directions to his *Attorney General* to proſecute the Authors or Author, the Printers or Printer, and the Publiſhers or Publiſher, of the ſaid ſcandalous Libel, in order that they may be brought to condign Puniſhment for the ſame.

Ordered, That the ſaid Addreſs be preſented to his Majeſty, by ſuch Members of this Houſe as are of his Majeſty's moſt Honourable Privy Council.

The Day following, Mr. Comptroller reported to the Houſe, that their Addreſs of Yeſterday had been preſented to his Majeſty, and that his Majeſty had commanded him to acquaint the Houſe, that he had given Directions accordingly.

Accordingly he was tried on the following Information, *July* 6, 1752.

Of Michaelmas *Term, in the twenty-fifth Year of King* George *the Second.*

London. BE it remembered, That Sir *Dudley Ryder*, Knight, Attorney-General of our preſent Sovereign Lord the King, who for our ſaid preſent Sovereign Lord the King in this Behalf proſecuteth, in his proper Perſon cometh here into the Court of our ſaid preſent Sovereign Lord the King, before the King himſelf at *Weſtminſter*, on *Wedneſday* next after three Weeks from the Feaſt-Day of *Saint Michael* in this ſame Term, and for our ſaid preſent Sovereign Lord the King, giveth the Court here to underſtand and be informed, that *John Owen**, late of *London*, Bookſeller, being a wicked, ſeditious, and ill-diſpoſed Perſon, and having no Regard for the Laws of this Realm, nor for the publick Peace and Tranquillity of this Kingdom, and well knowing that one *Alexander Murray*, late of the Pariſh of *St. George, Hanover-Square*, in the County of *Middleſex*, Eſquire, had been moſt juſtly and deſervedly committed to his Majeſty's Gaol of *Newgate*, in the City of *London*, by virtue of an Order of the Honourable Houſe of Commons of this Kingdom then aſſembled in Parliament, for a moſt groſs and flagrant Miſbehaviour and Contempt committed by him the ſaid *Alexander Murray*, againſt the ſaid Houſe, in refuſing to ſubmit to the Rules and Orders of the ſaid Houſe, and for acting in open Defiance of the Authority of the ſaid Houſe; but *moſt unlawfully, wickedly, and maliciouſly, deviſing, contriving, and intending to aſperſe, ſcandalize, and vilify the whole Body of the Commons of this Kingdom in Parliament aſſembled*, and moſt wickedly and audaciouſly to repreſent their Proceedings in Parliament as cruel, arbitrary, and oppreſſive; and to make it be believed and thought, as if the Commons in Parliament aſſembled were a moſt wicked, baſe, and degenerate Sett of Perſons, and had acted in their legiſlative Capacity in open Violation of the Conſtitution of this Kingdom, and had moſt daringly proſtituted their Power, and acted in Defiance of thoſe Laws which had been made and provided for the Security and Welfare of the Subjects of this Kingdom; and alſo moſt unlawfully, wickedly, and audaciouſly to repreſent the ſaid Houſe of Commons as a Court of Inquiſition; and moſt impudently to inſinuate, as if the Commitment of the ſaid *Alexander Murray* to his Majeſty's ſaid Gaol of *Newgate* was founded in Violence and Oppreſſion, and by that Means to arraign the public Juſtice and Proceedings of the ſaid Houſe, and to bring all the Commons of this Kingdom in Parliament aſſembled into an ill and bad Opinion, and into the utmoſt Hatred and Contempt, with all the Subjects of this Kingdom; and to raiſe, excite, and create moſt groundleſs and unreaſonable Fears and Apprehenſions in the Minds of all the ſaid Subjects, as if the Rights and Liberties of all the Subjects of this Kingdom, and the very Conſtitution of the Kingdom itſelf, were in the utmoſt Peril and Danger of being totally ſubverted and overturned, from an exceſſive and wanton Exerciſe of Power claimed by the ſaid Commons; and thereby to move, incite, and ſtir up all the Subjects of this Kingdom in a moſt unwarrantable Manner to vindicate, maintain, and aſſert their ſaid Rights and Liberties, without the leaſt Reaſon, Colour, or Pretence for the ſame; and alſo by that Means to moleſt and diſturb the happy State, and the publick Peace and Tranquillity of this Kingdom, at preſent ſo firmly and well eſtabliſhed under the mild and gentle Government and Adminiſtration of our ſaid preſent Sovereign Lord the King; upon the 29th Day of *June*, in the twenty-fifth Year of the Reign of our ſaid preſent Sovereign Lord *George* the Second, by the Grace of God, of *Great-Britain, France* and *Ireland*, King, Defender of the Faith, and ſo forth, with Force and Arms at *London* aforeſaid, (*that is to ſay*) at the Pariſh of *St. Dunſtan in the Weſt*, within the Ward of *Farringdon Without*, in *London* aforeſaid, a certain wicked, falſe, ſcandalous, ſeditious, and malicious Libel, intituled, "The Caſe of "the Hon. *Alex. Murray*, Eſq. (*meaning the ſaid* Alexander Murray, "*Eſq. herein above-mentioned*), in an Appeal to the People of *Great-Bri*"*tain*; more particularly, the Inhabitants of the City and Liberty of "*Weſtminſter*;" did moſt unlawfully, wickedly, ſeditiouſly, and maliciouſly print and publiſh, and did cauſe and procure to be printed and publiſhed: In which ſaid Libel, of and concerning the Houſe of Commons of this Kingdom in Parliament aſſembled, and alſo of and concerning the ſaid *Alexander Murray*, are contained (amongſt other Things) divers wicked, falſe, feigned, ſcandalous, ſeditious, and malicious Mat"ters, (*that is to ſay*) in one Part thereof according to the Tenor following, (*to wit*) "Whatever Air of Importance a Perſon may appear to aſ"ſume by thinking his particular Hardſhips a proper Object of the "public Attention; yet there are Inſtances, wherein the public and "private Intereſts are ſo intimately connected, that to let the latter paſs "unnoticed, would imply a tacit Reſignation of the former. Upon this "Principle, the Caſe of Mr. *Murray (meaning the ſaid* Alexander Mur"ray) may, without any Imputation of Vanity, be deemed worthy the "Conſideration of his Fellow-Subjects *(meaning the Subjects of this King*"*dom)*: For though he alone may, hitherto, have felt the Weight of the "Puniſhment, it is not known how ſoon they may experience the fatal "Effects of the Precedent,—A Precedent founded on the moſt open Vio"lation of the Conſtitution, the moſt daring Proſtitution of Power, and "in Defiance of thoſe Laws provided for the Security and Welfare of a "free People *(again meaning the Subjects of this Kingdom)*. But what "renders this Appeal, from a Sentence of the Repreſentatives, (*meaning "the ſaid Order* † *of this Kingdom ſo aſſembled in Parliament as aforeſaid, by "virtue of which he the ſaid* Alexander Murray *was ſo committed to his Ma*"*jeſty's ſaid Gaol of* Newgate *as aforeſaid, for the Reaſons aforeſaid*) to the "candid Judgment of their Conſtituents, (*meaning the Subjects of this King*"*dom having a Right to vote in the Election of Members to ſerve in the Parlia*"*ment of this Kingdom*) ſtill more neceſſary, is the peculiar Induſtry that "has been practiſed, to impoſe upon the Public a falſe Repreſentation of "the Offence, (*meaning the ſaid Miſbehaviour and Contempt for which he "the ſaid* Alexander Murray *was ſo committed as aforeſaid*) in order, if "poſſible, to juſtify the unexampled Barbarity of the Proſecution: For "whatever may have been the Pretence of vindicating the Honour and "Dignity of a particular Houſe, (*meaning the Houſe of Commons of this "Kingdom ſo aſſembled in Parliament as aforeſaid)* it will too plainly appear, "that greater Regard has been had to ſupport the private Pique and per"ſonal Reſentment of a certain turbulent Stateſman; whoſe Ambition "impatient of Controul, and whoſe Avarice abhorrent of Expence, de"termined him to offer up ſome exemplary Sacrifice to his devoted Thou"ſands, and an impious Oppoſition to his all-ſovereign Command." And in another Part thereof, according to the Tenor following, (*to wit*) "The Inhabitants of *Weſtminſter*, alarmed at the unconſtitutional Pro"ceedings carried on during the late Election (*meaning the late Election "of a Member to ſerve in the preſent Parliament of this Kingdom for the City "and Liberty of* Weſtminſter, *in the ſaid County of* Middleſex), and ex"aſperated to find a Repreſentative impoſed on them by the dictatorial "Authority of one Man in Oppoſition to a ſcrutinized Majority, had "Recourſe to the Houſe of Commons (*meaning the Houſe of Commons of "this Kingdom then aſſembled in Parliament)*, flattering themſelves that "auguſt Aſſembly would vindicate their invaded Rights and Liberties, "nor ſuffer the Invaders to eſcape with Impunity; accordingly a Peti"tion *(meaning a Petition of the Burgeſſes and Inhabitants of the ſaid City "and Liberty)* was preſented, complaining of a falſe Return (*meaning "the Return of the Member at the ſaid Election to ſerve in the preſent Parlia*"*ment of this Kingdom for the ſaid City and Liberty*).——The D—l Fac"tion, conſcious of their illegal Practices, and apprehending a Detec"tion of them would inevitably be the Conſequence of a free Inquiry "into the Merits of the Election, (*again meaning the ſaid Election of a "Member to ſerve in the preſent Parliament of this Kingdom for the ſaid City "and Liberty)* determined at all Events to put a Stop to the Proſecution "of it (*meaning the ſaid Petition*); and, in order to ſtrike the Petitioners "with Terror, prevailed on their truſty Friend the High-Bailiff (*mean*"*ing one* Peter Leigh, *Eſquire, the then High-Bailiff of the ſaid City and "Liberty, who was the proper Returning Officer at the ſaid Election*), to aſ"ſume the laudable Character of Informer, and complain of ſome high "Crimes and Miſdemeanours committed againſt his ſacred Perſon; but "the more effectually to anſwer the Purpoſe, took eſpecial Care that the "Objects of this Complaint ſhould be ſome principal Witneſſes in Sup"port of the Petition (*again meaning the ſaid Petition of the ſaid Burgeſſes "and Inhabitants of the City and Liberty aforeſaid, againſt the ſaid Return ſo "made as aforeſaid*). However, as the Accuſation againſt the High"Bailiff (*again meaning the ſaid* Peter Leigh, *then High-Bailiff of the ſaid "City and Liberty*) was antecedent to his Complaint, it was thought, in "Point of Regularity and Juſtice, that the Conſideration of the latter "ſhould be poſtponed till the Determination of the former; more parti"cularly as the Offences alledged to have been committed againſt this "Magiſtrate, (*again meaning the ſaid* Peter Leigh) muſt neceſſarily appear "upon hearing the Merits of the Petition. This having produced a Debate, "and the S———r (*meaning Speaker, that is to ſay, meaning the Right Ho*"*nourable* Arthur Onſlow, *Eſq. then Speaker of the Houſe of Commons of this "Kingdom)*, being called upon to give his Opinion in Point of Form and "Order, he (*again meaning the ſaid Speaker*) declared, That, *To begin by "Inquiry into the Complaint of the High-Bailiff*, (again meaning the ſaid "*Peter Leigh*, then High-Bailiff of the ſaid City and Liberty as afore"ſaid) *was not only contrary to the Order and Method of Proceeding in that "Houſe* (again meaning the ſaid Houſe of Commons), *but of every other "Court of Juſtice, and inconſiſtent with Juſtice itſelf.* Though theſe Rea"ſons might have ſome Prevalence with Part of the Houſe (*again meaning "the ſaid Houſe of Commons ſo aſſembled in Parliament as aforeſaid*), never"theleſs a Majority determined, that the High-Bailiff's Complaint "(*again meaning the ſaid Complaint of the ſaid* Peter Leigh, *then High-"Bailiff of the ſaid City and Liberty as aforeſaid*) ſhould be firſt heard, "which, if not ſufficient to terrify the Petitioners (*again meaning the ſaid "Burgeſſes and Inhabitants of the ſaid City and Liberty*) from their Purſuit "of Juſtice, would at leaſt produce the convenient Effect (to ſpeak in "the Phraſe of an inferior Court) of ſinking ſome material Evidence. "Thus, by a Kind of Parliamentary Legerdemain, the Accuſed became "the Accuſer, and the Witneſs had the Mortification to find himſelf "conjured into the Place of the Culprit. This equitable Determination "brought Mr. *Murray* (*again meaning the ſaid* Alexander Murray) to the "Bar (*meaning the Bar of the ſaid Houſe of Commons then aſſembled in Parlia-*

* *Memorandum.* He is called all the Way in the Information *John Owen*, whereas his Name is *William Owen.* His Counſel at the Trial took no Notice of the Miſnomer, intending if he had been found Guilty (as I am informed) to have moved this Miſnomer in Arreſt of Judgment.

† Q. Whether it ſhould not be "*the ſaid Order* of the Houſe of Commons *of this Kingdom*, &c."

" *ment as aforesaid*) ; where, in Support of the grievous Charge exhibited " againſt him by the High-Bailiff, *(again meaning the ſaid* Peter Leigh, " *then High-Bailiff of the ſaid City and Liberty)* the following Witneſſes " were produced ; and firſt, Mr. *Baldwin* (Deputy-Bailiff) and his Son " appeared, who declared, *That Mr.* Murray (again meaning the ſaid " *Alexander Murray) came to their Houſe, and ſaid, that he was reſolved* " *that the High-Bailiff ſhould not ſmuggle an Election* ; *and that he and a* " *thouſand more had ſwore, he* (again meaning the ſaid *Peter Leigh,* then " High-Bailiff as aforeſaid) *ſhould make the Declaration in the Middle of* Co- " vent-Garden (meaning *Covent-Garden* in the Pariſh of *St. Paul Covent-* " *Garden*, in the ſaid County of *Middleſex*, and within the City and " Liberty aforeſaid). The Truth of the former Part of this Accuſation " Mr. *Murray (again meaning the ſaid* Alexander Murray) was ingenuous " enough to confeſs ;---and indeed, if this Species of Parliamentary " Smuggling was found neceſſary to be encouraged for any private " Reaſons of State, no Wonder an actual Attempt to prevent it ſhould " be deemed culpable by thoſe at the Helm :---But as in our Days this " cannot even be ſuppoſed, ſurely the mere ſaying a Man ſhould not do " what he ought not to do, is a Crime of ſuch a Nature, to which no " Legiſlators have even yet thought proper of annexing a Penalty. With " reſpect to the other Part, Mr. *Gaſcoigne*, and Mr. *Carne* the High- " Conſtable, Gentlemen entirely diſintereſted, teſtified, that they were " preſent, and heard the former Words, yet they never heard the latter " Expreſſion ; and what afforded the ſtrongeſt preſumptive Evidence " againſt ſuch a Declaration, was, that it evidently appeared no ſuch " Purpoſe was ever intended to be executed ; or how eaſy would it have " been for Mr. *Murray (again meaning the ſaid* Alexander Murray) with " his thouſand Volunteers, to have ſecured the Perſon of this Magiſtrate, " *(again meaning the ſaid* Peter Leigh, *then High-Bailiff as aforeſaid)* when " he met him *(again meaning the ſaid* Peter Leigh) going to the Huſtings " unſupported by a ſingle Peace-Officer or any other Attendant ? But in " order to turn the Scale entirely in Favour of Mr. *Murray*'s Innocence, " the High-Bailiff himſelf was candid enough to acknowledge at the Bar, " *(again meaning the Bar of the ſaid Houſe of Commons ſo aſſembled in Par-* " *liament as aforeſaid)* that meeting Mr. *Murray (again meaning the ſaid* " Alexander Murray) in his Way from *Baldwin*'s to the Huſtings, upon " being aſked the Queſtion, he *(again meaning the ſaid* Peter Leigh) did " then declare, *That no Man could behave with more good Manners towards* " *him* (again meaning the ſaid *Peter Leigh) than Mr.* Murray (again " meaning the ſaid *Alexander Murray)*. Behold the next Witneſs coming " forth in the Character of a Journeyman Button-trimmer, and declar- " ing, *That he ſaw Mr.* Murray (again meaning the ſaid *Alexander* " *Murray) at the Head of a great Mob, who meeting a Chimney-Sweeper,* " *aſked him, Who he was for ?—The Chimney-Sweeper anſwering, For Sir* " George, (meaning Sir *George Vandeput*, Baronet, then a Candidate at " the ſaid Election of a Member to ſerve in the preſent Parliament for " the ſaid City and Liberty) Mr. *Murray (again meaning the ſaid* Alex- " ander Murray) replied, *Then you are an honeſt Fellow, but Lord* Trent- " ham (meaning the Honourable *Granville Leveſon Gower*, Eſquire, " commonly called Lord Viſcount *Trentham*, the other Candidate at the " ſaid Election) *and the High-Bailiff* (again meaning the ſaid *Peter Leigh*, " then High-Bailiff of the ſaid City and Liberty as aforeſaid) *are two* " *great Villains, or two great damn'd Villains and Raſcals.* What delectable " Dialogue !---Evidence how ſuited to the Solemnity of a Senatorial In- " quiry !---Muſt not the People *(meaning the People of this Kingdom)* " entertain the higheſt Opinion of their legiſlative Deputies, *(meaning* " *the Commons of this Kingdom in this preſent Parliament aſſembled)* when " they ſee them ſeriouſly attending, *Auribus erectis*, to ſuch im- " portant Diſcoveries ?---But unluckily, had this heinous Article of " Accuſation the Sanction of Truth to enforce it, what Matter does it " afford for the Cognizance of this Judicature ? *(meaning the ſaid Houſe* " *of Commons ſo aſſembled in Parliament as aforeſaid.)* Eſpecially, as it is " allowed to have paſſed long after the Declaration *(meaning the Decla-* " *ration of the ſaid* Peter Leigh, *the ſaid High-Bailiff, by which the ſaid* " Granville Leveſon Gower, *Eſquire, commonly called Lord Viſcount* Trent- " ham, *was declared duly elected a Member to ſerve in the preſent Parliament* " *for the ſaid City and Liberty)* was made ? Perſuaded I am, had the " Noble Lord himſelf *(again meaning the ſaid* Granville Leveſon Gower, " *Eſquire, commonly called Lord Viſcount* Trentham) given the leaſt Credit " to it, his punctilious Delicacy in Point of Honour would have ex- " pected a perſonal Explication from the Author of ſo ſcandalous an In- " dignity; nor is it to be imagined, a Perſon *(again meaning the ſaid* Gran- " ville Leveſon Gower, *Eſquire, commonly called Lord Viſcount* Trentham) " who ſo valiantly manifeſted his Heroiſm in a late *French* Affair, would " meanly buckle on the Armour of Privilege, and adopt a public Perſe- " cution in the Place of a private Reſentment. The next Authority " produced was that of a Tripe-Man, who *paſſing along* Henrietta-Street, " *at the ſame Time the High-Bailiff was going to the* Croſs-Keys, *heard* " *Somebody behind him ſay, Is there Nobody will knock the Dog's* (meaning the " ſaid *Peter Leigh*, then High-Bailiff as aforeſaid, his) *Brains out* ; *when* " *clapping the High-Bailiff's Footman on the Shoulder, he told him, That is he* " *who uttered thoſe terrible Words, and* then *the Footman informed him that* " *Perſon's Name was* Murray (meaning the ſaid *Alexander Murray)*. " What a *Janus*-headed Witneſs is here ! who from hearing Words " uttered behind him in a Crowd, could identify the Perſon who ſpoke " them ? Did his Ears furniſh him with the Knowledge of the perſonal " Figure of Mr. *Murray*, whom he does not pretend to know before the " Footman's Information ? Or what Kind of Inſpiration enabled him to " diſcover, that the particular Dog's Brains meant by this Exclamation " belonged to the High-Bailiff ? But were it poſſible to pay any Regard " to ſuch inconſiſtent Evidence, ſtill the Commiſſion of this horrid " Offence muſt have been at leaſt two Hours after all Buſineſs relat- " ing to the *Sanctum Sanctorum* of *St. Stephen*'s Chapel was finiſhed ; " conſequently ſubject to the Notice of ſome leſs ſacred Tribunal.——

" However ridiculous the Matter contained in theſe two laſt Articles of " Impeachment may appear, it cannot be denied, but that it muſt have " received a very notable Weight of Authority from the eminent Cha- " racters of the Witneſſes, who, from their Situation in Life, muſt be " concluded to have Underſtandings not to be impoſed upon, and Prin- " ciples of Honour not to be violated. What then will it avail the Cauſe " of Mr. *Murray* with the Public, any more than with the *Senate, (again* " *meaning the ſaid Houſe of Commons ſo aſſembled in Parliament as aforeſaid)* " to oppoſe the unqueſtionable Teſtimony of our Button-trimmer and " Tripe-man with that of a Noble Lord, an Honourable Baronet, and " a worthy Barriſter ? Nevertheleſs, as the ſame convincing Motives of " Condemnation may not poſſibly influence the Verdict without Doors, " I ſhall take the Liberty to produce the Authority of Lord *Carpenter*, " who was pleaſed to declare at *the* Bar, *(again meaning the ſaid Bar of the* " *ſaid Houſe of Commons ſo aſſembled in Parliament as aforeſaid)* that his " Lordſhip and Mr. *Murray (again meaning the ſaid* Alexander Murray) " were together from the Time the Declaration *(again meaning the ſaid* " *Declaration of the ſaid* Peter Leigh, *the ſaid High-Bailiff, by which the* " *ſaid* Granville Leveſon Gower, *Eſquire, commonly called Lord Viſcount* " Trentham, *was declared duly elected as aforeſaid*) was made till Dinner ; " that they were in *Bedford-Street*, where this great Mob was, by the " Button-trimmer, ſaid to be aſſembled, but never heard Mr. *Murray* " *(again meaning the ſaid* Alexander Murray) ſay any thing ſcurrilous of " Lord *Trentham (again meaning the ſaid* Granville Leveſon Gower, " *Eſquire, commonly called Lord Viſcount* Trentham) to a Chimney-ſweeper, " or any other Perſon whatever. His Lordſhip farther ſaid, that he was " Arm-in-Arm with Mr. *Murray (again meaning the ſaid* Alexander Mur- " ray) when the High-Bailiff paſſed cloſe by them through the Church- " Yard to the *Croſs-Keys*, *(meaning the ſaid Tavern, commonly called or* " *known by the Name of the* Croſs-Keys *Tavern)* which was near two " Hours after the Declaration, *(again meaning the ſaid Declaration ſo made* " *by the ſaid* Peter Leigh, *the ſaid High-Bailiff as aforeſaid)* but that he " never heard Mr. *Murray* utter the Exclamation laid to his Charge by " the Tripe-man ; and that if he had made uſe of any ſuch Expreſſions, " apprehended they could not have paſſed unnoticed by him ; that ſo " far from inciting the People to knock the High-Bailiff's *(again meaning* " *the ſaid* Peter Leigh, *then High-Bailiff of the ſaid City and Liberty as* " *aforeſaid, his)* Brains out, his Lordſhip declared, Mr. *Murray (again* " *meaning the ſaid* Alexander Murray) adviſed them, *To leave him* (again " meaning the ſaid *Peter Leigh) to the Remorſe of his own Conſcience* ; " *aſſuring them, that would be a more ſevere Puniſhment than any they could* " *inflict*. Sir *John Tyrrell* and Mr. *Gaſcoigne*, who were likewiſe cloſe by " Lord *Carpenter* and Mr. *Murray (again meaning the ſaid* Alexander " Murray) when the High-Bailiff paſſed from the Church to the Tavern, " were called to corroborate this Evidence ; which, in an Aſſembly " where moſt of its Members were ſo well acquainted with his Lord- " ſhip's Veracity and Honour, may ſeem an Act of Supererogation. In " the Courſe of this Examination, Lord *Carpenter* having ſaid, that he " and Mr. *Murray* were together all the Time, from the Declaration " till Dinner, and Sir *John Tyrrell* being aſked, if his Lordſhip was with " Mr. *Murray* when he firſt ſaw him, and anſwering he believed not, " one of the Members *(meaning one of the Members of the ſaid Houſe of* " *Commons ſo aſſembled in Parliament as aforeſaid)* (remarkable for his in- " ſuperable Modeſty) exulted on his Sagacity, in having, as he imagin- " ed, detected a notorious Contradiction in the Evidence ; but when it is " conſidered, that Sir *John Tyrrell* never ſaw Lord *Carpenter* till that Day, " it will require no great Stretch of Credulity, to believe that Sir *John* " might talk a Minute or two with Mr. *Murray* in a Crowd, without " particularly remarking a Perſon who was with him, and who at that " Time was an abſolute Stranger to him. Lo ! from this Mountain of " Contradiction, *ridiculus mus naſcitur* ; which however was ſcandalouſly " urged as ſufficient to invalidate the Teſtimony of two ſuch Honourable " Perſons ! To what pitiful Shifts muſt this Faction be reduced, when " obliged to have Recourſe to a Quibble, the moſt contemptible legal " Pettyfogger would bluſh to be guilty of ? The Reaſon of Lord *Car-* " *penter*'s and Mr. *Murray*'s ſtaying ſo long was, to uſe their Endeavours " to prevent any Inſult being offered to the High-Bailiff ; not perhaps " out of any Regard to the extraordinary Merits of that worthy Gentle- " man, but being ſenſible that they ſhould be made the Victims to expiate " any unlucky Accident that might happen ; and that this Apprehenſion " was not ill-grounded, evidently appears from the Fate of Mr. *Mur-* " *ray*, even when no Accident happened at all. Now appears the ce- " lebrated Mr. *Pond*, who is to give the *Coup de Grace.*—Hear him then " alarm the Houſe *(again meaning the ſaid Houſe of Commons ſo aſſembled* " *in Parliament as aforeſaid)* by declaring, *That he heard Mr.* Murray *ſay* " *in the* Mount *Coffee-houſe ſome Days after the Declaration* (again meaning " the ſaid Declaration ſo made by the ſaid *Peter Leigh*, the ſaid High- " Bailiff as aforeſaid) *was made, that if his Advice had been taken, and the* " *Rails of the Portico cut down, the High-Bailiff* (again meaning the ſaid " *Peter Leigh*, then High-Bailiff of the ſaid City and Liberty as afore- " ſaid) *durſt not have returned Lord* Trentham. Heavy Charge ! Nor " can the Truth of it admit of any Diſpute, when authenticated by the " Declaration of ſo worthy a Perſon, honoured with the Confidence of the " higheſt-born Gamblers, and conſtantly employed by them in the com- " mendable Quality of Bet-Broker ; nay, who during the Time of the " Election *(meaning the ſaid late Election of a Member to ſerve in the preſent* " *Parliament of this Kingdom for the ſaid City and Liberty)* is ſaid to have " very induſtriouſly exerciſed his Profeſſion, by laying conſiderable " Sums for the Noble Candidate himſelf on the Event of his Return " *(meaning his Return as a Member to ſerve in the preſent Parliament of this* " *Kingdom)*. But how atrocious the Matter contained in this Accuſation, " to ſuppoſe (ſo long after) *that* to have happened which did not happen, " certainly juſtifies the Extremity of Puniſhment, as the Suppoſition of a " Fact is doubtleſs more criminal than the Execution of it. Had the Iron

" Rails

" Rails been cut down, what ought to have been the Conſequence? Mr. " *Murray* ought to have been puniſhed. But the Iron Rails were not " cut down; what is the Conſequence? Mr. *Murray (again meaning the* " *ſaid* Alexander Murray) is puniſhed. Excellent Reaſoning! righteous " Determination! Could the bare Intimation that he was the Adviſer " of ſuch a curious Stratagem be ſufficient to condemn him *(again* " *meaning the ſaid* Alexander Murray), when it does not appear that he " ever actually gave this Advice to any Perſon whatever, or that the leaſt " Attempt was made in conſequence of it? Who knows not that an Overt-" Act is required to the Conviction of a Perſon for High-Treaſon againſt " the King himſelf? Yet behold! no ſuch legal Nicety is thought neceſ-" ſary to conſtitute a *læſa Majeſtas* againſt the Honourable Houſe *(again* " *meaning the ſaid Houſe of Commons ſo aſſembled in Parliament as aforeſaid)*. " It is obſervable throughout the whole Courſe of the Evidence, that not " ſo much as any one Act whatever is pretended to have been committed " by Mr. *Murray*, not even any oral Offence, (except that at *Baldwin*'s, " with which the High-Bailiff *(again meaning the ſaid* Peter Leigh, *then* " *High-Bailiff of the ſaid City and Liberty as aforeſaid)* was not, till long " after, acquainted) which was not ſubſequent to the Declaration. How " then could the Returning Officer (*again meaning the ſaid* Peter Leigh) " produce it in Support of a Charge, founded on delaying the Election, " *(again meaning the ſaid Election of a Member to ſerve in the preſent Parlia-* " *ment of this Kingdom for the ſaid City and Liberty)* by obſtructing him in " the Execution of his Office? *(meaning the Office of the ſaid* PeterLeigh *as* " *High-Bailiff of the ſaid City and Liberty.)* Did he *(again meaning the ſaid* " Peter Leigh) cunningly diſcover Obſtructions after the Completion of " his Duty, which he was not ſenſible of during the Exerciſe of it? Or " by what Kind of Logic does it follow, that the treaſonable Words " againſt the Noble Lord's Honour, the terrifying Exclamation againſt the " High-Bailiff's Brains, or the Coffee-houſe Suppoſition concerning the " Rails, could occaſion this criminal Delay in the Election (*again meaning* " *the ſaid Election of a Member to ſerve in the preſent Parliament of this King-* " *dom for the ſaid City and Liberty)*, when all muſt have happened long af-" ter the arbitrary *Fiat* had paſſed the hallowed Lips of one Member-mak-" ing Magiſtrate? Such is the Charge, and ſuch is the Proof of it, that " induced the Protectors of *Britiſh* Liberty *(again meaning the ſaid Houſe of* " *Commons ſo aſſembled in Parliament as aforeſaid)* to condemn a *Britiſh* Sub-" ject (*again meaning the ſaid* Alexander Murray) to cloſe Confinement in a " loathſome Priſon, appropriated for the Reception of Thieves and Mur-" derers, with every other Species of the meaneſt and moſt profligate Of-" fenders. But even this ſevere Exertion of Power was deemed too fa-" vourable, and muſt be embittered by the additional Cruelty of ſome ſtill " more mortifying Circumſtances. Mr. *Murray (again meaning the ſaid* " Alexander Murray) muſt receive this hard Sentence (*meaning the Order* " *of the ſaid Houſe of Commons ſo aſſembled in Parliament as aforeſaid, by* " *virtue of which he the ſaid* Alexander Murray *was ſo committed and ſent* " *to his Majeſty's ſaid Gaol of* Newgate *as aforeſaid*) upon his Knees. " Though his Reſolution might enable him to ſupport the former Part of " the Judgment, *(again meaning the Order aforeſaid)* his Spirit would by " no means ſuffer him to pay a ſlaviſh Submiſſion to the latter; for had this " reverential Token of Submiſſion been made the Price of his Acquittal, " he ſhould have thought the Penalty at leaſt equalled the Degree of his " Guilt; much leſs could he think of making ſo humble an Acknow-" ledgement of ſo extraordinary a Condemnation. However, this Refu-" ſal being held a high Inſult on the Dignity of the Houſe *(again meaning* " *the ſaid Houſe of Commons ſo aſſembled in Parliament as aforeſaid)*, a freſh " Article of Pains and Penalties was invented, and the Uſe of Pen, Ink, and " Paper prohibited; which, though in Caſes of Conſpiracy and Treaſon, " had been practiſed by way of Precaution, was ſeldom known to have been " inflicted by way of Puniſhment. The d----l Faction, findingthe Venge-" ance they had procured far from being juſtified by the Senſe of the " Public, induſtriouſly endeavoured to propagate an erroneous Belief, that " the Severity proceeded merely from Mr. *Murray*'s Obſtinacy, when on " the Face of the Proceedings it appears, that every Part of this tremen-" dous Sentence (*again meaning the Order aforeſaid)* (except what relates to " Pen, Ink, and Paper) was reſolved two Hours before it could poſſibly be " known, that Mr. *Murray (again meaning the ſaid* Alexander Murray) " would be guilty of ſo ſacrilegious a Contumacy, as to refuſe Knee-" worſhip to the aſſumed Divinity of his Judges (*again meaning the Com-* " *mons of this Kingdom ſo aſſembled in Parliament as aforeſaid)*. While Mr. " *Murray (again meaning the ſaid* Alexander Murray) (in Cuſtody of a " Meſſenger) waited the Determination of the Houſe, *(again meaning the* " *ſaid Houſe of Commons ſo aſſembled in Parliament as aforeſaid)* ſome Friends " came to him, and, with a generous Concern, acquainted him with the " former Part of his Judgment *(again meaning the Order aforeſaid)*: And " though he (*again meaning the ſaid* Alexander Murray) might poſſibly en-" tertain ſome Reliance on the Equity of thoſe (*again meaning the Com-* " *mons of this Kingdom ſo aſſembled in Parliament as aforeſaid)* who were " choſen by the People (*meaning the People of this Kingdom, having a Right* " *to vote in the Election of Members to ſerve in the Parliament of this King-* " *dom)* to defend their Liberties and Properties; yet he was the leſs ſur-" prized, having been informed, that his Fate was determined ſome Weeks " before at *White*'s; where very large Sums had been laid upon his Com-" mitment, *(meaning his the ſaid* Alexander Murray's *Commitment to his* " *Majeſty's ſaid Goal of* Newgate *as aforeſaid)* and was adviſed to fly his " Country, in order to evade the Fury of theſe ſporting Legiſlators, who " it was apprehended might not pay the moſt conſcientious Regard to " their public Truſt, when placed in Competition with their private Ad-" vantage. With what Indignation muſt this Sentence inſpire every " Reader, who has imbibed the leaſt Spark of public Spirit! And how " much more will he be alarmed when acquainted with the rancorous Exe-" cution of it? Let us then attend this injured Gentleman (*again mean-* " *ing the ſaid* Alexander Murray) to his Dungeon; at which arriving at " about Four o'Clock in the Morning, the ſixth Day of *February*, not-" withſtanding he had been ill for ſeveral Days before, he was conducted " into a Room, *(meaning a Room in his ſaid Majeſty's Gaol of* Newgate) the " Windows of which were ſhattered, and the Walls plentifully bedewed " with Moiſture, proceeding from the unwholeſome Situation of the " Place, and not having had an unhappy Tenant in it during ſome Years. " Theſe unſalutary Circumſtances ſoon encreaſed his Indiſpoſition, and " the third Day brought on a violent Fever. Mr. *Murray (again meaning* " *the ſaid* Alexander Murray) ſent the Perſon who looks after the Con-" victs (and was likewiſe the only Attendant allowed) to procure him " *(again meaning the ſaid* Alexander Murray) the Aſſiſtance of an Apothe-" cary or Surgeon; but this Benefit, which was never refuſed the moſt " flagitious Offender, was not to be indulged him. Mr. *Akerman (mean-* " *ing one* Richard Akerman, *Keeper of his Majeſty's ſaid Gaol of* Newgate) " pleaded the peremptory Orders he had received from the Houſe *(again* " *meaning the ſaid Houſe of Commons ſo aſſembled in Parliament as aforeſaid)* " in Excuſe of his Refuſal." And in another Part thereof according to the Tenor following, *(to wit,)* " Ten Weeks did Mr. *Murray (again* " *meaning the ſaid* Alexander Murray) ſupport this rigorous Treatment, " debarred the Sight of any Face he had ever ſeen before, except that of " his Doctor's, while (though in this Condition) treble Doors were " thought neceſſary to ſecure him, the numerous Locks and Bolts of which " furniſhed a Sound, not much leſs entertaining than would have ſeemed " that of his Paſſing-Bell. About the Middle of *April*, Mr. *Murray* " (*again meaning the ſaid* Alexander Murray) was again ſeized in ſuch a " Manner, that his Attendant, or rather Guardian, who had been tried " for his Life, and whoſe Employment conſiſted in locking up the Con-" victs in their Cells *(meaning the Cells in his Majeſty's ſaid Gaol of* " Newgate); an Occupation not very apt to inſpire the tendereſt Sen-" timents: Yet, I ſay, even this very Fellow was ſo melted with Pity " and Compaſſion, to behold Mr. *Murray*'s *(meaning the ſaid* Alex-" ander Murray *his*) Agonies, occaſioned by an Inflammation in his " Bowels, that he would not ſtir from him that Night. Lord *Eli-* " *bank* calling next Morning to enquire after his Brother's *(meaning* " *the ſaid* Alexander Murray *his*) Health, our Preſs-Yard Valet ex-" preſſed his Apprehenſions that he *(again meaning the ſaid* Alexan-" der Murray) could not live; but being informed the Doctor *(mean-* " *ing one Doctor* Lamont, *Phyſician to the ſaid* Alexander Murray) had " been there as ſoon as the Priſon-Gates were opened, his Lordſhip im-" mediately went to him, and requeſted he would acquaint the Houſe " *(again meaning the ſaid Houſe of Commons ſo aſſembled in Parliament as* " *aforeſaid)* with his Brother's *(meaning the ſaid* Alexander Murray *his)* " imminent Danger. Upon Dr. *Lamont*'s Repreſentation, Mr. *Palmer*, " Deputy-Serjeant, attended by a Meſſenger, came to *Newgate (meaning* " *his Majeſty's ſaid Gaol of* Newgate) in the Evening, with an Order to " move Mr. *Murray (again meaning the ſaid* Alexander Murray) directly. " At their Entrance they found him *(again meaning the ſaid* Alexander " Murray) upon the Bed, and the Sheets which had been ſoaked through, " reeking at the Fire. Mr. *Murray (again meaning the ſaid* Alexander " Murray) inquired of Mr. *Palmer* the Reaſon of ſo ſudden a Reſolution? " who replied, it was owing to the Phyſician's Information of his Danger, " and that the Houſe, (*again meaning the ſaid Houſe of Commons ſo aſſem-* " *bled in Parliament as aforeſaid)* from its wonted Humanity, had ordered " him *(again meaning the ſaid* Alexander Murray) to be carried to a Meſ-" ſenger's. And ſurely, removing a Perſon from *Newgate* to *Weſtminſter*, " with an Inflammation in his Bowels, and in a high Fever, muſt be al-" lowed a very extraordinary Act of Humanity! However, the Force of " Mr. *Palmer*'s Rhetoric was not ſufficient to prevail on Mr. *Murray* " (*again meaning the ſaid* Alexander Murray) to be of that Opinion; who " abſolutely refuſed to accept of this *unmerciful* Mercy; though there is " Reaſon to believe his Refuſal would have availed him little, had not " his Phyſician, (*again meaning the ſaid Dr.* Lamont) who chanced to be " preſent, declared his Opinion, that a Removal would be attended with " certain Death. This Authority juſtified Mr. *Palmer* for not putting " his Warrant in Execution; and upon Mr. *Murray*'s *(meaning the ſaid* " Alexander Murray *his)* aſking him what the Houſe (*again meaning the* " *ſaid Houſe of Commons ſo aſſembled in Parliament as aforeſaid)* intended to " do with him *(again meaning the ſaid* Alexander Murray) at the Meſſen-" ger's, he anſwered, To confine him (*again meaning the ſaid* Alexander " Murray) there till his Recovery; but that Nobody was to be admitted " to him (*again meaning the ſaid* Alexander Murray); and if he *(again* " *meaning the ſaid* Alexander Murray) did not then make his Submiſſion " upon his Knees, he *(again meaning the ſaid* Alexander Murray) would " be remanded back to *Newgate (again meaning his Majeſty's ſaid Gaol* " *of* Newgate). As the ten Weeks ſevere Sufferings had not been able " to convince Mr. *Murray* (*again meaning the ſaid* Alexander Murray) of " the Heinouſneſs of his Offence, he replied, That he would not conſent " to it upon ſuch Terms, and that he would rather die ten thouſand " Deaths than violate his Conſcience by a Confeſſion of Guilt; and, by " a ſcandalous Submiſſion, give a Sanction to Proceedings *(meaning the* " *ſaid Proceedings of the ſaid Houſe of Commons againſt the ſaid* Alexander " Murray) ſo manifeſtly founded in Oppreſſion and Injuſtice." And in another Part thereof according to the Tenor following, *(to wit,)* " Let " us next behold this Gentleman *(again meaning the ſaid* Alexander Mur-" ray) appealing from the Violence of Power (*meaning from the Order* " *aforeſaid)* to the Protection of Law, and claiming the Benefit of that " ſacred Act, (*meaning the Act of Parliament made in the thirty-firſt Year* " *of the Reign of his late Majeſty King* Charles *the Second, intitu-* " *led*, An Act for the better ſecuring the Liberty of the Subject, " and for Prevention of Impriſonment beyond the Seas) which, " however it may ſometimes have been ſuſpended for the pub-" lic Safety, has ſcarce ever been violated on private Occaſions. " Mr. *Murray* (*again meaning the ſaid* Alexander Murray) having

" determined

" determined to apply for his *Habeas Corpus*, Counsel was first to be pro-
" cured; but who would imagine, that amongst the Swarm of Legal
" Orators, not one of any Eminence was to be found, who had Resolu-
" tion enough to engage in the Cause of so obnoxious a Client? The
" *British* In——n (*meaning Inquisition, that is to say, meaning the said House*
" *of Commons so assembled in Parliament as aforesaid*) had struck such a Pa-
" nic throughout the Regions of Law and Justice, that even the all-pow-
" erful Fee was unable to subdue the Timidity of the mercenary Pro-
" fessors; but at the Request of Lord *Elibank*, an honourable Gentleman*,
" who had long abandoned the Business of the Bar, stood forth, and glo-
" riously despising any Penalty he might incur for vindicating the invaded
" Laws and Constitution of his Country, moved the Court of *King's-*
" *Bench*, that Mr. *Murray* (*again meaning the said* Alexander Murray)
" might be brought up and admitted to Bail." And in another Part there-
of according to the Tenor following, (*to wit*) " Though by this Appli-
" cation Mr. *Murray* (*again meaning the said* Alexander Murray) was
" rescued for a few Hours from his Confinement, it was only to hear the
" Puisne Judges of that Court pronounce the mortifying Sentence of
" his Return to his Dungeon; founded upon this Principle of Law, That
" the House of Commons (*meaning the House of Commons of this Kingdom in*
" *Parliament assembled*) was a superior Court of Judicature to the *King's-*
" *Bench*. Had the Constitution (*meaning the Constitution of this Kingdom*)
" complimented that House (*again meaning the House of Commons of this*
" *Kingdom in Parliament assembled*) with such executive Authority, it
" would certainly have been empowered to examine upon Oath; a Cir-
" cumstance absolutely necessary in the Administration of Justice. What
" then is become of this boasted Barrier of *British* Liberty, the *Habeas*
" *Corpus* Act? (*again meaning the Act of Parliament herein above-mentioned.*)
" What shall distinguish *Britons* from those who groan under the most ar-
" bitrary Governments, if subject to the like tyrannical Acts of Oppression?
" And what shall defend a free People (*meaning the People of* Great-Britain)
" from these, whenever their Representatives (*again meaning the Commons*
" *of this Kingdom in Parliament assembled*) shall think fit to constitute them-
" selves their Judges, and wantonly inflict the severest Pains and Penalties
" by virtue of their mere Will and Pleasure? More especially, as from this
" awful Tribunal (*again meaning the said House of Commons so assembled in*
" *Parliament as aforesaid*) no Appeal is to be permitted, except to that only
" superior one of Heaven; and indeed who knows but even this might be
" tortured into a high Breach of Privilege, as arraigning the Omnipo-
" tence of their terrestrial Jurisdiction (*meaning the Jurisdiction of the said*
" *House of Commons so assembled in Parliament as aforesaid*)?" And in ano-
ther Part thereof according to the Tenor following, (*to wit*) " If there
" lives any one so abandoned to a Love of Slavery, as to remain unmoved
" by this Narrative, I shall leave him in Possession of his Chains, and
" think them the most suitable Ornaments for so degenerate a Member of
" a free Country (*meaning* Great-Britain). But satisfied I am, every
" uncorrupted *Briton* will be roused at a Scene much more becoming the
" Meridian of an Oriental Tyranny than the Region of *British* Liberty; and
" though the Injury done a private Subject of the Community (*again mean-*
" *ing the said* Alexander Murray) should make little Impression; yet, surely,
" the Wound which the Constitution itself (*again meaning the Constitution*
" *of this Kingdom*) has received through him (*again meaning the said* Alex-
" ander Murray) must awake the most alarming Apprehensions. What
" has been the Fate of one (*again meaning the said* Alexander Murray) may
" prove that of Thousands; especially when it is considered, that the States-
" man is no less apt to quote the Authority of Precedent than the Lawyer.
" Who then, at any future Election, (*meaning an Election of a Member to*
" *serve in the Parliament of this Kingdom*) shall be hardy enough to ex-
" ercise the Rights of a free Elector (*meaning a Subject of this Kingdom hav-*
" *ing a Right to vote in the Election of a Member to serve in the Parliament*
" *of this Kingdom*) when even an Approach to the Hustings, without
" a ministerial Passport, has been deemed so criminal? Who, hereafter,
" but must tamely acquiesce in the authoritative Decision of a Returning
" Officer, (*meaning an Officer having a Right to return Members to serve in*
" *the Parliament of this Kingdom*) when a regular Impeachment of it is
" held to be such a Parliamentary Profanation? These Essentials in
" their Creation once removed, must not a House of Commons (*again*
" *meaning the House of Commons of this Kingdom in Parliament assembled*)
" become rather a *Turkish* Divan than a *British* Representative?
" And when this Constitutional Battery (*again meaning the House*
" *of Commons so assembled in Parliament as aforesaid*) raised to defend
" the People (*meaning the People of* Great-Britain) from the Attacks
" of arbitrary Power, shall, by the Intrigues of a State-Engineer,
" be once turned upon them, (*again meaning the People of this King-*
" *dom*) what remains but to surrender at Discretion?---When one Part
" of the Legislature (*again meaning the said House of Commons so assem-*
" *bled in Parliament as aforesaid*) assumes a Privilege peculiar to another,
" or wrests the Cognizance of Causes from those Courts erected for the
" Determination of them, what Confusion will not arise in the System of
" Government? And indeed what Security the People (*again meaning the*
" *People of* Great-Britain) are to expect in such an Anarchy of Adminis-
" tration, the Case of Mr. *Murray* (*again meaning the said* Alexander
" Murray) too fatally evinces. Though the Law of the Land has
" provided, that every Subject shall be tried by his Jury, have we not
" seen a particular Power (*again meaning the said House of Commons so as-*
" *sembled in Parliament as aforesaid*) uniting the three inconsistent Capa-
" cities of Judge, Jury, and Prosecutor? And though an express Pro-
" vision has been made against excessive Pains and Penalties, have not the
" most severe been inflicted (*meaning inflicted upon the said* Alexander
" Murray) even for no Offence? But to conclude in the Words of a Noble
" Author: "*This could not happen if there was the least Spirit among us*
" (again meaning the People of *Great-Britain*); *but there is none. The*
" *Mal-ration we* (again meaning the People of *Great-Britain*) *have seen*
" *practised, is Pusillanimity: Hence it comes that Corruption has spread and*
" *prevails. Consider then you* (again meaning the People of *Great-Britain*)
" *owe to your Country*, (again meaning *Great-Britain*) *to your Honour, to*
" *your Security, to the present and future Ages, that no Endeavours of yours*
" *be wanting to repair the Breach that is made, and is increasing daily, in the*
" *Constitution* (again meaning the Constitution of this Kingdom), *and*
" *to shut up, with all the Bars and Bolts of Laws, the principal Entries*
" *through which these Torrents of Corruption* (*and Oppression*) *have been let in*
" *upon us*" (again meaning the People of *Great-Britain*). To the great
Scandal and Dishonour of all the Commons of this Kingdom in Parlia-
ment assembled, and in high Contempt of their Authority, to the
great Disturbance of the public Peace and Tranquillity of this King-
dom, in Contempt of our said present Sovereign Lord the King and his
Laws, to the evil and pernicious Example of all others in the like Case
offending, and also against the Peace of our said present Sovereign Lord
the King, his Crown, and Dignity. Whereupon the said Attorney-Ge-
neral of our said present Sovereign Lord the King, for our said present
Sovereign Lord the King, prayeth the Consideration of the Court here in
the Premisses, and that due Process of Law may be awarded against him
the said *John Owen* in this Behalf, to make him answer to our said pres-
ent Sovereign Lord the King, touching and concerning the Premisses afore-
said.

The Counsel for the King were,

Sir *Dudley Rider*, Attorney-General,
Mr. *Murray*, Sollicitor-General, } who spoke.
Sir *Richard Lloyd*, King's Counsel.
Mr. *Yorke*, who opened.

Counsel for the Defendant, *William Owen*.

Mr. *Ford*,
Mr. *Pratt*, } who spoke.
Mr. *Williams*,
Mr. *Davy*,
Mr. *Norton*,
Mr. *Gascoigne*,

Special Jury.

Richard Barwell, of *Bread-Street*, Merchant, Foreman.
John Horton, *Old Fish-Street*, Sugar-Baker.
Thomas Smith, *Watling-Street*, Linen-Draper.
Godfrey Lowe, *Friday-Street*, Draper.
Edward Berwick, Ditto.
Richard Bristow, *Bread-Street*, Grocer.
William Woolley, *Cheapside*, Hosier.
Richard Bridgman, *Aldgate High-Street*, Grocer.
Philip Grafton, Ditto, Oilman.
Samuel Lloyd, *Devonshire-Square*, Merchant.
Henry Hall, *St. Helens*, Merchant.
John Tuff, *Bishopsgate-Street*, Grocer.

After Mr. *Yorke* had opened, the Attorney-General began with a De-
tail of the *Westminster* Election, between Lord *Trentham* and Sir *George*
Vandeput, with the ill Usage of the High-Bailiff in the Return. He
then mentioned the House of Commons calling the Rioters to Account,
of whom Mr. *Murray* he said was the principal; the Sentence on Mr.
Murray to be given at the Bar of the House; how merciful for so atroci-
ous a Crime; his Commitment to *Newgate*; his impudent Refusal to
ask Pardon, which was to be Part of his Sentence; his bad State of
Health in *Newgate*, which the House being informed of by his Friends,
ordered him into the Custody of a Messenger, which was more than he
deserved; his Refusal to be removed till the End of the Session, when the
Law discharges him. " Then appeared the most scandalous and astonish-
" ing Libel that ever appeared in the World. *The Case of the Honourable*
" Alexander Murray, *Esq. in an Appeal to the People of* Great-Britain;
" *more particularly the Inhabitants of the City and Liberty of* Westminster.
" The Accused now becomes the Accuser. In it is stated and contained
" Accusations of Partiality, Injustice, Corruption, and Barbarity, of the
" House of Commons. It accuses the House of committing a great
" Breach in our Laws; that House which is the Guardian of our Liber-
" ties, and the Protector of our Properties. It accuses also the *King's-*
" *Bench*, with overturning that Bulwark of our Liberties, the *Habeas*
" *Corpus* Act. Every one must be shocked that reads this wicked, diabo-
" lically wicked, Pamphlet. The Parliament meet again, and vote the
" Pamphlet a Libel: They vote it to be a false, malicious, infamous,
" scandalous, and seditious Libel, tending to create Confusion and Re-
" bellion; at least to sow the Seeds of Rebellion. And to me it is asto-
" nishing, how it could enter into the Mind or Heart of Man to write
" such a Libel. Now, Gentlemen, I shall shew to you the Nature of
" this Libel, and begin in this Order. 1. The Title. 2. The Intro-
" duction. 3. The State of the Case, and the Evidence laid before
" the House of Commons. 4. How considered, and in what Light he
" has put the Sentence of the Commons. 5. How wickedly and malici-
" ously he has insinuated the Thing. And, 6. His Treatment of the
" Court of *King's-Bench*.

" First. What!—shall a Person appeal from the Judgment of that
" Court, who are the only Judges of Things belonging to them, the
" House of Commons, I mean. An Appeal! To whom? to a Mob?
" Must Justice be appealed from? To whom? to Injustice? Appeal to the
" good People of *England*, particularly the Inhabitants of *Westminster*!
" The House of Commons are the good People of *England*, being the
" Representatives of the People. The rest are—what?—nothing—unless
" it be a Mob. And what can be in a Mob but Confusion? But the clear
" Meaning of this Libel was an Appeal to Violence, in Fact; and to stig-
" matize the House; but he durst not speak plain. Then the Pamphlet
" tells you, that his Case is worthy the Consideration of his Fellow-Sub-
" jects; here he shews his Virulence. He says his Commitment is a Prece-
" dent founded on unparalleled Barbarity, striking at our Laws in a most
" shocking Manner. Then he charges the House with sinking mate-
" rial Evidence; which in Fact is accusing the House of Injustice.
" This is a Charge the most shocking, the most severe, and the most
" unjust and virulent, against the good, the tender House of Com-
" mons; that Safeguard of our Liberty, and Guardian of our Wel-
" fare." The next Accusation the Libeller brings against the House

* Sir *John Philips*, Bart.

" is,

" is, on their granting Mr. *Murray*'s Removal, on the Application of " his Phyſicians,—in ſaying—they had a mind to kill Mr. *Murray*, by " removing him in the Midſt of a raging Fever; and on Mr. *Murray*'s " refuſing to go in that Condition, the Houſe, when his Phyſician had " maſtered the Diſtemper, ordered that none ſhould ſee him. Next ac- " cuſing another Court that never injured any one; a Court the moſt " dignified by the Worthineſs of the Members; the Court of *King's-* " *Bench*. Gentlemen, this Libel, to whoſoever reads it, will be found " the moſt pungent Invective that the Skill of Man could invent: I will " not ſay the Skill, but the Wit, Art, and falſe Contrivance of Man, " inſtigated by Satan: An indirect Pamphlet—though not ſaid plain, yet " underſtood; as being underſtood, is a Libel: And to ſay that this is " not a Libel," is to ſay that there is no Juſtice, Equity, or Right in the " World. There can be no Court of Juſtice, if the Houſe of Commons " is not; and if the Houſe of Commons is not to be defended, and have " Protection and Relief at Common Law, yourſelves, your Houſes, can- " not have the Protection of the Law. *The Thing you, Gentlemen of the* " *Jury, are to go on, is, whether the Caſe doth not mean the Houſe of Com-* " *mons; for we ſhall prove to you the Publication: Then you muſt find the* " *Houſe is charged by this Pamphlet to have been guilty of the moſt daring Pro-* " *ſtitution of Power. Can there be a greater Charge?*"

Witneſſes called.

Peter Beck ſwore he bought the Pamphlet of *William Owen*, the 28th of *June*, 1751, at *Homer's Head*, near *Temple-Bar*. Sent by *Ibbot* to buy it, gave 1*s.* 6*d.* for two.—*John Ibbot*, Meſſenger to the Preſs, ſent *Peter Beck* the 28th of *June*, to buy the Pamphlet; and on the 29th he took *Owen* into Cuſtody, and ſeized ſeveral Pamphlets in his Shop.—*Mealin*, the 27th of *June*, 1751, went to *Owen*'s, by Order of his Maſter *Cook*, to buy them: But *Owen* ſaid he had none by him, but he ſhould have them when ready; and in the Afternoon, *William Owen* let him have twelve. —*Cook*, Bookſeller, on the 27th of *June*, the firſt Time he ſaw the Pamphlet advertiſed, ſent his Servant to buy them.—*Langford* and *Shorter* alſo proved *Owen*'s ſelling the Pamphlet.—*Frewen* called to prove the Writ for the Election at *Weſtminſter*.—*Stanhope* proved that there was an Election. —*Barwell*, Clerk of the Houſe of Commons, proved the Proceedings of the Houſe in this Affair.—*The Pamphlet read in Court.*—Then the Attorney-General aſked Mr. *Ford* and Mr. *Pratt*, if he need trouble the Court with proving more and other Things; and ſhould be glad to know what they intended for their Plea and Defence, in order to give the Court as little Trouble as poſſible. Mr. *Ford* anſwered, That in Juſtice to his Client, he could not tell him what they intended for their Defence; but would be ſo far candid with him, as to ſay, he would take Advantage of his Want of Proof; and therefore deſired him to prove all he could.

Mr. Sollicitor then got up and made a ſhort Speech to the following Purport*: " The Queſtion is, *Whether the Jury are ſatisfied that the De-* " *fendant* Owen *publiſhed the Pamphlet? The reſt follows of Courſe. If the* " FACT *is proved, the* LIBEL *proves itſelf, Sedition, Diſturbance*, &c. " Therefore the Printer muſt be affected with every Thing in the Pam- " phlet, *if the Publication is proved, and that is what lies for your* [*the Jury's*] " *Determination; you being Judges of the* FACT, *the Judge determines the* " LAW. But *ſuppoſe* you Judges of the Law, your own Breaſts may tell " you this is a Libel: It accuſes the Houſe of Commons of Injuſtice; " compares them to the *Turkiſh* Divan, meant by the Letters *D——n*; " and the Inquiſition, meant by the Letters *In——n*; and calls them a " bribed Aſſembly. Suppoſe a Pamphlet were publiſhed after this Trial, " that you [the Jury] were perjured and bribed, and this ſpread over the " Kingdom, would it not gall you?—Theſe Sort of Libels can tend to " nothing but Sedition; for how can the Mob or the People redreſs but " by Tumult and Rebellion, and thereby ſubvert the Conſtitution? For " this is a Part of the legiſlative Power; and if a third Part of the Legi- " ſlature is deſtroyed or expoſed, how can that be without riſing in the " Face of the Conſtitution? There have been ſeveral Papers, and Para- " graphs in the Papers, printed on Purpoſe to poiſon the Minds of the " People, and ſeemed calculated to influence the Minds of any Jury that " ſhould be on this Occaſion: But I dare ſay you, Gentlemen, who are " upon your Oaths here to try the Fact, and Caſe, wholly as it is, will " have no Regard to ſuch artful and falſe Inſinuations†. And I know " very well the Counſel on the other Side deſign to take no Advantage " or Notice of theſe falſe and malicious Hints. But as you are upon " your Oaths, *you judge of the* FACTS *we have laid before you, now in Court,* " *and* only *them*; and like honeſt Men bring in your *Verdict accordingly.*"

The next who ſpoke was Mr. *Ford*, for the Defendant, as follows: " The Doctrine laid down by the Gentlemen for the King, that what a " Court of Juſtice does, whether legal or not, is not to be called in " Queſtion, nor any Remonſtrance to be made againſt it, is a Doctrine " that may be full of the moſt fatal Conſequences to all Sorts of Men; " ſince every inferior Court may do the ſame with equal Juſtice; for there " can be no Court but what is legally ſo: Therefore, if legal Courts do " wrong, muſt our Mouths be ſhut, and not complain or petition for " Redreſs? God forbid!—May you, Gentlemen, nor I, ever be ſenſible " of ſuch Injuſtice!—I ſay, if the Caſe can be ſo.—And here the Gen- " tlemen for the King ſeem to endeavour to confine the Counſel for the " Defendant, in their Argument, by ſaying ſuch and ſuch Arguments " will not be uſed; which is, in Fact, hinting that they ſhould not. " Why? If they have Liberty to make uſe of any Argument, Thought, " or Fact, for the King, ſurely the Defendant's Counſel ought to have " the ſame Liberty for their Client. I underſtand not the ſhutting of " Men's Mouths. Let every Man clap his Hand upon his Heart, and " examine how he would like it, was it his own Caſe. Shall a Man be " injured,———or ſuppoſe he fancies himſelf injured, which is the " ſame,———ſhall his Mouth be eternally cloſed, and no Redreſs for " the Injury ever be given; nor no Satisfaction to his own Mind, " for a right underſtanding, and clearing up of what he looked " upon even as an Injury? If Things ſhould come to this Paſs, which " Heaven forbid! what would be the Caſe of us all? We may be " ſcourged, afflicted, and wronged, and all for the Want of Liberty to " complain, and put forth our Caſe: The very Hand that hurts us may " ſtill continue that Preſſure, not knowing of the Grievances done to " thoſe who lie under it; and who, were this Doctrine to be allowed, " muſt ſuffer without Hope of Redreſs; for, unleſs our Mouths are open " to Complaints, there can be no Redreſs for poor ſuffering Mortals: " For how can that be redreſſed which is not known? or that known, " which is not allowed to be mentioned?—May never you, Gentlemen, " nor I, be ſenſible of ſuch a Maxim carried into Practice! Nay, the " very Gentlemen who put it, cannot from their Hearts conſent to it.— " We in this Caſe lie under Diſadvantages enough; our Adverſaries have " great Power; nay, their Power is unknown, even to themſelves, at all " Times; few of them know the Limits of it: It may be almoſt what " they have a mind. Though great, though wiſe this Houſe may be, " yet they are but a Body of Men, and therefore fallible; for it is not in " Men, or Bodies of Men, to be infallible.—By this great Power of the " Houſe of Commons, we, for our Client, are debarred from making " uſe of all the Means of Defence we could againſt other People. Much " might be ſaid, but much we dare not ſay; I own I dare not. But let " me ſuppoſe, only for Argument's Sake, that a Houſe of Commons " may do Wrong, it is not impoſſible for them to err; I do not ſay that " they do in this Caſe: Former Houſes of Commons certainly have err- " ed, and thoſe Errors have been redreſſed by a future Houſe of Com- " mons, and that on a Knowledge of the Caſe by *Complaint:* And if the " Houſe of Commons ever has erred, by the ſame Rule it may err again. " Therefore allow me to ſuppoſe, only for Suppoſition and Argument's " Sake, that the Houſe have done Wrong in their Votes on this Affair " (not that I ſay they have); they have voted this Pamphlet a Libel, and " have turned it over to the Common Law, for the Defendant thereby to " be tried for it; then they have left the Common Law to be Judge of it. " If ſo, ſhould the Defendant's Counſel be debarred (if it was neceſſary, " but which in my Opinion is not) from contradicting, and proving this " to be no Libel; which would, in Fact, be contradicting and oppoſing " the Opinion and Vote of the Houſe of Commons? I only put this by " way of Suppoſition; to ſhew, if theſe Arguments were neceſſary to be " gone upon, the Diſadvantage we lie under. Much might be ſaid, even " on this; but much I dare not ſay. I know not ſcarce what I dare ſay; " but I ſhall not go on this Point, as I think it is not neceſſary to our " preſent Purpoſe; and I hope we can and ſhall be able to ſucceed with- " out it. I only mentioned it, becauſe the Gentlemen on the other Side " ſeemed deſirous ſtill further to ſhut the Mouths of the Defendant's " Counſel, who are under Difficulties enough already. The Houſe of " Commons have voted this Pamphlet a Libel: Great is the Power of a " Vote of that Houſe; and where is the Man who dares find Fault with, " or contradict, the Opinion of the Houſe, eſpecially when voted ſo? I " dare not, and bold muſt be the Man who dares; he knows not the " Riſque he runs, by juſtifying or maintaining a Book not to be a Libel, " when the Houſe of Commons have voted it ſo. That Man may per- " haps have a Vote againſt himſelf; for what cannot a Houſe do, whoſe " Power is ſo great? What therefore I ſhall inſiſt upon is this:

" The FACT charged in the Information is, That the Defendant *Owen*, " publiſhed this Pamphlet, *maliciouſly, ſeditiouſly, ſcandalouſly, and* " *falſely*, to the Calumny of the Houſe of Commons of *Great-Britain*, and " in order to diſturb the Peace of the Nation; and this he has done *wit-* " *tingly, wilfully, maliciouſly, ſcandalouſly*, &c. This is the FACT laid to " his Charge; which the Gentlemen have been very far from PROVING. " Only proving the *Sale* of the Book, does not prove all thoſe *opprobrious* " and hard Terms laid in the Charge againſt him. If his ſelling and pub- " liſhing this Book *maliciouſly*, with a *ſeditious Intent*, *ſcandalouſly* and " *falſely*, with a *Deſign* to calumniate the Houſe of Commons, and in or- " der to diſturb the Peace of the Nation, is not proved, then this great " *Charge* in the Information fails. Let the Gentlemen prove thoſe " Words (the *Intention*) if they mean any thing by them; if they do not " prove theſe Terms, this bad Intent, for in that lies the Crime, then it " is no more than ſelling printed Paper, in which ſurely there can be no " Fault. Then what are theſe Words? If the Gentlemen mean any " thing by them, prove them; if they mean nothing, but Words of " Courſe and Form, let the Gentlemen ſcratch them out, they are need- " leſs; which if they do, their Information will be very defective. But " they will not conſent to ſcratch them out, I am ſure; why then they " muſt mean ſomething by them, which if they do, conſequently they " muſt prove them. Theſe Words conſtitute the Charge, which if they " do not make out, will you, Gentlemen, clap your Hands upon your " Hearts, and ſay this Man is *guilty? Guilty* of what? Nothing; for no- " thing is proved, unleſs ſelling Paper is a Crime. Surely, Gentlemen, " your own Breaſts, your own Conſciences, muſt tell you, when you " conſider of it,—and pray conſider it as your own Caſe, fancy each of " yourſelves here under a rigorous Proſecution, like this poor Man,— " there is no Crime proved, no malicious Intent, no ſeditious Deſign; " therefore not proved guilty of the Crime laid againſt him. If a Man be " even a bad Man, and you all know it, and is accuſed of a Crime he is in- " nocent of, ſurely none will find him guilty of a Crime, when that Crime " is not proved, becauſe you know him to be guilty of other Faults. " Theſe Things are plain, even to a Demonſtration, to every Man. " But this Defendant, whoſe Cauſe you are now Judges of, will appear

* From a Word Mr. *Ford* dropped in aſking one of the Witneſſes a Queſtion, Mr. Sollicitor gueſſed what would be the Scope of his Argument; and thereupon endeavoured to anticipate him; of which Mr. *Ford* afterwards ſeems to take Notice.

† This has Reference to a Letter in the *London Evening-Poſt* of *Saturday, May* 30, 1752.

" to be a Man of very fair Character; well-affected to the Government " and Conſtitution in his Principles; always was, and is a good Sub- " ject; a Member of the Church of *England*, and as well affected to " both Church and State as any Man in *England*. Therefore can any " Man believe, when we ſhall have made this appear by ſeveral Wit- " neſſes, Men of Worth, Subſtance, Honour and Credit, both Clergy " and Laity, that he could be guilty of theſe Things; that he *intended* " this Hurt laid to his Charge? We ſhall prove that he publiſhed more " Papers for the Government, in the late Rebellion, in 1745, and con- " taining the moſt Steadineſs for Government, and the moſt home and " inveterate Things againſt its Enemies, than any Printer of his Time; " ſo that I believe, if the Rebels had gained the Day, his Zeal might " have cauſed his Puniſhment. Will it then appear likely that he is " guilty of theſe Charges laid againſt him?

" I muſt obſerve one Thing, which is, the Danger of your finding a " Verdict SPECIALLY. Suppoſe you find him guilty of *publiſhing* and " ſelling this Book; Guilty includes Guilt, then guilty of what? Selling " Paper.---Where is the Guilt?---Take care, Gentlemen, of being " *deceived*, by finding him guilty any way; by bringing in your Verdict " any way againſt him, you render him liable to the *Conſequences of the* " *whole*; that is, to the ſame Penalties that he would have been liable " to, if he had committed the *whole Crime* laid to his Charge, and that " Charge *fully proved* againſt him. After you have brought in your Ver- " dict, it will be in vain for you to ſay, you did not intend he ſhould be " puniſhed; you only found that he had *publiſhed*, but not committed the " Crime; it will be in vain for you to petition for Mercy, Mercy will " then be in other Hands; it will be out of your Reach; and he will be " at the Mercy of others, who may not look with the ſame Eyes as you: " When you have found him guilty, it will be in other Breaſts to puniſh; " it will then be too late for you to interfere. By finding him guilty, " you do all that you can againſt him, and then it will be out of your " Power to ſerve him. You muſt therefore conſider him *guilty* of this " *great Crime*, and conſequently deſerving of great Puniſhment, or *not*. " But if you think he is not guilty, and not deſerving of great Puniſh- " ment, then he has not committed this great Crime; then conſequently " they have failed in their Information, and he is innocent of it; if " innocent, conſequently not guilty. Mr. Attorney tells you, this " Pamphlet means, and is writ with the *Intent* that is laid in the Infor- " mation; he ſays, becauſe the Pamphlet compares the Parliament to " *In——n*, it muſt certainly mean *Inquiſition*; and in my Opinion it " may, and does as likely, mean *Information*; and I aſſure you, Gentle- " men, I have very little Love for *Information*, as well as Mr. Attorney " for *In——n*; it is certain that theſe Things, which will bear ſeveral " Interpretations, muſt, nor can, have no Weight with you; who ſhould " either put a good Conſtruction upon them, or none at all. You muſt " conſider too, that there is a great Difference between the Author and " the Printer; the Author knew well what he intended, and the whole " Senſe of the Pamphlet; therefore liable to have the Senſe of the " Pamphlet interpreted againſt him; but a Bookſeller may ſell a Book, " and not have any Intent but Profit; and be quite ignorant of the Con- " tents, at leaſt the Spirit of them; therefore it is well worth conſidering " how Intent makes a Crime, and how far not; every Man may err, and " if unintentionally, he cannot be guilty of a Crime before God; and " if ſo, it would be Preſumption in Man, to make any Compariſon of " his own Juſtice; what is not criminal with God, cannot be with Man. " *The Gentlemen on the other Side have not proved the Intention.*"

The Reverend Mr. *Warner*, Mr. *Goſling*, Mr. *Hawkins*, and ſeveral others were called, who proved Mr. *Owen* to be a good Subject, a true Man to the Church of *England*, zealous for the Eſtabliſhment; that he had printed ſeveral Papers for the Government, and would not have publiſhed the Pamphlet, had he known or thought the Contents bad, or any Hurt in them, and the fartheſt Man in *England* from doing ſuch a Thing.

Mr. *Pratt* next roſe up for the Defendant; and having for ſome Time gone upon different Parts of Mr. *Ford*'s Argument (which it cannot be neceſſary to repeat, as Mr. *Ford*'s Speech has juſt been given at length, and as nearly *verbatim* as poſſible), he ſaid, " Then, Gentlemen, to ſhew " you how neceſſary it is to prove the Intention; if there is an Indict- " ment preferred againſt a Man for an Aſſault, with an Intention to " raviſh; the Intention muſt be proved, or elſe the Jury cannot find him " guilty. The ſame of an Aſſault with an Intention to kill, if the In- " tention is not proved, he muſt be acquitted. If he kills, and the In- " tention is not proved, that is, if it is not proved that he killed pre- " meditatedly and of Forethought, it is but Manſlaughter. Therefore " in the Caſe before us, if that Part of the Information is not proved, " that he publiſhed *maliciouſly*, &c. you muſt acquit him.---The Privi- " leges of Parliament are not known to the Common Law; perhaps " they may judge and puniſh: I know not their Privileges, nor perhaps " are they to be known; nay, not known to themſelves wholly: They " may be juſt what they pleaſe. But they have not puniſhed this Man; " they have turned him over to the Common Law, therefore he muſt be " tried by the Common Law. Yet, as hath been juſtly obſerved, they " may take the Thing again into Conſideration, and puniſh him in the " Houſe; and if ſo, he may be puniſhed twice for the ſame Fault, by " two different Sentences; which by the Common Law a Man cannot. " Mr. Attorney will not anſwer for the Houſe of Commons, that it will " not be ſo. Then, Gentlemen, conſider what Injuſtice it would be to " puniſh a Man here, who is at the ſame Time liable to be puniſhed " there, if the Houſe thinks fit.---Much might be ſaid, more than we " dare ſay for our Client in this Caſe: Our Mouths are already half ſhut, " and *the Tenets the Gentlemen on the other Side lay down, are to ſhut them* " QUITE; *but may you, this Nation, nor I, ever feel the Effects of ſuch* " *Tenets, or ſee them put in Practice.* It is a Rule in Law, and a Principle " in Equity, to hear both Sides; therefore we may juſtly complain in this " Caſe. It is a common Proverb (and a very wiſe Chancellor affirmed " that Proverbs were the Wiſdom of a People), *Loſers muſt have Leave to* " *ſpeak.* In the Scripture *Job* complains of the Diſpenſations of Provi- " dence, the Cauſes and Conſequences of which he did not comprehend; " one would imagine, therefore, that as Complaints are ſo natural to Suf- " ferers, they may merit ſome Excuſe where the *Affliction exceeds proper* " *Bounds.* It may be ſaid indeed, they are capable of raiſing a dangerous " Compaſſion. But to prevent this, will it be right to tell a free People, " happen what will, *you ſhall never complain?* Before this is ſaid, it ſhould " be well *conſidered.*" [Mr. *Pratt* then went again upon different Parts of Mr. *Ford*'s excellent Speech, which he enforced in a very ſtrong and fine Manner, and with which he concluded.]

The Attorney-General got up again and made a Reply, the principal Matter in which was, " That in an Indictment for Murder were always " theſe Words, which are Words of Courſe, and of mere Form, *viz.* " *not having the Fear of God before his Eyes*, and *being inſtigated by the Devil.* " Now, according to the Rule laid down by the Gentlemen, this muſt be " proved, which is impoſſible; for the Man would ſay, *he was* not ſo " *inſtigated*, and had *the Fear of God before his Eyes*; and who could prove " that it was otherwiſe? Now this evidently ſhews all thoſe Things to " be merely Matter of Form."

The Chief Juſtice next ſummed up the Evidence; and delivered it *as his Opinion*, that the Jury OUGHT to find the Defendant *guilty*; for he thought the FACT of *Publication* was fully proved; and if ſo, they could not avoid bringing in the Defendant *guilty*.

The Jury went out and ſtayed about two Hours; when they came into the Court, the Foreman anſwered for the reſt, and when the Queſtion was put, he ſaid, *Guilty*; NOT GUILTY, NOT GUILTY, MY LORD—the firſt Word *guilty* being ſaid by Miſtake; upon which there was a loud Huzza; and the Jury went away. But, at the Deſire of the Attorney-General, they were called into Court again, and aſked this leading Queſtion, *viz.* " Gentlemen of the Jury, do you think the Evidence " laid before you, of *Owen's publiſhing* the Book by *ſelling* it, is not ſuffi- " cient to convince you that the ſaid *Owen did ſell this Book?*" At which the Foreman appeared a good deal fluttered; and the Judge repeated the Queſtion; upon which the Foreman, without anſwering the Queſtion, ſaid, " NOT GUILTY, NOT GUILTY;" and ſeveral of the Jurymen ſaid, " That is our Verdict, my Lord, and we abide by it." Upon which the Court broke up; and there was a prodigious Shout in the Hall. The Attorney-General deſired more Queſtions might be aſked, but the Judge would not, neither would the Noiſe permit it.

Note, The Jury could not ſay, to the Queſtion, that the Evidence of publiſhing was not clear, without Perjury; and if the Jury had anſwered *Yes*, and *not* found the Defendant *guilty*, one does not know what might have been done to the Jury, or before whom called. But they found *Owen not guilty* on the *whole* of the Caſe, taking in that which included Guilt or not, and judged as to *Facts*, *Law*, and *Juſtice*, of the *whole*; and therefore did not anſwer that leading Queſtion, which was ſo *artfully* put to them.

NUMBER XXIV.

In the Caſe of Earl FERRERS, April 17, 1760 *.

THE Houſe of Peers unanimouſly found Earl *Ferrers* Guilty of the Felony and Murder whereof he ſtood indicted; and the Earl being brought to the Bar, the High Steward acquainted him therewith; and the Houſe immediately adjourned to the Chamber of Parliament. And having put the following Queſtions to the Judges, adjourned to the next Day:

Firſt, " Whether a Peer indicted of Felony and Murder, and tried " and convicted thereof before the Lords in Parliament, ought to receive " Judgment for the ſame, according to the Proviſions of the Act of " Parliament of the 25th Year of his Majeſty's Reign, intituled, *An* " *Act for better preventing the horrid Crime of Murder?*"

Second, " Suppoſing a Peer ſo indicted and convicted ought by Law " to receive ſuch Judgment as aforeſaid, and the Day appointed by the " Judgment for Execution ſhould lapſe before ſuch Execution done, " whether a new Time may be appointed for the Execution, and by " whom?"

On the 18th, the Houſe then ſitting in the Chamber of Parliament, the Lord Chief Baron, in the Abſence of the Chief Juſtice of the Common Pleas, delivered in Writing the Opinion of the Judges, which they had agreed on, and reduced into Form that Morning.

His Lordſhip added many weighty Reaſons in Support of the Opinion, which he urged with great Strength and Propriety, and delivered with a becoming Dignity.

To the Firſt Queſtion.

" We are all of Opinion, that a Peer indicted of Felony and Mur- " der, and tried and convicted thereof before the Lords in Parliament,

* From Judge *Foſter's Reports*, p. 138, *&c.*

" ought to receive Judgment for the ſame according to the Proviſions of " the Act of Parliament of the 25th Year of his Majeſty's Reign, inti- " tuled, *An Act for better preventing the horrid Crime of Murder.*"

To the Second Queſtion.

" Suppoſing the Day appointed by the Judgment for Execution ſhould " lapſe before ſuch Execution done (which however the Law will not " preſume); We are all of Opinion that a new Time may be appointed " for the Execution, *either by the High Court of Parliament before which* " *ſuch Peer ſhall have been attainted*, or by the Court of *King's-Bench*, the " Parliament not then ſitting; the Record of the Attainder being pro- " perly removed into that Court."

The Reaſons the Judges went upon, in their Anſwer to the firſt Queſtion, are, I preſume, too obvious to be mentioned at large. And the Houſe reſolved and ordered, that Judgment ſhall be pronounced in *Weſtminſter-Hall*, purſuant to the late Act.

The Reaſons upon which the Judges founded their Anſwer to the ſecond, relating to the further Proceedings of the Houſe after the High Steward's Commiſſion diſſolved, which is uſually done upon pronouncing Judgment, may poſſibly require ſome further Diſcuſſion. I will therefore, before I conclude, mention thoſe which weighed with me, and I believe with many others of the Judges.

The Houſe, before they adjourned to the Court-Room in *Weſtminſter-Hall* for pronouncing Judgment, reſolved and ordered, that Execution be reſpited to the 5th Day of *May* following. Upon which Day Execution was done at *Tyburn* purſuant to the Judgment, and the Body delivered at *Surgeons Hall* to be diſſected and anatomized.

[*The Writ to the Sheriffs for Execution, ſee in the Account of his Execution.*]

REASONS, &c.

EVERY Proceeding in the Houſe of Peers, acting in its judicial Capacity, whether upon Writ of Error, Impeachment, or Indictment removed thither by *Certiorari*, is in Judgment of Law a Proceeding before the *King in Parliament*. And therefore the Houſe, in all thoſe Caſes, may not improperly be ſtiled, The Court of our Lord the King in Parliament.

This Court is founded upon immemorial Uſage, upon the Law and Cuſtom of Parliament, and is Part of the original Syſtem of our Conſtitution.

It is open for all the Purpoſes of Judicature during the Continuance of the Parliament: It openeth at the Beginning, and ſhutteth at the End of every Seſſion; juſt as the Court of *King's-Bench*, which is likewiſe in Judgment of Law held before the King himſelf, openeth and ſhutteth with the Term.

The Authority of this Court, or, if I may uſe the Expreſſion, its conſtant Activity for the Ends of public Juſtice, independent of any Special Powers derived from the Crown, is not doubted in the Caſe of Writs of Error from thoſe Courts of Law whence Error lieth in Parliament, and of Impeachments for Miſdemeanors.

It was formerly doubted, whether in the Caſe of an Impeachment for Treaſon, and in the Caſe of an Indictment againſt a Peer for any Capital Crime removed into Parliament by *Certiorari*, whether in theſe Caſes the Court can proceed to Trial and Judgment without an High Steward appointed by ſpecial Commiſſion from the Crown.

This Doubt ſeemeth to have ariſen from the not diſtinguiſhing between a Proceeding in the Court of the High Steward, and that before the King in Parliament. The Name, Stile, and Title of Office is the ſame in both Caſes; but the Office, the Powers and Preheminences annexed to it, differ very widely; and ſo doth the Conſtitution of the Courts where the Offices are executed. The Identity of the Name may have confounded our Ideas, as equivocal Words often do if the Nature of Things is not attended to; but the Nature of the Offices properly ſtated will, I hope, remove every Doubt on theſe Points.

In the Court of the High Steward, he alone is Judge in all Points of Law and Practice; the Peers Triers are merely Judges of Fact, and are ſummoned by virtue of a Precept from the High Steward to appear before him on the Day appointed by him for the Trial, *Ut rei veritas melius ſciri poterit.*

The High Steward's Commiſſion, after reciting that an Indictment hath been found againſt the Peer by the Grand Jury of the proper County, impowereth him to ſend for the Indictment, to convene the Priſoner before him at ſuch Day and Place as he ſhall appoint; then and there to hear and determine the Matter of ſuch Indictment; to cauſe the Peers Triers, *tot et tales per quos rei veritas melius ſciri poterit*, at the ſame Day and Place to appear before him: *Veritate queinde compertâ*, to proceed to Judgment according to the Law and Cuſtom of *England*, and thereupon to award Execution *.

By this it is plain, that the ſole Right of Judicature is, in Caſes of this Kind, veſted in the High Steward; that it reſideth ſolely in his Perſon; and conſequently without this Commiſſion, which is but in Nature of a Commiſſion of *Oyer and Terminer*, no one Step can be taken in order to a Trial. And that when his Commiſſion is diſſolved, which he declareth by breaking his Staff, the Court no longer exiſteth.

But in a Trial of a Peer in full Parliament, or, to ſpeak with legal Preciſion, before the King in Parliament, for a Capital Offence, whether upon Impeachment or Indictment, the Caſe is quite otherwiſe. Every Peer preſent at the Trial, and every Temporal Peer hath a Right to be preſent in every Part of the Proceeding, voteth upon every Queſtion of Law and Fact; and the Queſtion is carried by the major Vote; the High Steward himſelf voting merely as a Peer and Member of that Court, in common with the reſt of the Peers, and in no other Right.

It hath indeed been uſual, and very expedient it is in point of Order and Regularity, and for the Solemnity of the Proceeding, to appoint an Officer for preſiding during the Time of the Trial and until Judgment, and to give him the Stile and Title of Steward of *England*. But this maketh no Sort of Alteration in the Conſtitution of the Court. It is the ſame Court founded in immemorial Uſage, in the Law and Cuſtom of Parliament, whether ſuch Appointment be made or not.

It acteth in its judicial Capacity in every Order made touching the Time and Place of the Trial, the poſtponing the Trial from Time to Time upon Petition, according to the Nature and Circumſtances of the Caſe, the Allowance or Non-allowance of Counſel to the Priſoner, and other Matters relative to the † Trial; and all this before an High Steward hath been appointed. And ſo little was it apprehended, in ſome Caſes which I ſhall mention preſently, that the Exiſtence of the Court depended on the Appointment of an High Steward, that the Court itſelf directed in *what Manner and by what Form of Words he ſhould be appointed.* It hath likewiſe received and recorded the Priſoner's Confeſſion which amounteth to a Conviction, before the Appointment of an High Steward, and hath allowed to Priſoners the Benefit of Acts of General Pardon where they appeared intituled to it, as well without the Appointment of an High Steward, as after his Commiſſion diſſolved.

And when, in the Caſe of Impeachments, the Commons have ſometimes, at Conferences between the Houſes, attempted to interpoſe in Matters preparatory to the Trial, the general Anſwer hath been, " This " is a Point of *Judicature* upon which the Lords will not confer, they " impoſe Silence upon themſelves," or to that Effect. I need not here cite Inſtances; every Man who hath conſulted the Journals of either Houſe hath met with many of them.

I will now cite a few Caſes applicable, in my Opinion, to the preſent Queſtion. And I ſhall confine myſelf to ſuch as have happened ſince the Reſtoration. Becauſe in Queſtions of this Kind, modern Caſes, ſettled with Deliberation, and upon a View of former Precedents, give more Light and Satisfaction, than the deepeſt Search into Antiquity can afford. And alſo becauſe the Prerogatives of the Crown, the Privileges of Parliament, and the Rights of the Subjects in general, appear to me to have been more ſtudied and better underſtood at, and for ſome Years before that Period, than in former Ages.

In the Caſe of the Earl of *Danby* and the Popiſh Lords then under Impeachments, (*Lords Journal*) the Lords on the 6th of *May*, 1679, appointed Time and Place for hearing the Earl of *Danby* by his Counſel upon the Validity of his Plea of Pardon, and for the Trials of the other Lords; and voted an Addreſs to his Majeſty, praying that he would be pleaſed to appoint an High Steward for thoſe Purpoſes.

Theſe Votes were on the next Day communicated to the Commons by Meſſage in the uſual Manner.

On the 8th, at a Conference between the Houſes upon the Subject-matter of that Meſſage, the Commons expreſs themſelves to the following Effect: " They cannot apprehend what ſhould induce your Lordſhips to addreſs " his Majeſty for an High Steward for determining the Validity of the " Pardon which hath been pleaded by the Earl of *Danby*, as alſo for the " Trial of the other five Lords, becauſe they conceive the conſtituting " an High Steward is not neceſſary, but that Judgment may be given in " Parliament upon Impeachment without an High Steward." And concluded with a Propoſition, that for avoiding any Interruption or Delay, a Committee of both Houſes might be nominated to conſider of the moſt proper Ways and Methods of Proceeding.

This Propoſition the Houſe of Peers, after a long Debate, rejected.

Diſſentientibus, Finch ‡ Chancellor, and many other Lords.

However, on the 11th, the Commons Propoſition of the 8th was upon a ſecond Debate agreed to, and the Lord Chancellor, Lord Preſident, and ten other Lords were named of the Committee, to meet and confer with a Committee of the Commons.

The next Day the Lord Preſident reported, that the Committees of both Houſes met that Morning, and made an Entrance into the Buſineſs referred to them. That the Commons deſired to ſee the Commiſſions that are prepared for an High Steward at theſe Trials, and alſo the Commiſſions in the Lord *Pembroke*'s, and the Lord *Morley*'s Caſes.

That to this the Lords Committees ſaid, " The High Steward is but " Speaker *pro Tempore*, and giveth his Vote as well as the other Lords. " This changeth not the Nature of the Court. And the Lords declared " they have Power enough to proceed to Trial, though the King ſhould " not name an High Steward §.

" That this ſeemed to be a Satisfaction to the Commons, provided it " was entered in the *Lords Journal*, which are Records."

Accordingly on the ſame Day, " It is declared and ordered by the " Lords Spiritual and Temporal in Parliament aſſembled, That the Office " of an High Steward upon Trials of Peers upon Impeachments, is " not neceſſary to the Houſe of Peers; but that the Lords may proceed " in ſuch Trials if an High Steward be not appointed according to their " humble Deſire ‖."

On the 13th the Lord Preſident reported, that the Committees of both Houſes had met that Morning, and diſcourſed in the firſt Place on the Matter of a Lord High Steward, and had peruſed former Commiſſions for the Office of High Steward. And then putting the Houſe in mind of the Order and Reſolution of the preceding Day, propoſed from the Committees, that a new Commiſſion might iſſue, ſo as the Words in

* See Lord *Clarendon*'s Commiſſion as High Steward, and the Writs and Precepts preparatory to the Trial in Lord *Morley*'s Caſe. VII. *State Trials.*
† See the Orders previous to the Trial in the Caſes of Lord *Kilmarnock*, Lord *Lovat*, and many other modern Caſes.
‡ Afterwards Earl of *Nottingham.*
§ In the *Commons Journal* of the 15th of *May* it ſtandeth thus: Their Lordſhips further declared to the Committee, that a Lord High Steward was made *hac Vice* only. That notwithſtanding the making of a Lord High Steward the Court remained the ſame, and was not thereby altered, but ſtill remained the Court of Peers in Parliament. That the Lord High Steward was but as a Speaker or Chairman, for the more orderly Proceeding at the Trials.
‖ This Reſolution my Lord Chief Baron referred to and cited in his Argument upon the ſecond Queſtion propoſed to the Judges, which is before ſtated.

the Commiſſion may be thus changed, *viz.* inſtead of, *Ac pro eo quòd officium* Seneſchalli Angliæ *(cujus præſentia in hac parte requiritur) ut accepimus jam vacat*, may be inſerted, *Ac pro eo quod Proceres et Magnates in Parliamento noſtro aſſemblati nobis humiliter ſupplicaverunt ut* Seneſchallum Angliæ *pro hac vice conſtituere dignaremur*; to which the Houſe agreed *.

It muſt be admitted, that Precedents drawn from Times of Ferment and Jealouſy, as theſe were, loſe much of their Weight; ſince Paſſion and Party-Prejudice generally mingle in the Conteſt. Yet let it be remembered, that theſe are Reſolutions in which both Houſes concurred, and in which the Rights of both were thought to be very nearly concerned; the Commons Right of Impeaching with Effect, and the whole Judicature of the Lords in Capital Caſes. For if the Appointment of an High Steward was admitted to be of abſolute Neceſſity, (however neceſſary it may be for the Regularity and Solemnity of the Proceeding during the Trial and until Judgment, which I do not diſpute) every Impeachment may, for a Reaſon too obvious to be mentioned, be rendered ineffectual; and the Judicature of the Lords, in all Capital Caſes, nugatory.

It was from a Jealouſy of this Kind, not at that Juncture altogether groundleſs, and to guard againſt every Thing from whence the Neceſſity of an High Steward in the Caſe of an Impeachment might be inferred, that the Commons propoſed, and the Lords readily agreed to the Amendment in the Steward's Commiſſion, which I have already ſtated. And it hath, I confeſs, great Weight with me, that this Amendment, which was at the ſame Time directed in the Caſes of the five Popiſh Lords when Commiſſions ſhould paſs for their Trials, hath taken Place in every Commiſſion upon Impeachments for Treaſon ſince that Time †. And I cannot help remarking, that in the Caſe of Lord *Lovat*, when neither the Heat of the Times, nor the Jealouſy of Parties had any Share in the Proceeding, the Houſe ordered, "That the Commiſſion for appointing a "Lord High Steward ſhall be in the like *Form* as that for the Trial of "the Lord Viſcount *Stafford*, as entered in the Journal of this Houſe on "the 30th of *November*, 1680, except that the ſame ſhall be in the *Engliſh* "Language ‡."

I will make a ſhort Obſervation on this Matter.

The Order in the 13th of *May*, 1679, for varying the Form of the Commiſſion, was, as appeareth by the Journal, plainly made in conſequence of the Reſolution of the 12th, and was founded on it; and conſequently the conſtant, unvarying Practice with regard to the new Form, goeth in my Opinion a great way towards ſhewing that in the Senſe of all ſucceeding Times that Reſolution was not the Reſult of Faction or a blameable Jealouſy, but was founded in ſound Reaſon and true Policy.

It may be objected, that the Reſolution of the 12th of *May*, 1679, goeth no further than to a Proceeding upon Impeachment.

The Letter of the Reſolution, it is admitted, goeth no further, but this is eaſily accounted for. A Proceeding by Impeachment was the Subject-Matter of the Conference, and the Commons had no Pretence to interpoſe in any other. But what ſay the Lords? *The High Steward is but as a Speaker or Chairman* pro Tempore, *for the more orderly Proceeding at the Trials; the Appointment of him doth not alter the Nature of the Court, which ſtill remaineth the Court of the Peers in Parliament.* From theſe Premiſes they draw the Concluſion I have mentioned. Are not theſe Premiſes equally true in the Caſe of a Proceeding upon Indictment? They undoubtedly are.

It muſt likewiſe be admitted, that in the Proceeding upon Indictment, the High Steward's Commiſſion hath never varied from the antient Form in ſuch Caſes; the Words objected to by the Commons, *Ac pro eo quod officium* Seneſchalli Angliæ *(cujus præſentia in hac parte requiritur) ut accepimus jam vacat*, are ſtill retained. But this proveth no more than that the Great Seal having no Authority to vary in Point of Form, hath from Time to Time very prudently followed antient Precedents.

I have already ſtated the Subſtance of the Commiſſion in a Proceeding in the Court of the High Steward. I will now ſtate the Subſtance of that in a Proceeding in the Court of the Peers in Parliament. And ſhall make uſe of that in the Caſe of the Earl of *Kilmarnock* and others, as being the lateſt, and in Point of Form agreeing with the former Precedents.

The Commiſſion, after reciting that *William* Earl of *Kilmarnock*, &c. ſtand indicted before Commiſſioners of Gaol-Delivery in the County of *Surry*, for High Treaſon, in levying War againſt the King; and that the King intendeth, that the ſaid *William* Earl of *Kilmarnock*, &c. ſhall be heard, examined, ſentenced, and adjudged before *Himſelf in this preſent* Parliament touching the ſaid Treaſon; and for that the Office of Steward of *Great-Britain* (*whoſe Preſence is required upon this Occaſion*) is now vacant as we are informed, appointeth the then Lord Chancellor Steward of *Great-Britain*, to bear, execute, and exerciſe (for this Time) the ſaid Office, with all Things due and belonging to the ſame Office *in that Behalf*.

What therefore are the Things due and belonging to the Office *in a Caſe of this Kind?* Not, as in the Court of the High Steward, a Right of Judicature. For the Commiſſion itſelf ſuppoſeth that Right to reſide in a Court then ſubſiſting before the King and Parliament. The Parties are to be *there* heard, ſentenced, and adjudged. What Share in the Proceeding doth the High Steward then take? By the Practice and Uſage of the Court of the Peers in Parliament, he giveth his Vote as a Member thereof with the reſt of the Peers; but for the Sake of Regularity and Order he preſideth during the Trial and until Judgment as Chairman or Speaker, *pro Tempore*. In that reſpect therefore it may be properly enough ſaid, that his Preſence is required during the Trial and until Judgment, *and in no other*. Herein I ſee no Difference between the Caſe of an Impeachment and of an Indictment.

I ſay, during the Time of the Trial and until Judgment, becauſe the Court hath, as I obſerved before, from Time to Time, done various Acts plainly judicial before the Appointment of an High Steward, and where no High Steward hath ever been appointed, and even after the Commiſſion diſſolved.

I will to this Purpoſe cite a few Caſes.

I begin with the lateſt, becauſe they are the lateſt, and were ruled with great Deliberation, and for the moſt Part upon a View of former Precedents.

In the Caſe of the Earl of *Kilmarnock* and others, the Lords, on the 24th of *June*, 1746, ordered that a Writ or Writs of *Certiorari* be iſſued for removing the Indictments before the Houſe. And on the 26th the Writ, *which is made returnable before the King in Parliament*, with the Return and Indictments, was received and read. On the next Day upon the Report of the Lords Committees, that they had been attended by the two Chief Juſtices and Chief Baron, and had heard them touching the Conſtruction of the Act of the 7th and 8th of King *William* "for regulating "Trials in Caſes of High Treaſon and Miſpriſion of Treaſon," the Houſe, upon reading the Report, came to ſeveral Reſolutions founded for the moſt Part on the Conſtruction of that Act. What that Conſtruction was, appeareth from the Lord High Steward's Addreſs to the Priſoners juſt before their Arraignment. Having mentioned that Act as one happy Conſequence of the Revolution, he addeth, "However injuriouſly that "Revolution hath been traduced, whatever Attempts have been made to "ſubvert this happy Eſtabliſhment founded on it, your Lordſhips will "now have the Benefit of that Law *in its full Extent*."

I need not after this mention any other judicial Acts done by the Houſe in this Caſe before the Appointment of the High Steward, many there are. For the putting a Conſtruction upon an Act relative to the Conduct of the Court, and the Right of the Subject at the Trial and in the Proceedings preparatory to it; and this in a Caſe entirely new, and upon a Point, to ſay no more in this Place, not extremely clear; was undoubtedly an Exerciſe of Authority proper only for a Court having full Cognizance of the Cauſe.

I will not minutely enumerate the ſeveral Orders made preparatory to the Trial of Lord *Lovat*, and in the ſeveral Caſes I ſhall have Occaſion to mention, touching the Time and Place of the Trial, the Allowance or Non-allowance of Counſel, and other Matters of the like Kind, all plainly judicial, becauſe the like Orders occur in all the Caſes where a Journal of the preparatory Steps hath been publiſhed by Order of the Peers. With regard to Lord *Lovat*'s Caſe, I think the Order directing the Form of the High Steward's Commiſſion which I have already taken Notice of, is not very conſiſtent with the Idea of a Court whoſe Powers can be ſuppoſed to depend at any Point of Time upon the Exiſtence or Diſſolution of that Commiſſion.

In the Caſe of the Earl of *Derwentwater* and the other Lords impeached at the ſame Time, the Houſe received and recorded the Confeſſion of thoſe of them who pleaded Guilty long before the *Teſte* of the High Steward's Commiſſion; which iſſued merely for the Solemnity of giving Judgment againſt them upon their Conviction.

This appeareth by the Commiſſion itſelf (*See the Proceedings in Vol.* VI.). It reciteth, that the Earl of *Derwentwater* and others *coram nobis in præſenti parliamento* had been impeached by the Commons for High Treaſon, and had *coram nobis in præſenti parliamento* pleaded Guilty to that Impeachment; and that the King, intending that the ſaid Earl of *Derwentwater* and others *de et pro Proditione unde ipſi ut præfertur impetit' accuſat' et convict' exiſtunt coram nobis in præſenti parliamento ſecundum legem et conſuetudinem hujus regni noſtri* Magnæ Britanniæ, *audientur, ſententientur, et adjudicentur*, conſtituteth the then Lord Chancellor High Steward (*hac vice*) to do and execute all Things which to the Office of High Steward in that Behalf do belong.

The receiving and recording the Confeſſion of the Priſoners, which amounted to a Conviction, ſo that nothing remained but proceeding to Judgment, was certainly an Exerciſe of judicial Authority, which no Aſſembly, how great ſoever, not having full Cognizance of the Cauſe, could exerciſe.

In the Caſe of Lord *Salisbury*, who had been impeached by the Commons for High Treaſon, the Lords upon his Petition allowed him the Benefit of the Act of General Pardon paſſed in the ſecond Year of *William* and *Mary*, ſo far as to diſcharge him from his Impriſonment, upon a Conſtruction they put upon that Act, *no High Steward ever having been appointed in that Caſe*.

On the 2d of *October*, 1690, upon reading the Earl's Petition, ſetting forth that he had been a Priſoner for a Year and nine Months in the *Tower*, notwithſtanding the late Act of Free and General Pardon, and praying to be diſcharged; the Lords ordered the Judges to attend on the *Monday* following to give their Opinions, whether the ſaid Earl be pardoned by the Act. On the 6th the Judges delivered their Opinions, That if his Offence was committed before the 13th of *February*, 1688, and not in *Ireland*, or beyond the Seas, he is pardoned. Whereupon it was ordered, that he be admitted to Bail; and the next Day he and his Sureties entered into a Recognizance of Bail, himſelf in 10,000*l.* and two Sureties in 5000*l.* each; and on the 30th he and his Sureties were, after a long Debate, diſcharged from their Recognizance.

It will not be material to enquire, whether the Houſe did right in diſcharging the Earl without giving the Commons an Opportunity of being heard. Since in Fact, they claimed and exerciſed a Right of Judicature without an High Steward, which is the only Uſe I make of this Caſe.

They did the ſame in the Caſe of the Earl of *Carnwarth*, the Lords *Widdrington* and *Nairn*, long after the High Steward's Commiſſion diſſolved.

Theſe Lords had Judgment paſſed on them at the ſame Time that Judgment was given againſt the Lords *Derwentwater*, *Nithſdale*, and *Kenmure*, (*State-Trials*, Vol. VI.) and Judgment being given, the High Steward immediately broke his Staff, and declared the Commiſſion diſſolved. They continued Priſoners in the *Tower* under Reprieves till the paſſing the Act of General Pardon in the 3d of King *George* the Firſt.

On the 21ſt of *November*, 1717, the Houſe being informed that theſe Lords had ſeverally entered into Recognizances before one of the Judges of the Court of *King's-Bench* for their Appearance in the Houſe

* This Amendment aroſe from an Exception taken to the Commiſſion by the Committee for the Commons, which as it then ſtood did in their Opinion imply that the conſtituting a Lord High Steward was neceſſary. Whereupon it was agreed by the whole Committee of Lords and Commons, that the Commiſſion ſhould be recalled, and a new Commiſſion according to the ſaid Amendment iſſue, to bear Date after the Order and Reſolution of the 12th. *Commons Journal* of the 15th of *May*.

† See in the *State-Trials* the Commiſſions in the Caſes of the Earl of *Oxford*, Earl of *Derwentwater* and others, Lord *Winton*, (Vol. VI.) and Lord *Lovat*.

‡ See the Proceedings printed by Order of the Houſe of Lords. (4th *Feb.* 1746.)

in

in this Seſſion of Parliament, and that the Lords *Carnwarth* and *Widdrington* were attending accordingly, and that the Lord *Nairn* was ill at *Bath*, and could not then attend, the Lords *Carnwarth* and *Widdrington* were called in; and ſeverally at the Bar prayed that their Appearance might be recorded, and likewiſe prayed the Benefit of the Act (3 *Geo.* I. *c.* 19.) for his Majeſty's General and Free Pardon.

Whereupon the Houſe ordered that their Appearance be recorded; and that they attend again To-morrow in order to plead the Pardon. And the Recognizance of the Lord *Nairn* was reſpited till that Day Fortnight.

On the Morrow the Lords *Carnwarth* and *Widdrington* then attending, were called in; and the Lord Chancellor acquainted them ſeverally that it appeared by the Records of the Houſe, that they ſeverally ſtood attainted of High-Treaſon, and aſked them ſeverally what they had to ſay why they ſhould not be remanded to the *Tower* of *London*.

Thereupon they ſeverally upon their Knees prayed the Benefit of the Act, and that they might have their Lives and Liberty purſuant thereunto.

And the Attorney-General, who then attended for that Purpoſe, declaring that he had no Objection on his Majeſty's Behalf to what was prayed, conceiving that thoſe Lords, not having made any Eſcape ſince their Conviction, were intitled to the Benefit of the Act, (*ſee Sect.* 45. *of the* 3*d* Geo. I.) the Houſe, after reading the Clauſe in the Act relating to that Matter, agreed that they ſhould be allowed the Benefit of the Pardon as to their Lives and Liberties, and diſcharged their Recognizances; and gave them Leave to depart without further Day given for their Appearance.

On the 6th of *December* following, the like Proceedings were had, and the like Orders made in the Caſe of Lord *Nairn*.

I obſerve that the Lord Chancellor did not aſk theſe Lords, what they had to ſay, *why Execution ſhould not be awarded*. There was, it is probable, ſome little Delicacy as to that Point. But ſince the Allowance of the Benefit of the Act as to Life and Liberty, which was all that was prayed, was an effectual Bar to any future Impriſonment on that Account, and alſo to Execution, and might have been pleaded as ſuch in any Court whatſoever; the whole Proceeding muſt be admitted to have been in a Court having compleat Juriſdiction in the Caſe, notwithſtanding the High Steward's Commiſſion had been long diſſolved. Which is all the Uſe I intended to make of this Caſe.

I will not recapitulate: The Caſes I have cited, and the Concluſions drawn from them, are brought into a very narrow Compaſs. I will only add, that it would ſound extremely harſh to ſay, that a Court of Criminal Juriſdiction founded in immemorial Uſage, and held in Judgment of Law before the *King himſelf*, can *in any Event whatever* be under an utter Incapacity of proceeding to Trial and Judgment either of Condemnation or Acquittal, the ultimate Objects of every Criminal Proceeding, without certain ſupplemental Powers derived from the Crown.

Theſe Caſes, with the Obſervations I have made on them, I hope, ſufficiently warrant the Opinion of the Judges upon that Part of the ſecond Queſtion in the Caſe of the late Earl *Ferrers* which I have already mentioned. And alſo what was advanced by the Lord Chief Baron in his Argument on that Queſtion, "That though the Office of High Steward "ſhould happen to determine before Execution done according to the "Judgment, yet the Court of the Peers in Parliament, where that "Judgment was given, would ſubſiſt for all the Purpoſes of Juſtice du-"ring the Sitting of the Parliament." And conſequently that in the Caſe ſuppoſed by the Queſtion, that Court might appoint a new Day for the Execution.

An Account of the Execution of the late Laurence *Earl* Ferrers, *Viſcount* Tamworth, *and of his Lordſhip's Behaviour, from the Time of his being delivered into the Cuſtody of the Sheriffs of* London *and* Middleſex, *until the Time of his Execution. By the Authority of the Sheriffs.*

ON *Friday* the ſecond Day of *May*, 1760, the Sheriffs of *London* and *Middleſex* received the following *Writ* under the *Great Seal of Great-Britain*, for the *Execution* of *Laurence* Earl *Ferrers*, Viſcount *Tamworth*, on the *Monday* following.

"*George* the Second, by the Grace of God of *Great-Britain*, *France* and "*Ireland*, King, Defender of the Faith, and ſo forth, To the *Sheriffs* of "*London* and *Sheriff* of *Middleſex*, greeting. Whereas *Laurence* Earl "*Ferrers*, Viſcount *Tamworth*, hath been indicted of Felony and Mur-"der by him done and committed; which ſaid Indictment hath been cer-"tified before us in our preſent Parliament, and the ſaid *Laurence* Earl "*Ferrers*, Viſcount *Tamworth*, hath been thereupon arraigned, and up-"on ſuch Arraignment hath pleaded Not Guilty: And the ſaid *Laurence* "Earl *Ferrers*, Viſcount *Tamworth*, hath before us in our ſaid Parlia-"ment been tried, and in due Form of Law convicted thereof: And "whereas Judgment hath been given in our ſaid Parliament, That the "ſaid *Laurence* Earl *Ferrers*, Viſcount *Tamworth*, ſhall be hanged by the "Neck till he is dead, and that his Body be diſſected and anatomized, "the Execution of which Judgment yet remains to be done: We re-"quire, and by theſe Preſents ſtrictly command you, that upon *Monday* "*the fifth Day of* May *Inſtant*, *between the Hours of Nine in the Morning* "*and One in the Afternoon of the ſame Day*, him the ſaid *Laurence* Earl "*Ferrers*, Viſcount *Tamworth*, without the Gate of our *Tower* of *Lon-*"*don*, (to you then and there to be delivered, as by another Writ to the "Lieutenant of our *Tower* of *London*, or to his Deputy directed, we have "commanded) into your Cuſtody you then and there receive; and him "in your Cuſtody ſo being, you forthwith convey to the accuſtomed "Place of Execution at *Tyburn*, and that you do cauſe Execution be "done upon the ſaid *Laurence* Earl *Ferrers*, Viſcount *Tamworth*, in your "Cuſtody ſo being, in all Things according to the ſaid Judgment. "And this you are by no Means to omit at your Peril. Witneſs Ourſelf "at *Weſtminſter* the *ſecond* Day of *May*, in the *thirty-third* Year of our "Reign.

"YORKE and YORKE."

Upon the Receipt of this Writ, the Sheriffs immediately iſſued their Orders for making all the neceſſary Preparations for the Execution, and for the Performance of it in a Manner ſuitable to his Lordſhip's Rank.

When the foregoing Precept was delivered to the Sheriffs, they had Notice of the following Writ being ſent to the Lieutenant of the *Tower* of *London* or his Deputy, for the Delivery of his Lordſhip into their Cuſtody.

"*George* the Second, by the Grace of God of *Great-Britain*, *France* "and *Ireland*, King, Defender of the Faith, and ſo forth, To the *Lieu-*"*tenant* of our *Tower* of *London* or his Deputy, greeting. Whereas *Lau-*"*rence* Earl *Ferrers*, Viſcount *Tamworth*, hath been indicted of Felony "and Murder by him done and committed, which ſaid Indictment hath "been certified before us in our preſent Parliament; and the ſaid *Lau-*"*rence* Earl *Ferrers*, Viſcount *Tamworth*, hath been thereupon arraigned, "and upon ſuch Arraignment hath pleaded Not Guilty; and thereupon "the ſaid *Laurence* Earl *Ferrers*, Viſcount *Tamworth*, hath before us in "our ſaid Parliament been tried, and in due Form of Law convicted "thereof, and for the ſame is adjudged to ſuffer Death, the Execution of "which Judgment yet remains to be done; We require, and by theſe "Preſents ſtrictly command you, That upon *Monday the fifth Day of* "May *Inſtant*, *between the Hours of Nine in the Morning and One in the* "*Afternoon of the ſame Day*, him the ſaid *Laurence* Earl *Ferrers*, Viſcount "*Tamworth*, unto the uſual Place without the Gate of the ſaid *Tower* you "bring, and him to the *Sheriffs* of *London* and *Middleſex* then and there "deliver; which ſaid Sheriffs, by another Writ to them directed, we "have commanded then and there to receive the ſaid *Laurence* Earl *Fer-*"*rers*, Viſcount *Tamworth*, that Execution of the aforeſaid Judgment "may be done in Manner and Form as to the ſaid *Sheriffs* of *London* and "*Middleſex* we by our ſaid other Writ have commanded; and this you "are by no Means to omit at your Peril. Witneſs Ourſelf at *Weſtminſter* "the *ſecond Day* of *May*, in the *thirty-third* Year of our Reign.

"YORKE and YORKE."

In Obedience to theſe Commands, the *Sheriffs*, *on* Monday *the* 5*th Day of* May, being attended by their Under-Sheriffs, and other proper Officers, went to the *Outward Gate* of the *Tower* of *London*, and *at Nine o'Clock in the Morning* ſent Notice to the Lieutenant that they were there, ready to receive the Body of *Laurence* Earl *Ferrers*, Viſcount *Tamworth*, purſuant to the King's Writ in that Behalf.

His Lordſhip being informed of it, ſent a Meſſage to the Sheriffs, requeſting their Permiſſion that he might go in his own Landau, which was waiting for him within the *Tower*, inſtead of the Mourning-Coach which had been provided by his Friends; which Requeſt being granted, his Lordſhip, attended by the Reverend Mr. *Humphries*, the Chaplain of the *Tower*, entered into his Landau, drawn by ſix Horſes, and was conducted in it, by the Officers of the *Tower*, to the Outward Gate, and there delivered into the Cuſtody of the Sheriffs, upon their giving the following Receipt:

Tower-Hill, 5*th May*, 1760.

"Received then of *Charles Rainsford*, Eſq. Deputy-Lieutenant of the "*Tower* of *London*, the Body of the within-named *Laurence* Earl *Ferrers*, "Viſcount *Tamworth*, delivered to us in Obedience of the King's Writ, "of which the within is a true Copy.

GEO. ERRINGTON, *Sheriffs of* London, *and*
PAUL VAILLANT. *Sheriff of* Middleſex.

Mr. Sheriff *Vaillant* accompanied his Lordſhip in the Landau from the *Tower* Gate to the Place of Execution; and, upon his Entrance into it, addreſſing himſelf to his Lordſhip, he told him, *That it gave him the higheſt Concern to wait upon him upon ſo melancholy an Occaſion, but that he would do every Thing in his Power to render his Situation as eaſy as poſſible; and hoped that, whatever he did, his Lordſhip would impute to the neceſſary Diſcharge of his Duty.*——To which his Lordſhip anſwered, *Sir, I am very much obliged to you,—I take it very kindly that you are pleaſed to accompany me.*—His Lordſhip being dreſſed in a Suit of light Cloaths, embroidered with Silver, ſaid, *You may, perhaps, Sir, think it ſtrange to ſee me in this Dreſs, but I have my particular Reaſons for it.*

The *Civil* and *Military* Powers attended the Sheriffs from thence to the Place of Execution, and the Proceſſion was as follows:——

Firſt, a very large Body of the Conſtables for the County of *Middleſex* (the greateſt probably that had ever been aſſembled together upon any Occaſion), preceded by one of the High-Conſtables.

Then a Party of Horſe-Grenadiers, and a Party of Foot;

Then Mr. Sheriff *Errington* in his Chariot, accompanied therein by his Under-Sheriff Mr. *Jackſon*;

Then followed the Landau, eſcorted by two other Parties of Horſe-Grenadiers and Foot;

Then Mr. Sheriff *Vaillant*'s Chariot, in which was his Under-Sheriff Mr. *Nicols*;

Then a Mourning-Coach and Six;

And, laſtly, a Hearſe and Six, which was provided for the Conveyance of his Lordſhip's Corpſe from the Place of Execution to *Surgeons-Hall*.

The Proceſſion was conducted with the utmoſt Solemnity; but moved ſo very ſlow, that it did not reach the Place of Execution till a *Quarter before Twelve*, ſo that his Lordſhip was *Two Hours and Three Quarters* in the Landau; during the whole of which Time he appeared to be perfectly eaſy and compoſed, and his decent Deportment ſeemed greatly to affect the Minds of all that beheld him; inſomuch that although his Lordſhip thus paſſed through many hundred thouſand Spectators, yet ſo reſpectful was the Behaviour of all towards him, that not the leaſt Affront or Indignity was offered to him by any one; but, on the contrary, many Perſons ſaluted him with their Prayers for his Salvation.

His Lordſhip aſked the Sheriff, *If he had ever ſeen ſo great a Concourſe of People before?* and upon his anſwering that he had not; *I ſuppoſe*, ſaid his Lordſhip, *it is, becauſe they never ſaw a* Lord *hanged before.* He ſaid, *that he had wrote to the King, to beg that he might ſuffer where his Anceſtor the Earl of* Eſſex *had ſuffered; and that he was in the greater Hopes of obtaining that Favour,*

vour, as he had the Honour of quartering Part of the ſame Arms, and of being allied to his Majeſty;---and that he thought it was hard that he muſt die at the Place appointed for the Execution of Common Felons.---But whatever his Lordſhip's Thoughts were upon that Account, thoſe Conſiderations will for ever throw an additional Luſtre on his Majeſty's Impartiality and Juſtice.

Mr. *Humphries* the Chaplain, who, it ſeems, had not attended his Lordſhip till this Morning, took Occaſion to obſerve, that *the World would naturally be very inquiſitive concerning the Religion his Lordſhip profeſſed*; and aſked him, *If he choſe to ſay any Thing upon that Subject?* To which his Lordſhip anſwered, *That he did not think himſelf at all accountable to the World for his Sentiments on Religion; but that he had always believed in, and adored* One God, *the Maker of all Things;---that whatever his Notions were, he had never propagated them, or endeavoured to gain any Perſons over to his Perſuaſion;---that all* Countries *and* Nations *had a Form of Religion by which the People were governed, and that whoever diſturbed them in it, he looked upon him as an Enemy to Society;---but that, if he himſelf was wrong in his Way of thinking, he was very ſorry for it.---That he very much blamed my Lord* Bolingbroke, *for permitting his* Sentiments on Religion *to be* publiſhed *to the* World.---*That the many* Sects *and* Diſputes *which happen about* Religion, *have almoſt turned* Morality *out of Doors.---That he could never believe what ſome* Sectaries *teach, that* Faith alone *will ſave Mankind; ſo that if a Man, juſt before he dies, ſhould ſay only,* I believe, *that* that *alone will ſave him;*—" *Shew me thy Faith.*"——Here his Lordſhip ſtopped;—but by which Quotation he plainly meant, according to the Holy Writer, (*St. James, chap.* ii. *ver.* 18.) whoſe Words they are, that *Faith without Works is a dead Faith.*

Concerning the unfortunate and much-to-be lamented Mr. *Johnſon, whoſe Death occaſioned the Trouble of this Day,* his Lordſhip declared, *That he was under particular Circumſtances; that he had met with ſo many Croſſes and Vexations he ſcarce knew what he did*; and moſt ſolemnly proteſted, *that he had not the leaſt Malice towards him.*

The Slowneſs of the Proceſſion made this *Journey* appear ſo very tedious to his Lordſhip, that *he often expreſſed his Deſire of being got to the End of it,* ſaying, *that the* Apparatus of Death, *and the paſſing through ſuch Crowds of People, were ten times worſe than Death itſelf*; but upon the Sheriff's taking Notice to his Lordſhip, that he was glad to ſee that he ſupported himſelf ſo well, his Lordſhip replied, *I thank you, Sir, I hope I ſhall continue ſo to the laſt.*

When his Lordſhip had got to that Part of *Holborn* which is near *Drury-Lane*, he ſaid, *he was thirſty, and ſhould be glad of a Glaſs of Wine and Water*; but upon the Sheriff's remonſtrating to him, that *a Stop for that Purpoſe would neceſſarily draw a greater Crowd about him, which might poſſibly diſturb and incommode him; yet if his Lordſhip ſtill deſired it, it ſhould be done*; he moſt readily anſwered,---*That's true, I ſay no more, let us by no means ſtop.*

When they approached near the Place of Execution, his Lordſhip told the Sheriff, *That there was a Perſon waiting in a Coach near there, for whom he had a very ſincere Regard, and of whom he ſhould be glad to take his Leave before he died*; to which the Sheriff anſwered, That *if his Lordſhip inſiſted upon it, it ſhould be ſo; but that he wiſhed his Lordſhip, for his own Sake, would decline it, leſt the Sight of a Perſon, for whom he had ſuch a Regard, ſhould unman him, and diſarm him of the Fortitude he poſſeſſed.*—To which his Lordſhip, without the leaſt Heſitation, replied, *Sir, if you think I am wrong, I ſubmit*; and upon the Sheriff's telling his Lordſhip, that if he had any Thing to deliver to that Perſon, or any one elſe, he would faithfully do it; his Lordſhip thereupon delivered to the Sheriff a Pocket-Book, in which was a Bank-Note, and a Ring, and a Purſe with ſome Guineas, in order to be delivered to that Perſon, and which was done accordingly.

The Landau being now advanced to the Place of Execution, his Lordſhip alighted from it, and aſcended upon the *Scaffold*, which was covered with black Baize, with the ſame Compoſure and Fortitude of Mind he had enjoyed from the Time he left the *Tower*; where, after a ſhort Stay, Mr. *Humphries* aſked his Lordſhip, if he choſe to ſay Prayers? which he declined; but upon his aſking him, *If he did not chooſe to join with him in the* Lord's Prayer? he readily anſwered, *He would, for he always thought it a very fine Prayer*; upon which they knelt down together upon two Cuſhions, covered with black Baize, and his Lordſhip with an audible Voice very devoutly repeated the *Lord's Prayer*, and afterwards, with great Energy, the following Ejaculation, *O God, forgive me all my Errors, ---pardon all my Sins!*

His Lordſhip then riſing, took his Leave of the Sheriffs and the Chaplain; and after thanking them for their many Civilities, he preſented his Watch to Mr. Sheriff *Vaillant*, which he deſired his Acceptance of; and ſignified his Deſire, *that his Body might be buried at* Breden *or* Stanton, *in* Leiceſterſhire.

His Lordſhip then called for the *Executioner*, who immediately came to him, and aſked him Forgiveneſs; upon which his Lordſhip ſaid, *I freely forgive you, as I do all Mankind, and hope myſelf to be forgiven.*——He then intended to give the Executioner five Guineas, but, by Miſtake, giving it into the Hands of the Executioner's *Aſſiſtant*, an unſeaſonable Diſpute enſued between thoſe unthinking Wretches, which Mr. Sheriff *Vaillant* inſtantly ſilenced.

The Executioner then proceeded to do his Duty, to which his Lordſhip, with great Reſignation, ſubmitted.---His Neckcloth being taken off, a white Cap, which his Lordſhip had brought in his Pocket, being put upon his Head, his Arms ſecured by a black Saſh from incommoding himſelf, and the Cord put round his Neck, he advanced by three Steps upon an Elevation in the Middle of the Scaffold, where Part of the Floor had been raiſed about eighteen Inches higher than the reſt; and ſtanding under the Croſs-Beam which went over it, covered with black Baize, he aſked the Executioner, *Am I right?*——Then the Cap was drawn over his Face:---*and, then!*---upon a Signal given by the Sheriff (for his Lordſhip, upon being before aſked, declined to give one himſelf) that Part upon which he ſtood, inſtantly ſunk down from beneath his Feet, and left him entirely ſuſpended; but not having ſunk down ſo low as was deſigned, it was immediately preſſed down, and levelled with the reſt of the Floor.

For a few Seconds his Lordſhip made ſome Struggles againſt the Attacks of Death, but was ſoon eaſed of all Pain by the Preſſure of the Executioner.

From the Time of his Lordſhip's aſcending upon the Scaffold, until his Execution, was about *eight Minutes*; during which his Countenance did not change, nor his Tongue faulter:---The Proſpect of Death did not at all ſhake the Compoſure of his Mind.

Whatever were his Lordſhip's Failings, his Behaviour in theſe his laſt Moments, which created a moſt awful and reſpectful Silence amidſt the numberleſs Spectators, cannot but make a ſenſible Impreſſion upon every humane Breaſt.

The accuſtomed Time of one Hour being paſt, the Coffin was raiſed up, with the greater Decency to receive the Body, and being depoſited in the Hearſe, was conveyed by the Sheriffs, with the ſame Proceſſion, to *Surgeons-Hall**, to undergo the Remainder of the Sentence (*viz.* Diſſection).---Which being done, the Body was on *Thurſday* Evening, the 8th of *May*, delivered to his Friends for Interment.

He was privately interred at *St. Pancras* near *London*, in a Grave dug twelve or fourteen Feet deep, under the Belfry.

* The Statute made in the 25th Year of his late Majeſty's Reign for preventing the Crime of Murder, enacts, " That the Body of every Perſon convicted of Murder ſhall, " if ſuch Conviction and Execution ſhall be in the County of *Middleſex*, or within the City of *London*, or the Liberties thereof, be immediately conveyed by the Sheriff or " Sheriffs, his or their Deputy or Deputies, and his or their Officers, to the Hall of the Surgeons Company, or ſuch other Place as the ſaid Company ſhall appoint for this " Purpoſe, and be delivered to ſuch Perſon as the ſaid Company ſhall depute or appoint, who ſhall give to the Sheriff or Sheriffs, his or their Deputy or Deputies, a Receipt " for the ſame; and the Body ſo delivered to the ſaid Company of Surgeons, ſhall be diſſected and anatomized by the ſaid Surgeons, or ſuch Perſons as they ſhall appoint " for that Purpoſe; and that in no Caſe the Body ſhall be ſuffered to be buried, unleſs after ſuch Body ſhall have been diſſected and anatomized."

THE END OF THE TENTH VOLUME.

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Hargrave, Francis, 1741-1821 [Verfasser eines Vorworts] [Zusammenstellender]

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London (1779)

2 Crim. 52 h-10
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